CORRECTIONS IN VIRGINIA

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mmonwealth of Virginia Division of Justice and Crime Prevention

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FOREWORD

This Volume, Corrections is one of the Division of Justice and Crime Prevention's three reports on the status of the criminal justice system in Virginia relative to the comprehensive standards and goals established by the National Advisory Commission on Criminal Justice Standards and Goals.

The National Advisory Commission was appointed during 1971 to formulate the first national criminal justice standards and goals for crime reduction and prevention at the state and local levels. The results of this Commission's efforts culminated in the late 1973 release of a six-volume report which contained approximately 400 standards, goals and recommendations covering the criminal justice system, police, courts, corrections and community crime prevention.

The standards, goals, and recommendations were not formulated by the National Advisory Commission for carte blanche acceptance and implementation. Instead, the Commission urged each state and local government to evaluate its present status and to implement only those standards and recommendations found to be appropriate.

This and the other two volumes of our report represent our efforts to present objective assessments of the present status of the criminal justice system in Virginia as compared to these national standards and goals. The information con-

tained in this and the other two volumes should provide an objective basis for developing clear statements of State and local priorities, goals and standards to prevent and reduce crime in Virginia.

A discretionary grant was obtained from the Law Enforcement Assistance Administration to fund these comprehensive study efforts. For the area of corrections, the Division of Justice and Crime Prevention contracted with Professor Thomas Vocino of Auburn University at Montgomery to conduct the necessary research. This work was initiated during June of 1974 and was completed during December.

The Division would like to express its gratitude to Dr. Vocino, Mr. Stephen St. John, and Miss Susan L. Lindler who contributed their expertise to this effort. We are also grateful to Miss Lynn Dixon and Mr. William G. Sewell, Jr. who had administrative responsibility for this project and to the many state and local correctional officials who contributed valuable time to supply the information which made this report possible.

January, 1975
Richmond, Virginia

Richard N. Harris, Director
Division of Justice and
Crime Prevention

PREFACE

The purpose of this volume is to assist Virginia officials in considering the correctional standards of the National Advisory Commission on Criminal Justice Standards and Goals. The method employed to achieve this purpose was that of comparative analysis. More specifically, each standard in the NAC volume was examined in relation to correctional practice in Virginia in order to determine the degree of conformity.

Our findings are presented in a standard-by-standard format following the organization of the NAC volume. Each chapter of this report contains an introduction (which outlines the primary considerations in the chapter, the degree of compliance of the Virginia system with the recommended standards, and a note on methodology for the chapter), the comparative analysis for each standard, and an alternative standards section for each standard. The alternative standards section catalogs additional approaches to areas treated by the NAC or reactions to the NAC recommendations by various interested organizations. The methodology for this study is discussed in detail in Chapter One.

Without the cooperation of many individuals and agencies, this study would have achieved few of its objectives. At the state level, Mr. Jack F. Davis, Director of the Department of Corrections, and approximately forty additional officials

cooperated by granting interviews, responding to telephone inquires, and supplying numerous documents and reports. Cooperation from local officials was excellent as well. Sheriffs and Commonwealth's Attorneys completed questionnaires which provided information concerning local jail operations and court practices affecting corrections, respectively.

Large portions of this manuscript were reviewed by Dr. Ronald H. Rogers, Director of the Criminal Justice Program, Auburn University at Montgomery, and Dr. Joseph Honan, a former practicing attorney and Professor of Political Science, Illinois State University. Their expertise resulted in many conceptual and factual errors being eliminated from this report. Mr. Davis Morgan, Assistant Director of the South Carolina Department of Corrections, also provided many worthwhile suggestions at the early stages of our research. In addition, gratitude must be extended to the staff of the Division of Justice and Crime Prevention, especially Miss Lynn Dixon and Mr. William G. Sewell, Jr., who provided continuing assistance and encouragement.

The key personnel in any research undertaking is the project staff, and this project was fortunate to have had a number of extremely able individuals associated with it. Mr. Stephen St. John and Miss Susan L. Lindler served as co-investigators and made substantial and outstanding contributions to this report. During the project's life, Miss Sandra Busch, Mrs. Jewel Morecock, Mrs. Gail Holtz, and Miss Maribeth Ekey

served overlapping terms as secretary/typist. It is difficult to imagine a group of more intelligent and productive support personnel.

Finally, as project director, I have made the major decisions regarding methodology, format, inclusion of information, and edition of this report, and thus, am the only individual who should be criticized for conceptual and factual errors that appear herein.

January, 1975
Montgomery, Alabama

Thomas Vocino
Assistant Professor
Public Administration Program
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CHAPTER ONE

Methodology and Summary

The 129 recommendations in Corrections by the National Advisory Commission on Criminal Justice Standards and Goals range over a large area of correctional practice. In addition to traditional substantive concerns such as major institutions and probation and parole, the NAC places the correctional system in a larger criminal justice and political system context by addressing such concerns as diversion from the criminal justice system, pretrial release and detention, and sentencing practices. Such a scope of coverage has required extensive data collection to achieve the comparative analysis that follows in chapters two through sixteen.

Methodology:

A variety of methods have been employed, including use of mailed questionnaires, personal interviews, and literature searches. Information concerning state correctional activities was obtained from interviews with approximately forty key personnel of the State Department of Corrections and from a variety of offical documents and publications (see Bibliography).

Despite our best efforts, it is likely that a slight bias toward an official view of practice has probably resulted. If greater resources were available, systematic interviewing of correctional staff, inmates, and representatives of cliental

groups could have been undertaken. In respect to the problems of relying on official documents (statutes, administrative guidelines, official program descriptions, etc.) as may be expected, statutes and guidelines may be in conformance with NAC recommendations, but practice may in reality be at variance. Thus, every effort has been made to avoid such situations; however, although objectivity has been a paramount purpose, the reliance on official sources probably tends at times to place the Virginia correctional system in a somewhat favorable light.

Two mailed questionnaires were employed to obtain information concerning practices in the various state courts and local jails. As it would have literally required thousands of hours to obtain "hard" data for the areas of diversion, pretrial release, and sentence practices, Commonwealth's Attorneys were surveyed in order to obtain a generalized view of existing practices. Commonwealth's Attorneys were selected as respondents because they regularly have contact with judges, magistrates, and the police, allowing them to be knowledgeable in such areas as sentencing, pretrial release, and diversion. Of the 120 local prosecutors, 65 (or 54 percent) responded to the mailed questionnaire.

Data concerning the rights of offenders in Virginia jails and jail practices in the state were obtained for the most part from a survey of all local jails in Virginia. At the time of data processing for appropriate chapters, the survey showed a

return of 76 questionnaires out of a total of 98 mailed, for a response rate of 77 percent. As the questionnaire solicited data in addition to Standards and Goals information, follow-up action was taken so that completed questionnaires were obtained from 93 jails. These data have been processed onto data tapes for further analysis. As is the case for the Commonwealth's Attorney survey, the jail questionnaire data has been supplemented with information gathered by other research methods, including personal interviews and literature searches.

Summary of Findings:

Comparable to the companion volume in this series, Law Enforcement, the purpose of this section is to present a capsulized version of the major findings of the present study. This task was rendered difficult by the fact that most of the NAC's standards and recommendations were rather lengthy.

Many of the 129 Corrections Standards and Goals contained several hundred words and covered varying aspects of the subject. As a result, a summary of all findings pertaining even to one of the more comprehensive standards would have been very lengthy and partially defeated the purpose of a "summary". Thus, it was decided to indicate the approximate degree the Virginia correctional system is in compliance with each of the NAC standards.

Following the procedures in Law Enforcement, synopses of the Corrections Standards and Goals are classified below according to the following categories: (1) "Complete or

almost complete implementation of standards and recommendations," (2) "Majority standard and recommendation implementation," (3) "Minority standard and recommendation implementation," and (4) "No or almost no implementation of standards and recommendations".

The first category ("Complete or almost complete implementation of standards and recommendations") was used to designate the standards and recommendations which were found to have been implemented completely or almost completely. Only seven of the 129 Corrections Standards were found to fall into this category. The second major category ("Majority standard and recommendation implementation") was used to designate each standard or recommendation which was found to have a majority of its component parts already implemented. Approximately one-third (43) of the standards fell into this category.

The third category ("Minority standard and recommendation implementation") was used to designate each standard which was found to have only a minority of its components implemented in Virginia. Over one-third (46) of the standards fell into this category. The final category ("No or almost no implementation of standards and recommendations") was used to designate those standards and recommendations which have not been implemented at all or which have been implemented only to a very small degree. Over one-fourth (33) of the standards fell into this category.

As the foregoing summary has indicated, Virginia's correctional system and related activities are substantially in

non-compliance with the NAC standards. More specifically, over 60 percent of the NAC Standards do not find substantial compliance by the Virginia system. This non-compliance is likely due to the absence of a financial commitment for far-reaching standards as well as a difference of philosophy concerning corrections.

COMPLETE OR ALMOST COMPLETE IMPLEMENTATION OF STANDARDS AND RECOMMENDATIONS:

2.1	Access to Courts
5.8	Credit for Time Served
9.3	State Inspection of Local Facilities
10.1	Organization of Probation
12.2	Parole Authority Personnel
16.4	Unifying Correctional Programs
16.16	Pardon Legislation

MAJORITY STANDARD AND RECOMMENATION IMPLEMENTATION:

2.2	Access to Legal Services
2.4	Protection Against Personal Abuse
2.5	Healthful Surroundings
2.6	Medical Care
2.8	Nondiscriminatory Treatment
2.11	Rules of Conduct
2.12	Disciplinary Procedures
2.14	Grievance Procedure
2.16	Exercise of Religious Beliefs and Practices
2.17	Access to the Public
4.3	Alternatives to Arrest
4.4	Alternatives to Pretrial Detention
4.5	Procedures Relating to Pretrial Release and Detention Decisions
4.6	Organization of Pretrial Services
4.10	Expediting Criminal Trials
5.4	Probation
5.6	Multiple Sentences
5.7	Effect of Guilty Plea in Sentencing
5.14	Requirements for Presentence Report and Content Specification
5.15	Preparation of Presentence Report Prior to Adjudication
5.16	Disclosure of Presentence Report
7.2	Marshaling and Coordinating Community Resources
8.1	Role of Police in Intake and Detention
8.4	Juvenile Intake and Detention Personnel Planning

9.5	Pretrial Detention Admission Process
9.7	Internal Policies
9.9	Jail Release Programs
11.3	Social Environment of Institutions
11.7	Religious Programs
11.9	Counseling Programs
11.10	Prison Labor and Industries
12.1	Organization of Paroling Authorities
12.4	Revocation Hearings
14.6	Personnel Practices for Retaining Staff
14.9	Coordinated State Plan for Criminal Justice Education
14.10	Intern and Work-Study Programs
14.11	Staff Development
16.6	Regional Cooperation
16.9	Detention and Disposition of Juveniles
16.11	Probation Legislation
16.12	Commitment Legislation
16.14	Community-Based Programs
16.17	Collateral Consequences of a Criminal Conviction

MINORITY STANDARD AND RECOMMENDATION IMPLEMENATION:

2.9	Rehabilitation
2.13	Procedures for Nondisciplinary Changes of Status
2.15	Free Expression and Association
2.18	Remedies for Violation of an Offender's Rights
4.7	Persons Incompetent to Stand Trial
4.8	Rights of Pretrial Detainees
4.9	Programs for Pretrial Detainees
5.5	Fines
5.12	Sentencing Institutes
5.17	Sentencing Hearing -- Rights of Defendant
5.18	Sentencing Hearing -- Role of Counsel
5.19	Imposition of Sentence
6.1	Comprehensive Classification Systems
6.2	Classification for Inmate Management
7.1	Development Plan for Community-Based Alternatives to Confinement
7.3	Corrections' Responsibility for Citizen Involvement
7.4	Inmate Involvement in Community Programs
8.2	Juvenile Intake Services
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9.4	Adult Intake Services
9.6	Staffing Patterns
9.8	Local Correctional Facility Programming
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10.2	Services to Probationers
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10.4	Probation Manpower
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14.1	Recruitment of Correctional Staff
14.2	Recruitment from Minority Groups
14.3	Employment of Women
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15.2	Staffing for Correctional Research and Information Systems
16.5	Recruitment and Retaining Professional Personnel
16.8	Sentencing Alternatives
16.13	Prison Industries
16.15	Parole Legislation

NO OR ALMOST NO IMPLEMENTATION OF STANDARDS AND RECOMMENDATIONS:

2.3	Access to Legal Materials
2.7	Searches
✓ 2.10	Retention and Restoration of Rights
✓ 3.1	Use of Diversion
4.1	Comprehensive Pretrial Process Planning
4.2	Construction Policy for Pretrial Detention Facilities
5.1	The Sentencing Agency
5.2	Sentencing the Nondangerous Offender
5.3	Sentencing to Extended Terms
5.9	Continuing Jurisdiction of Sentencing Court
5.10	Judicial Visits to Institutions
5.11	Sentencing Equality
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13.4	Work Stoppage and Job Action
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14.8	Redistribution of Correctional Manpower Resources to Community-Based Programs
✓ 15.1	State Correctional Information Systems
15.3	Design Characteristics of a Correctional Information System
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16.3	Code of Offenders' Rights
16.7	Sentencing Legislation
16.10	Presentence Reports

CHAPTER TWO

Rights of Offenders

The question of the rights of offenders represents a very special problem within the criminal justice system, standing as it does at the junction of two fundamental concepts: the need for security and protection of the public and the necessity to preserve and protect the civil and constitutional rights of the incarcerated individual. As such, the rights of offenders are an especially difficult area, that affects not only the security aspects of jailing, but the aspect of dehumanization and loss of dignity and freedom in a criminal justice system as well. Consequently, owing to its importance, the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals has devoted substantial space to expounding upon what they believe should be the norm for offenders' rights in correctional facilities throughout the nation. The drift and substance of the recommendations of the Commission are clear in this area: that basically offenders should be allowed as close an approximation of the rights and privileges of non-jailed citizens as possible within an incarcerated setting. Furthermore, the basic burden should fall upon the correctional administrators to show why rights should be abridged or curtailed. Finally, the Commission and its Corrections Task Force recommended a wide-reaching introduction of due process procedures into

institutions, further guaranteeing the rights of prisoners.

In Virginia, the general situation would appear to be that of mixed compliance, with the Virginia state correctional system in accord with the majority of the Standards in this area, but with the local correctional institutions exhibiting somewhat less of a degree of acceptance and implementation. As for the methodology employed in this chapter, information for the state system was obtained from an examination of written policy guidelines of the Department of Corrections and interviews with correctional personnel. Data for the local jails was gathered through the use of a survey instrument administered to all local jails within the Commonwealth. The survey resulted in a return of 76 questionnaires out of a total of 98 mailed, for a responding percentage of 77.55. The local jailers responded to a variety of questions concerning the rights of offenders in their institution, the results of which follow in the standard-by-standard analysis.

Standard 2.1

Access to Courts

Each correctional agency should immediately develop and implement policies and procedures to fulfill the right of persons under correctional supervision to have access to courts to present any issue cognizable therein, including (1) challenging the legality of their conviction or confinement; (2) seeking redress for illegal conditions or treatment while incarcerated or under correctional control; (3) pursuing remedies in connection with civil legal problems; and (4) asserting against correctional or other governmental authority any other rights protected by constitutional or statutory provision or common law.

1. The State should make available to persons under correctional authority for each of the purposes enumerated herein adequate remedies that permit, and are administered to provide, prompt resolution of suits, claims, and petitions. Where adequate remedies already exist, they should be available to offenders, including pretrial detainees, on the same basis as to citizens generally.

2. There should be no necessity for an inmate to wait until termination of confinement for access to the courts.

3. Where complaints are filed against conditions of correctional control or against the administrative actions or treatment by correctional or other governmental authorities, offenders may be required first to seek recourse under established administrative procedures and appeals and to exhaust their administrative remedies. Administrative remedies should be operative within 30 days and not in a way that would unduly delay or hamper their use by aggrieved offenders. Where no reasonable administrative means is available for presenting and resolving disputes or where past practice demonstrates the futility of such means, the doctrine of exhaustion should not apply.

4. Offenders should not be prevented by correctional authority administrative policies or actions from filing timely appeals of convictions or other judgments; from transmitting pleadings and engaging in correspondence with judges, other court officials, and attorneys; or from instituting suits and actions. Nor should they be penalized for so doing.

5. Transportation to and attendance at court proceedings may be subject to reasonable requirements of correctional security and scheduling. Courts dealing with offender matters and suits should cooperate in formulating arrangements to accommodate both offenders and correctional management.

6. Access to legal services and materials appropriate to the kind of action or remedy being pursued should be provided as an integral element of the offender's right to access to the courts. The right

of offenders to have access to legal materials was affirmed in Younger v. Gilmore, 404 U.S. 15 (1971), which is discussed in Standard 2.3.

Analysis

Under the existing administrative practices of correctional facilities in the Commonwealth of Virginia, access to the courts by offenders is for the most part not restricted by correctional administrators. Access to the courts has been guaranteed by the courts themselves by several rulings.[1] The offender's right to present issues to the judicial branch is fairly scrupulously guarded and preserved in the state correctional facilities as well as in the local facilities, and would appear to be in concert with the standards recommended by the National Advisory Commission.

Regarding state correctional facilities, an effort has been made to improve the opportunities in seeking redress of grievances. There are presently no restrictions on the right of access to the courts of any prisoner in any correctional institutional of the Commonwealth.[2] This lack of barriers includes all four major areas of litigation cited in NAC Standard 2.1, and places Virginia in compliance with federal law as adjudicated in Johnson v. Avery (393 US 483 - 1969), where the United States Supreme Court ruled that no restrictions may be placed on an offender's access to courts for the filing or answering of legal suits or the seeking of remedies. Thus, adequate remedies are available to offenders in Virginia to pursue the aforementioned four areas of litigation, and there is no necessity that an inmate wait until termination of his or her confinement to do so.

Likewise, the filing of timely appeals, the transmission of pleadings and correspondences, and institution of suits are not prevented and adequate transportation is available for suit purposes. However, regarding the utilization of administrative remedies, there generally is no appeal to the judiciary in matters concerning inmate grievances over administrative procedures, as traditionally the courts have looked upon such areas as being within the discretion of correctional personnel. Such procedures are generally regarded as internal disciplinary conduct, left to the prerogative of the administration within the broad guidelines of constitutional requirements. Thus, while no habeas corpus arguments may be utilized by offenders, nor will the courts serve as a clearinghouse of inmate grievances, appeals from administrative procedures based on constitutional deprivation are applicable and acceptable. Appeals beyond the procedures of the institutional system are feasible and are not prevented by correctional officials. Finally, the questions of access to legal materials and services are addressed in Standards 2.2 and 2.3, respectively.

As for local institutions surveyed, none of the 76 responding sheriffs stated that any interference was made with the conduction of legal suits, appeals, and other transactions. The administrative remedies for local institutions are covered in Standards 2.11, 2.12, 2.13 and 2.14.

Alternative Standards

Regarding Standard 2.1, the Standards Committee of the

American Wardens' Association has found it acceptable, stating:

> Agreed that all offenders should have access to courts for post-conviction remedies. Administrative practices within institutions should be sound enough to stand the test of court review.[3]

The Association of State Correctional Administrators disagrees, stating:

> Controversial to the extreme, tending to encroach upon administrative authority.[4]

The American Corrections Association recommends that:

> No impediments shall be imposed upon the rights of any prisoner to free access to books of law and to the preparation and prompt forwarding of writs, appeals or complaints to courts of law as to governmental authorities.[5]

Finally the State of Oregon has formulated as one of its 1980 standards the following:

> 1.403 Establish an ongoing program providing legal assistance to inmates of the state's insitutions, including the provision of access to a complete legal library, and legal counsel.[6]

Footnotes

[1]See Ex Parte Hull, 312 U. S. 546 (1946); Palingiano v. Trevisono, 317 F. Supp. 776 (S. D., NY: 1971) Jones v. Wittenberg, 330 F. Supp. 707 (n. d. OH: 1971).

[2]Interview with Mr. James Hopper, Assistant Attorney General for the Virginia Department of Corrections, July 31, 1974.

[3]"Review of the National Advisory Commission on Criminal Justice Standards and Goals", (Draft), Standards Committee of the American Wardens' Association, August 1974.

[4]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

[5]American Correctional Association, Manual of Correctional Standards (Washington, D. C.: 1966), p. 268.

[6]Proposed 1980 Standards and Goals (Draft), Salem: Oregon Law Enforcement Council, May 1974.

Standard 2.2

Access to Legal Services

Each correctional agency should immediately develop and implement policies and procedures to fulfill the right of offenders to have access to legal assistance, through counsel or counsel substitute, with problems or proceedings relating to their custody, control, management, or legal affairs while under correctional authority. Correctional authorities should facilitate access to such assistance and assist offenders affirmatively in pursuing their legal rights. Governmental authority should furnish adequate attorney representation and, where appropriate, lay representation to meet the needs of offenders without the financial resources to retain such assistance privately.

The proceedings or matters to which this standard applies include the following:

1. Postconviction proceedings testing the legality of conviction or confinement.
2. Proceedings challenging conditions or treatment under confinement or other correctional supervision.
3. Probation revocation and parole grant and revocation proceedings.
4. Disciplinary proceedings in a correctional facility that impose major penalties and deprivations.
5. Proceedings or consultation in connection with civil legal problems relating to debts, marital status, property, or other personal affairs of the offender.

In the exercise of the foregoing rights:

1. Attorney representation should be required for all proceedings or matters related to the foregoing items 1 to 3, except that law students, if approved by rule of court or other proper authority, may provide consultation, advice, and initial representation to offenders in presentation of *pro se* postconviction petitions.
2. In all proceedings or matters described herein, counsel substitutes (law students, correctional staff, inmate paraprofessionals, or other trained paralegal persons) may be used to provide assistance to attorneys of record or supervising attorneys.
3. Counsel substitutes may provide representation in proceedings or matters described in foregoing items 4 and 5, provided the counsel substitute has been oriented and trained by qualified attorneys or educational institutions and receives continuing supervision from qualified attorneys.
4. Major deprivations or penalties should include loss of "good time," assignment to isolation status, transfer to another institution, transfer to higher security or custody status, and fine or forfeiture of inmate earnings. Such proceedings should be deemed to include administrative classification or reclassification actions essentially disciplinary in nature; that is, in response to specific acts of misconduct by the offender.
5. Assistance from other inmates should be pro-

hibited only if legal counsel is reasonably available in the institution.

6. The access to legal services provided for herein should apply to all juveniles under correctional control.

7. Correctional authorities should assist inmates in making confidential contact with attorneys and lay counsel. This assistance includes visits during normal institutional hours, uncensored correspondence, telephone communication, and special consideration for after-hour visits where requested on the basis of special circumstances.

Analysis

Within the correctional systems of Virginia, offenders are, for the most part, given access to legal services as recommended in Standard 2.2. Insofar as state correctional facilities are concerned, the inmate's access to legal services is supplied through a system whereby the local Commonwealth's Attorney in the county or city of the institution, upon petition by the superintendent of the facility that legal assistance is needed by inmates, will appoint counsel to represent incarcerated offenders. Thus, under this provision, the rotation of court-appointed attorneys at each facility is assured. These attorneys, however, are restricted to criminal venue only, dealing with post-conviction pleadings and proceedings as outlined in the first three areas of litigation in this Standard. Under this plan for representation, the State Penitentiary in Richmond has five attorneys, the state farms have one for each facility, the Women's Farm one, and each correctional field unit one attorney, whose job it is to tender legal assistance in matters of post-conviction relief.[1] In addition, of course, private attorneys may be secured by offenders at any time without restriction. Thus, the system of access to legal services within the state correctional system as it relates to post-conviction criminal remedies would appear to satisfy Standard 2.2 in its general provision, and in the more specific provision that attorney representation be required for items 1 - 3 of the five areas of litigation by an inmate.

With regard to the civil proceedings, there are no provisions for administrative supply of attorneys in proceedings such as divorce, etc. A possible source of counsel for offenders is utilization of the local legal aid facilities, which maintain their own independent eligibility requirements.

If an inmate can satisfy these requisites, centered usually around poverty provisions, such assistance may be used. In addition, in proceedings where an inmate is a respondent to a civil suit initiated by an individual outside the correctional system, the court then involves itself in the question of counsel to insure that the offender's interests in society are protected while he is incarcerated.

Finally, with regard to internal disciplinary proceedings, specific guidelines are in existence which govern the policy of the Department of Corrections for legal counsel. Division of Corrections Guideline No. 800 (Revised), issued April 16, 1973, provides that:

> Prior to the hearing, the inmate may request an inmate advisor from a list of those inmates who have volunteered for this job to help him present his case. The inmate will not receive his choice from this list, but will be assigned the next name in turn unless there is some good reason for not doing so. The inmate advisors are expected to be familiar with these guidelines and the rules of the institution. The job of the inmate advisors is to help the inmate charged with misbehavior to understand the proceedings before the Adjustment Committee and the possible penalties he may receive. When the Adjustment Committee proceedings may result in the loss of substantial rights, such as loss of good conduct time, isolation, or an inmate being held in padlock confinement for more than ten (10) days, and the inmate desires to secure his own private attorney to represent him at the hearing, he must notify the Committee of the fact, and his hearing will be postponed for a period of four (4) working days

> so that he may secure the aid of his attorney, and he will be permitted to call him at that time. The inmate may indicate on the misconduct report whether or not he wants the help of an inmate advisor or private attorney. Private attorneys must be retained at the inmate's expense, including the expense of any long distance telephone calls. The private attorney must be prepared to appear at the hearing after the four (4) day continuance as no further delays need be granted. If the inmate has been placed in detention, he will remain there during the period of this four-day continuance.[2]

Thus, under Guideline 800, counsel substitutes may be used in the form of inmate advisors in all disciplinary proceedings before the Adjustment Committee, and the inmate may secure private counsel in hearings involving the more serious types of violations, but there is no provision for the supplying of counsel from administrative or court sources, nor the provision of counsel at state expense. In addition, assistance in internal disciplinary hearings is provided through the use of law students from the state's four law schools, in particular through the Post-Conviction Assistance Project at the University of Virginia Law School. This project has been providing legal assistance in the areas surrounding Charlottesville. A similar project is now under way at the Washington and Lee Law School, and assistance for offenders is also available at the law schools of the University of Richmond and the College of William and Mary, although no formal programs are currently in existence. Thus, in internal disciplinary proceedings the inmate has the following options insofar as access to legal services are concerned: 1) securing a private attorney at his own expense; 2) use of an inmate advisor as a counsel

substitute; and 3) use of a law student from one of the state's four law schools. In sum, state correctional facilities would again appear for the most part to be in compliance with the recommendations of the National Advisory Commission regarding legal services.

Regarding local correctional institutions, access to legal services would appear to be relatively unhampered in these facilities. The State Department of Corrections has promulgated rules in this area:

1. An inmate shall have the right to confidential visits with the following persons: a. His attorney (or authorized member of his staff...)

2. Attorneys will be allowed to visit their clients during regular business hours and other reasonable hours. Nights and weekend emergency visits should be permitted where practical and possible.

3. Conversations with attorneys are confidential and jail personnel may not listen to them.[3]

Table 2.2 - 1 shows the distribution of responses to questions regarding inmate access to legal services in local jails. Some 97 percent do allow legal representatives of offenders special visitation periods beyond normal visiting hours. Of these who do, 59 or nearly 80 percent have unlimited hours for attorney visitation. Of the fifteen with limitations, the average number of hours available for access to legal personnel beyond normal visitation hours is 13.8 per jail. Sheriffs were also polled on the availability of legal services in disciplinary proceedings which impose major penalties or deprivations. Sixty-one percent answered that such services

are allowed, with 14 percent responding negatively and 24 percent providing no response (for further analysis of this area, see Standard 2.12 on Disciplinary Proceedings). Thus, for the most part, the local jails appear to be in accord with the requisites of the NAC regarding the granting of access to legal services.

Alternative Standards

Regarding Standard 2.2, the Standards Committee of the American Wardens' Association has stated:

> Modify. The hearing to determine an inmate's readiness for parole is not an adversary one. His sentence is not extended if a grant is not forthcoming. Parole Boards are looking for reasons to grant parole, not deny. Therefore, I see no need for attorney representation.
>
> Counsel substitutes can be utilized in serious disciplinary hearings and should be provided with some direction, hopefully by someone with legal training. However, this procedure should not bog down the disciplinary process. The immediacy and certainty of punishment is of tantamount importance in the operation of an institution. The unnecessary delays caused by this standard would possibly lead to the breakdown of discipline and control. Further, if the inmate is represented by someone trained in the law, it would stand to reason that the Disciplinary Committee would also need legal training. Consequently, the hearing would be so complicated and drawn out to the point where the inmate's behavior or misconduct would be lost and become meaningless in terms of correction.[4]

The State Association of Correctional Administrators Standards Committee regards this standard in the following manner:

> To budget for this standard would be extemely difficult and like Standard 2.1 encroach upon the administrative flexibility necessary to efficient operation of a penal institution. The providing of attorneys at the whim of an inmate makes little sense. Administration and staff have no such resources available and would be at a distinct disadvantage. This standard is basically

> sound, but it is too total, too exteme, and too broad. There is a running assumption that all actions are adversary and punitive.[5]

The American Bar Association has proposed the following standards concerning the lawyer-client relationship:

> c) To insure the privacy essential for confidential communication between lawyer and client, adequate facilities should be available for private discussions between counsel and accused in jails, prisons, court houses and other places where accused persons must confer with counsel.
>
> d) Personnel of jails, prisons and custodial institutions should be prohibited by law or administrative regulations from examining or otherwise interfering with any communication or correspondence between a client and his lawyer relating to legal action arising out of charges or incarceration.[6]

In its handbook, The Rights of Prisoners -- An American Civil Liberties Handbook, the ACLU has addressed the matter of a prisoner's access to legal assistance. The union asserted:

> A few courts have been more precise. In California a federal district court held that prior to any administrative punitive action a prisoner must be given written notice of the charges against him; a record of the hearing; the right to cross-examine witnesses against him and to call witnesses on his behalf; the right to counsel and to have counsel appointed if he is indigent...[7]

Footnotes

[1] Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2] Department of Corrections' Division Guideline No. 800 (Revised), pp. 7-8, issued April 16, 1973.

[3] Rules for Local Jails, (Revised Draft Copy) (Richmond: Department of Corrections, July 1974), unpaginated.

[4] "Review of the National Advisory Commission on Criminal Justice Standards and Goals," (Draft), Standards Committee of the American Wardens' Association, August 1974.

[5] "Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

[6] Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association, 1973, p. 320.

[7] American Civil Liberties Union, The Rights of Prisoners -- An American Civil Liberties Handbook, 1973.

TABLE 2.2 - 1

Access to Legal Services in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are the legal representatives of offenders held at your facility allowed special visitation periods beyond normal visting hours to consult with their clients?	74	97.36	1	1.31	1	1.31
Are offenders allowed legal representation at your facility when involved in disciplinary proceedings which impose major penalties or deprivations such as solitary confinement, etc.?	47	61.84	11	14.47	18	23.68

Standard 2.3

Access to Legal Materials

Each correctional agency, as part of its responsibility to facilitate access to courts for each person under its custody, should immediately establish policies and procedures to fulfill the right of offenders to have reasonable access to legal materials, as follows:

1. An appropriate law library should be established and maintained at each facility with a design capacity of 100 or more. A plan should be developed and implemented for other residential facilities to assure reasonable access to an adequate law library.

2. The library should include:

a. The State constitution and State statutes, State decisions, State procedural rules and decisions thereon, and legal works discussing the foregoing.

b. Federal case law materials.

c. Court rules and practice treatises.

d. One or more legal periodicals to facilitate current research.

e. Appropriate digests and indexes for the above.

3. The correctional authority should make arrangements to insure that persons under its supervision but not confined also have access to legal materials.

Analysis

With regard to offender access to legal materials, Virginia institutions are, for the most part, lacking the library items recommended in Standard 2.3. As far as state institutions are concerned, the legal materials available may best be described as minimal, with the exact number of volumes at each institution varying considerably, depending upon the available budgetary funds at each given facility. However, it can be said that the volumes at each institution do not even remotely approach the recommendations of the National Advisory Commission. The standard volumes at most institutions are usually a set of the Virginia Code, some volumes on Federal practice and pleadings, and other various and assorted law volumes.[1] Thus, the Virginia state institutions are not in concert with these recommendations.

It should be noted, however, that when considering access to legal materials, the standard of access to legal services ought to be scrutinized in association with Standard 2.2. These standards go hand in hand to a common goal of allowing an offender to define and assert his legal prerogatives, and may be thought of as working somewhat in tandem. The strategy pursued by the state Department of Corrections is at least partially explanatory of the absence of legal materials. The Commonwealth's correctional officials have chosen to emphasize the alternative right of supplying legal counsel and services in replacement of the supply of legal materials

to offenders. The stated rationale behind such an alternative lies in the administration's belief that the supplying of legal services affords superior representation and expertise to that of simply doling out legal materials to untrained inmates.[2]

Library material guidelines do exist for local jails as promulgated by the state Department of Corrections. They read:

1. All inmates, regardless of the status of confinement, shall have access to any existing library facilities. Inmates in disciplinary segregation shall be able to check out books and magazines from the library to read in their cells.

2. A lending system should be worked out with the local library in order that additional books may be made available.

3. Every inmate must be allowed to prepare his own legal documents and assist other inmates on request. Where available, law student assistant projects should be encouraged.

4. Each inmate may use the law books in the jail library or may purchase or receive legal materials by mail. Sufficient legal size paper, envelopes and stamps should be supplied for prisoner's legal documents, where a prisoner is unable to provide his own.[3]

Regarding local correctional facilities, access to legal materials is little better than in state facilities. Table 2.3 - 1 exhibits the distribution of responses to the questions concerning legal library materials. As to the availability of such volumes, approximately 40 percent responded that they have some legal materials available, while 60 percent do not. The number of volumes is paltry, however, as the 76 responding jails total only 221 volumes among their reserves, making for

an average of only 7.3 per institution which responded affirmatively, and 2.9 per institution when the entire sample of 76 jails is considered. Finally, slightly over one-half of the jails do allow inmates to seek legal materials at other facilities or libraries. Thus, it would appear that the local correctional facilities do not even remotely approach achieving the recommendation of the NAC regarding legal materials.

Alternative Standards

The American Wardens' Association has stated:

> Accept. We recognize the need for all inmates, who so desire, to have access to legal materials.[4]

The Association of State Correctional Administrators disagrees, however, stating:

> No minimum count. Difficult to budget for and supervise in a jail facility.[5]

Finally, the Special Committee of Law Library Services to Prisoners of the American Association of Law Libraries recommends the purchase of the following sets of materials:

1. United State Code Annotated
2. Federal Code Annotated
3. United States Report
4. Federal Reports
5. Federal Supplement
6. State Law Reporters[6]

In its collection of standards relating to post-conviction remedies, the American Bar Association has put forth its view on access to legal materials:

> ... there appears to be substantial room for improvement in the resources available to prisoners on a self-help basis. The collections of legal materials in prison libraries are generally very sparse, or non-

> existent. Few trained lawyers could operate with any degree of competence with such materials. Moreover, there are frequently found prison rules narrowly restricting the sources to which prisoners may resort to purchase their own legal reference materials.[7]

The American Correctional Association has the following to say concerning the availability of law materials:

> To assist administrators to 'make their libraries realistic research centers for prisoner self-help' a Special Committee on Law Library Service to Prisoners, American Association of Law Libraries, has prepared two recommended collections of law books: Minimum Collection for Prison Law Libraries and Expanded Collection for Prison Law Libraries. The minimum collection has been carefully selected to provide the most basic legal research needs. Anything less will be inadequate. It consists of basic United States and general titles. To this list, however, each state must add its own materials and each administrator will need to consider whether one set of the collection will be sufficient for the inmate needs in his institution or whether more copies of titles are essential. He must also consider purchasing other titles from the 'Expanded' list, which is not an extravagant list. As many titles should be purchased from this list as can be funded.[8]

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]Ibid.

[3]Rules for Local Jails, Revised Draft Copy (Richmond: Department of Corrections, July 1974), unpaginated.

[4]"Review of the National Advisory Commission on Criminal Justice Standards and Goals." Draft, Standards Committee of the American Wardens' Association, August 1974.

[5]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

[6]American Association of Law Libraries, Special Committee on Law Library Services to Prisoners, in Guidelines for Legal Deference Service in Correctional Institutions: A Tool for Correctional Administrators (College Park, Maryland: American Correctional Association), unpaginated and undated.

[7]American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies, 1967, p. 49.

[8]American Correctional Association, Guidelines to Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators, 1973.

TABLE 2.3 - 1

Legal Materials in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are legal materials such as codebooks, cases, procedural rules and decisions, etc. available at your facility for offenders to use?	30	39.47	45	59.21	1	1.31
Are offenders allowed access to such materials at other facilities or libraries?	39	51.31	15	19.73	22	28.94

Standard 2.4

Protection Against Personal Abuse

Each correctional agency should establish immediately policies and procedures to fulfill the right of offenders to be free from personal abuse by correctional staff or other offenders. The following should be prohibited:

1. Corporal punishment.

2. The use of physical force by correctional staff except as necessary for self-defense, protection of another person from imminent physical attack, or prevention of riot or escape.

3. Solitary or segregated confinement as a disciplinary or punitive measure except as a last resort and then not extending beyond 10 days' duration.

4. Any deprivation of clothing, bed and bedding, light, ventilation, heat, exercise, balanced diet, or hygienic necessities.

5. Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any offender.

6. Infliction of mental distress, degradation, or humiliation.

Correctional authorities should:

1. Evaluate their staff periodically to identify persons who may constitute a threat to offenders and where such individuals are identified, reassign or discharge them.

2. Develop institution classification procedures that will identify violence-prone offenders and where such offenders are identified, insure greater supervision.

3. Implement supervision procedures and other techniques that will provide a reasonable measure of safety for offenders from the attacks of other offenders. Technological devices such as closed circuit television should not be exclusively relied upon for such purposes.

Correctional agencies should compensate offenders for injuries suffered because of the intentional or negligent acts or omissions of correctional staff.

Analysis

Regarding the protection of inmates against personal abuse, such a determination is fairly difficult to make given the internal and obscured nature of correctional facility discipline. However, certain indicators are available which provide insight into the problem of protecting an offender's safety and well-being while incarcerated. With reference to the Virginia state correctional system, the comparative analysis reveals a mixed bag of general compliance and non-compliance with the suggested standards of the National Advisory Commission.

In terms of general compliance, Virginia state facilities strictly forbid the use of unnecessary force or corporal punishment except under the circumstances delineated in subpoint 2. The Department of Corrections Guideline No. 800 (Revised) states that "4) corporal punishment (punishment applied to the body of the offender) is strictly prohibited."[1] In addition, deprivation of the listed hygenic and mental health necessities is likewise prohibited.[2] Finally, lack of care or acts which injure inmates and the infliction of mental duress are banned as a matter of policy in the state corrections systems.[3]

In the realm of implementation of security measures, the Penitentiary in particular has, since the Landman v. Royster 333 F. Supp. 621 (E.D. V.A.: 1971)[4] decision, increased protective security for the inmates, largely in the form of increased technological aids such as closed

circuit television surveillance and through the installation of partitions and other separating devices which restrict the roaming and wandering of offenders. In addition, attempts are made by correctional officials to segregate prisoners according to their propensity for violence, with classification as to institution and intra-facility segregation.

Non-compliance with this standard occurs in the area of staff evaluation where, although staff violence and the use of unnecessary force are strictly prohibited, there is no formal periodic evaluation of staff personnel who might constitute a threat to offenders. In addition, the corrections policy regarding solitary confinement is harsher than that recommended by the NAC, in that a longer sentence than the suggested ten days is allowed under state policy. The department Guidelines for inmate discipline state:

> Duration of isolation - The inmate will remain in isolation for a determined or an undetermined period of time but not longer than fifteen days. Infractions of rules by a prisoner while in isolation, or continued defiance of prison authorities, will be referred to the Adjustment Committee under the above established procedures for a hearing, except in the event of exceptional circumstances. The prisoner may be kept in isolation for an additional period of up to fifteen days for each such additional infraction and hearing; but a special report shall be made to the Director whenever such offenses while in confinement take place. If return to the regular population after fifteen days represents a threat to the population or to the security of the institution, the inmate should be referred to the Adjustment Committee for their recommendation as to transfer to a different setting...[5]

Thus, the maximum sentence to solitary or isolation may be as long as fifteen days per individual offense, and

in the case of multiple offenses where consecutive sentences are given, an inmate's term in isolation may considerably exceed fifteen day maximum.

Concerning local institutions, the Department of Corrections has promulgated conditions and limitations on punishments in order to protect inmates against personal abuse. They are:

1. Correspondence privileges shall not be denied as punishment unless the offense itself related to abuse of privileges.

2. Bread and water or any other dietary restrictions shall be not imposed as punishment.

3. Physical restraints, (chains, tape, handcuffs, etc.) shall not be used to bind an inmate except for transport, where physical injury to person or property is imminent and otherwise unavoidable, or prescribed by a competent doctor for the inmate's safety.

4. Corporal punishment may not be used at any time.

5. Inmates shall not be denied bedding, clothing, or toilet articles as punishment nor shall they be so restrained as to prevent exercise for punishment.

6. Correctional officers shall not cut inmate's hair, mustache or beards for punishment.

7. There must be a time limit on <u>every</u> punishment.

8. An inmate shall never be punished for his/her political beliefs, the books which one reads or the organizations to which they belong.

9. Tear gas, chemical mace or similar instruments shall not be used except in extreme emergencies where physical injury to person or property is imminent or otherwise unavoidable.

10. An inmate shall not be held in punitive segregation for more than fifteen consecutive days for any offense.[6]

Local jailers were questioned regarding protection of inmates, the results of which are exhibited in Table 2.4 - 1.

Regarding initiation of suits or complaints as to personal abuse, 15 percent of the jails have had such actions begun, a total of 12 suits or complaints in this area. As for similar legal or administrative action in the realm of redress for illegal treatment or conditions, 33 percent of the reporting institutions have had complaints of this nature, for a total of 21 reported incidents of administrative grievance or legal proceedings. Of the 21, 20 were settled in favor of the institution's administration, and a single complaint was resolved in the inmate's favor. Thus, the local jails would appear to comply with the requisites of the standards concerning personal abuse, with some exceptions.

Alternative Standards

The Standards Committee of the American Wardens' Association has found Standard 2.4 acceptable, stating:

> Accept. Although it is extremely difficult to protect one inmate from another, I believe most administrators feel it is their moral duty, if not their legal responsibility.
>
> Corporal punishment has no place in the modern correctional facility.[7]

The American Civil Liberties Union makes the following statement regarding solitary confinement:

> Solitary confinement may also be cruel and unusual where the reason for isolation or the length or incarceration in isolation is not justified by the alleged violation of prison regulations, even though the physical conditions do not fall below the standards required by the Eighth Amendment. Thus, a federal district court in Washington, D. C., has ruled that isolation in solitary confinement for two years

constituted cruel and unusual punishment because the only violation of prison rules -- engaging in a demonstration tending to breach the peace -- was relatively minor.[8]

Footnotes

[1]Department of Corrections Division Guideline No. 800 (Revised), issued April 16, 1973, p. 5.

[2]Ibid., p. 13.

[3]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[4]The leading case in this area is Holt v. Sarver where the court undertook review of the internal practices of the prison system of Arkansas as many unconstitutional practices had been substantiated.

[5]Department of Corrections Division Guideline No. 800 (Revised), issued April 16, 1973, p. 15.

[6]Rules and Regulations for the Administration of Local Jails and Lockups, Revised Draft Copy (Richmond: Department of Corrections, July 1974), unpaginated.

[7]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft (Standards Committee of the American Wardens' Association, August 1974).

[8]American Civil Liberties Union, The Rights of Prisoners -- An American Civil Liberties Handbook, 1973.

TABLE 2.4 - 1

Protection Against Personal Abuse in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Have any prisoners filed suit or initiated complaints as to personal abuse within your facility?	11	14.47	63	82.89	2	2.63
Has any offender held at your facility filed suit within the last two years against your facility for redress for illegal treatment or conditions while incarcerated?	24	32.89	52	68.42	0	0

Standard 2.5

Healthful Surroundings

Each correctional agency should immediately examine and take action to fulfill the right of each person in its custody to a healthful place in which to live. After a reasonable time to make changes, a residential facility that does not meet the requirements set forth in State health and sanitation laws should be deemed a nuisance and abated.

The facility should provide each inmate with:

1. His own room or cell of adequate size.

2. Heat or cooling as appropriate to the season to maintain temperature in the comfort range.

3. Natural and artificial light.

4. Clean and decent installations for the maintenance of personal cleanliness.

5. Recreational opportunities and equipment; when climatic conditions permit, recreation or exercise in the open air.

Healthful surroundings, appropriate to the purpose of the area, also should be provided in all other areas of the facility. Cleanliness and occupational health and safety rules should be complied with.

Independent comprehensive safety and sanitation inspections should be performed annually by qualified personnel: State or local inspectors of food, medical, housing, and industrial safety who are independent of the correctional agency. Correctional facilities should be subject to applicable State and local statutes or ordinances.

Analysis

Regarding healthful surroundings in the Virginia state correctional system, all facilities operated by the Department of Corrections must be constructed in compliance with existing building codes and regulations. State facilities are regularly inspected by personnel of the state health department, who have the power to enforce sanitary and health requirements and to demand compliance with state statutes. Within the Department of Corrections, the Bureau of Engineering regularly inspects the facilities as well, and supervises the compliance with the statutory and departmental mandates. Consequently, efforts are apparently being made to insure that the physical environment of the correctional facilities is of a healthful and satisfactory nature.

As for the specific requisites of Standard 2.5, natural and artificial light is available at all facilities, as well as some recreational opportunities, adequate heating and cooling, and facilities for the maintenance of personal cleanliness. However, regarding the provisions of one man cells, within the penitentiary each inmate is given a cell of his own; yet, in other facilities such as the State Farm and the field units, barracks-style accommodations prevail for the most part.[1] Recreational programs in the state system are treated in Standard 11.8, Recreation Programs.

Concerning local correctional facilities, rules regarding healthful surroundings have been promulgated for local jails

by the state Department of Corrections. In the area of sanitation, the following regulations have been promulgated:

I. Personal Hygiene

1. On admission, each inmate will be given jail clothing, soap, toothbrush, toothpaste, two sheets, pillow, pillowcase, mattress, blanket (when necessary), toilet paper, towels and other necessities and be required to bathe. No inmate shall be held in any cell where there is not a sink, commode, bunk and mattress, except where he/she is likely to use such items in such a way as to pose a substantial danger to himself, others or property. Mattresses shall be a minimum of four (4) inches, fire resistant, and obtainable from the Virginia Commission of the Blind, Charlottesville, Virginia.

2. If any inmate has no money in his account to buy the necessary toilet articles they shall be supplied on his request.

3. Clean linen and towels must be supplied at least once a week.

4. Sanitation equipment will be made available daily to each inmate to be used to clean his/her cell or other common usage areas.

5. A clean change of jail clothes shall be provided twice a week.

6. All common rooms, toilets, sinks and cells used by the inmates shall be cleaned daily by the inmates.

7. Extermination will be done as often as necessary to keep the jail reasonably free of pests, vermin, lice, bugs, etc.

8. Each inmate may be allowed to shower and shave daily, and must shower at least twice a week.

9. Prisoners held less than ten (10) days may not be compelled to have haircuts. Prisoners held for ten (10) days or more shall be subject to the same regulations as apply in State Institutions.

...

Cleanliness and Sanitation

1. Interior of Jail - The interior of the jail and the jail surroundings shall be kept clean and presentable at all times. Floors shall be swept, trash removed, bars and ledges dusted, and sanitary fixtures scoured every day. Floors, cell walls, and bunk rails shall be scrubbed and rinsed completely clean twice each week. Windows shall be washed each two weeks. Pencil marks and paper pasted on walls shall be removed as soon as discovered, and wherever possible, the prisoner making the marks or pasting the paper shall be required to remove the marks or paper. Personal property, papers, and magazines, and especially soiled clothing shall not be stored or kept in bunks under mattresses.

2. Food in cells forbidden - Wherever possible, food shall be served to prisoners in dining rooms, day rooms, or prisoners' corridors. Prisoners shall not be permitted to take food into or keep food in cells. All unconsumed food should be removed from living quarters immediately after each meal.[2]

As for recreation, these following guidelines have been suggested:

A. All jails are encouraged to provide indoor recreation and outdoor exercise. Any person held more than thirty (30) days shall be afforded regular physical exercise or activity.

B. Inmates should be allowed to have radios and should be allowed to play them so long as they do not disturb others.

C. Television should be made available to inmates in a general recreation area, where funds are available.[3]

In addition, all local jails are regularly inspected by staff members of the Jail Section of the Bureau of Institutional Services of the Department of Corrections. They have the power to make recommendations to the State Board of Corrections, which in turn has the statutory authority to force changes

in these institutions and ultimately to close them if necessary.

In the area of recreational opportunities, local jailers were surveyed as to the extent of such facilities within their institutions. The results are contained in Table 2.5 - 1. With the exception of radios and televisions, it would appear that the recreational facilities in local jails are somewhat limited.

Thus, in the area of healthful surroundings, the local facilities appear to be in accord with the standards on healthful surroundings as they deal with sanitary matters, but not so in the area of recreational opportunities for offenders.

Alternative Standards

Realizing the numerous deficiencies in the surroundings in which inmates are forced to live, the American Correctional Association has addressed many of these problems in its Manual of Correctional Standards. Speaking of the prison environment in general, the association asserts:

> Careful attention must be given in planning, therefore, to provide designs and surface treatments which will make sanitation easy. It should go without saying that heat, water supply, sewage disposal and similar matters, should be given careful attention in the interests of ... maintaining the health of the prisoners.[4]

The manual also addresses specific items recommended in Standard 2.5 concerning sanitation in the handling and preparation of food:

> The methods, techniques, and standards for the establishment and maintenance of environmental sanitary food handling practices shall conform with principles and policies approved by a qualified public health sanitarian.[5]

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]Rules and Regulations for the Administration of Local Jails and Lockups, Revised Draft Copy (Richmond: Department of Corrections, July 1974), unpaginated.

[3]Ibid.

[4]The American Correctional Association, A Manual of Correctional Standards, 1966, p. 346.

[5]Ibid., p. 445.

TABLE 2.5 - 1

Recreational Opportunities in Local Correctional Facilities

	Frequency	Percent
Record Players	7	9.21
Radios	61	80.26
Motion Pictures	7	9.21
Televisions	37	47.60
Sports Equipment	4	5.26
Sports facilities such as a football field or basketball court	5	6.57
Competitive or intramural sports	2	2.63
Exercise Yard	6	7.89
Other	15	19.93
None	9	11.84

Standard 2.6

Medical Care

Each correctional agency should take immediate steps to fulfill the right of offenders to medical care. This should include services guaranteeing physical, mental, and social well-being as well as treatment for specific diseases or infirmities. Such medical care should be comparable in quality and availability to that obtainable by the general public and should include at least the following:

1. A prompt examination by a physician upon commitment to a correctional facility.
2. Medical services performed by persons with appropriate training under the supervision of a licensed physician.
3. Emergency medical treatment on a 24-hour basis.
4. Access to an accredited hospital.

Medical problems requiring special diagnosis, services, or equipment should be met by medical furloughs or purchased services.

A particular offender's need for medical care should be determined by a licensed physician or other appropriately trained person. Correctional personnel should not be authorized or allowed to inhibit an offender's access to medical personnel or to interfere with medical treatment.

Complete and accurate records documenting all medical examinations, medical findings, and medical treatment should be maintained under the supervision of the physician in charge.

The prescription, dispensing, and administration of medication should be under strict medical supervision.

Coverage of any governmental medical or health program should include offenders to the same extent as the general public.

Analysis

Regarding the provision of medical care and the maintenance of inmate health, generally the correctional facilities within the Commonwealth are in compliance with the requisites of the National Advisory Commission standard on offender rights to medical aid and treatment. As for the state correctional facilities, there appears to be general compliance with the suggestions of the Commission. There are medical services available at each correctional facility. An examination of every offender by a physician is made upon entry into the correctional system, similar to and resembling in nature the physical examination given to inductees into the armed services. At each major correctional facility there is a doctor or other trained medical personnel available on a twenty-four hour basis, as exemplified by the Penitentiary which has a physician on the grounds for nine hours a day and paramedics and/or licensed practical nurses at the facility at all times. At the correctional field units, utilization is made of local medical facilities, with usually a local licensed physician under contract or secured on a fee basis available to treat offenders incarcerated.

All Virginia correctional facilities appear to possess the capability for basic emergency medical treatment on a twenty-four hours basis, and all have access to a local accredited hospital. In addition, at the State Penitentiary there is a prison hospital which serves inmates. This facility

will move to the ninth floor of the Medical College of Virginia hospital shortly. There is no evidence of any attempts by the correctional staff to limit access to medical facilities, and generally the state system would appear to be in agreement in principle and in application to the National Advisory Commission medical care standard.

The Department of Corrections has promulgated formal rules for medical care in the local correctional institutions of Virginia:

1. There shall be a doctor on call at all times and where possible a nurse or paramedic on duty at the major jails. Dental care should be made available upon request, and where possible, psychiatric help should be provided. If a doctor or dentist is not on call in the event of a medical emergency involving an inmate, a doctor or dentist will be called immediately or the inmate will be transported immediately to the nearest available medical facility, depending upon the circumstances.

2. At no time shall jail personnel, other than medical, diagnose ailments, prescribe medication, or administer shots.

3. An inmate admitted with obvious physical injury or who is not fully conscious should receive immediate medical attention from a licensed physician.

4. An inmate who complains of a medical illness may call a licensed physician of his own choice so long as it is understood by both the inmate and the doctor that the inmate is responsible for the cost of such medical care or treatment.

5. It is desirable that every inmate be examined by a doctor when received at the jail. No reasonable request by a prisoner for medical attention should be ignored.

6. Medicines or prescriptions will be kept in a safe place and will be dispensed as instructed by physician issuing prescription.

7. Dentistry, surgery, hospitalization or other unusual medical treatment will be provided in accordance with Section 53-185, Code of Virginia.

8. Prescribed medicines shall not be left in the possession of prisoners. Prescribed doses shall be given by the correctional officers in compliance with the prescription. It shall be the duty of the correctional officer to make certain that all medicines issued by him are consumed in his presence.

9. Drug addicts and persons with communicable diseases should be entirely segregated from other prisoners whenever possible.[1]

Thus, local correctional facilities would appear for the most part to be in accord with the requisites of the standards. Table 2.6 - 1 reveals the types of medical treatment available in the local correctional facilities. The vast majority of jails do have physician services available either on a contract or fee basis, while nearly one-fifth have paramedics available. Approximately 8 percent have some type of infirmary, and nearly 15 percent have other types of medical facilities available. No local facility is without any type of medical treatment. Few facilities do, however, provide a medical examination by a physician upon admission, with some 86 percent not giving such medical scrutinies. In addition, the survey revealed that most jail staffs were extensively trained in first aid, the majority of which approach 100 percent of their personnel having had such training. Finally, extensive medical records as suggested in the NAC Standard are kept by a majority of jails, some 60 percent, with 29

percent responding that they fail to do so. Thus, as for medical care, the jails appear to basically be in accord with the standards as to having physicians and emergency medical treatment available with some slippage in the area of medical recordkeeping, and general noncompliance with regard to the provision of medical examinations upon admission.

Alternative Standards

The subject of medical care is addressed by the Association of State Correctional Administrators in its manual, "Uniform Correctional Policies and Procedures." It is the position of the Association that upon admission to any correctional facility, including jails and other detention facilities, the admitting officer should determine whether the person being admitted should receive immediate medical attention. Immediate attention should be provided for any individual who is suspected of being ill, physically injured, emotionally disturbed, or under the influence of alcohol, narcotics, or similar agents. A record should be kept of the admission interview and inspection.[2]

Addressing other problems in the area of adequate medical care, the Association believes that:

> Elective medical or surgical procedures of an unusual nature, not considered a part of basic medical care for inmates, should be subject to the consent of the institutional head with consultation of the medical officer.
>
> The institutional head is to ensure that a physician or appropriate health services staff is available to provide emergency treatment on a twenty-four hour call basis.

> Each correctional institution should develop and be prepared to implement a written medical emergency plan. Such a plan should provide for:
>
> 1. Emergency treatment of injuries.
>
> 2. Appropriate transfer of victims who cannot be adequately treated at the institution.
>
> 3. Procurement, utilization, and coordination of additional medical resources.
>
> Each institution should take the initiative in identifying health problems and providing adequate treatment and follow-up rather than relying on the inmate initiative.[3]

Realizing the importance of adequate inmate medical care, the National Council on Crime and Delinquency in its "Standards for State Correctional Services" recommends the following legislation be passed:

> Medical Care - The director shall establish and shall prescribe standards for health, medical, and dental services for each institution, including preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients.
>
> An inmate may be taken when necessary to a medical facility outside the institution.[4]

Footnotes

[1] Rules and Regulations for the Administration of Local Jails and Lockups, Revised Draft Copy (Richmond: Department of Corrections, July 1974), unpaginated.

[2] Association of State Correctional Administrators, "Uniform Correctional Policies and Procedures," 1972, pp. 17-20.

[3] Ibid., p. 20.

[4] National Council on Crime and Delinquency, "Standard Act for State Correctional Services," 1966, p. 30.

TABLE 2.6 - 1

Types of Medical Treatment in Local Correctional Facilities

What provisions do you have for medical treatment of prisoners?	Frequency	Percent
a. Jail physician on contract	42	55.26
b. Jail physician on fee basis	25	32.89
c. Paramedic on salary	15	19.73
d. Infirmary without beds for overnight stays	4	5.26
e. Infirmary with beds for overnight stays	2	2.63
f. Other	11	14.47
g. None	0	0

TABLE 2.6 - 2

Provision of Medical-Related Treatment in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Is a thorough medical examination by a physician made of each person admitted?	9	11.84	65	85.82	2	2.63
Are medical records containing condition on admission, previous medical history, illness or injury during confinement and treatment provided, and condition at the time of release kept?	46	60.52	22	28.94	6	7.89

Standard 2.7

Searches

Each correctional agency should immediately develop and implement policies and procedures governing searches and seizures to insure that the rights of persons under their authority are observed.

1. Unless specifically authorized by the court as a condition of release, persons supervised by correctional authorities in the community should be subject to the same rules governing searches and seizures that are applicable to the general public.

2. Correctional agencies operating institutions should develop and present to the appropriate judicial authority or the officer charged with providing legal advice to the corrections department for approval a plan for making regular administrative searches of facilities and persons confined in correctional institutions.

a. The plan should provide for:

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

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

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

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

(5) Publication of the plan.

Any search for a specific law enforcement purpose or one not otherwise provided for in the plan should be conducted in accordance with specific regulations which detail the officers authorized to order and conduct such a search and the manner in which the search is to be conducted. Only top management officials should be authorized to order such searches.

Analysis

Regarding the policy toward the conduct of searches in Virginia correctional facilities, there would appear to be little agreement and compliance with the suggestions of the National Advisory Commission. In state correctional facilities, there are no specific or definitive departmental guidelines or memoranda in the realm of searches. Consequently, in the absence of uniform guidelines or policy, no inclusive plan or scheme for the conduct of these administrative searches has emerged which is available to inmates or published.[1]

Frequent and unannounced searches do take place in state correctional facilities. At the major institutions, searches are conducted on the average of twice a week; and, for the most part, are concerned with the seizure of contraband. However, in actuality, searching is a continual process, for searches are made constantly of individual inmates entering and leaving the industrial shop areas to prevent the smuggling of metal or other substances which could be fashioned into a weapon. Here, extensive use of metal detectors of the types now utilized in airports is common. There are likewise in existence correctional facility search units, which, in a facility of the size and nature of the Virginia State Penitentiary, spend nearly all their working hours in search of contraband material. In the case of the correctional field units, major searches are conducted on the average of three times a week, under a similar policy as that which governs searches at the major institutions.

Regarding local correctional institutions, compliance is generally as lacking in this area of search policies as was evidenced in the Virginia state system. Table 2.7 - 1 indicates the distribution of responses to questions asked local jailers about their policy in this area. As for the portion of this standard which deals with formulation of a plan for the conduct of regular administrative searches, the survey showed a majority of jails do have some type of plan, while 36 percent reported having no such plan. Among those who do have plans, the average frequency of searches computes to approximately 58 per year, or roughly one per week. These figures do not include some twelve jails which reported conducting searches solely on an "as needed" basis. Finally, concerning the distribution of these search procedures to offenders within the facility, only 16 percent do circulate these publications among the inmate population, while 32 percent do not and 32 percent did not respond to the question.

Thus, it would appear that the area of search policy reveals a mixed degree of compliance with the NAC recommendations.

Alternative Standards

The Standards Committee of the American Wardens' Association believes this standard should be modified to reflect the fact that:

> People under supervision in the community are different in one respect to the average person -- they have been convicted of a crime. Under no circumstances should searches be conducted for harassment purposes, but there

> are times when circumstances would preclude time to secure a search.[2]

The Association of State Correctional Administrators likewise endorsed modification:

> The Committee took a firm stand that Paragraphs 1 and 2 be deleted and replaced by institutional policy and procedural manual, and training covering these areas as it applies to a given institution. Again, subparagraph 5 "Publication of the plan": delete paragraph which reads, "Any search for a specific law enforcement purpose..." Emergent situations require authority be granted supervisory personnel when a situation cannot wait that only top management officials authorize a search. Turning to the explanation under Commentary, reference is made to the second paragraph, right column, page 39, "Commission's recommendations that the courts maintain continuing jurisdiction..." totally unworkable and to be deleted.
>
> Essentially sound standard. Commentary ramble, equivocates, and makes errors in conclusions. Unfortunately, the wording is such as to create varied interpretation, thus complicating conclusions.[3]

In its Manual of Correctional Standards, the American Correctional Association argues that searches are necessary for the control of contraband. Specifically, the Association feels:

> For consistent control of contraband items whether they be dangerous articles such as guns, knives, or other weapons or poisonous or hazardous substances can best be assured by these few basic procedures being faithfully carried out:
>
> a. Periodic but irregular search of cells, inmates and inmate work areas.
>
> b. Frequent search and careful supervision of so-called "trusties."[4]

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

[3]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

[4]The American Correctional Association, Manual of Correctional Standards, 1966, p. 374.

TABLE 2.7 - 1

Conduction of Searches in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Does your facility have a plan or formal operating procedure as to the conduction of regular administrative searches?	43	56.57	28	36.84	5	6.57
Is this procedure published and made available to the offenders within your facility?	12	15.78	32	42.10	32	42.10

Standard 2.8

Nondiscriminatory Treatment

Each correctional agency should immediately develop and implement policies and procedures assuring the right of offenders not to be subjected to discriminatory treatment based on race, religion, nationality, sex, or political beliefs. The policies and procedures should assure:

1. An essential equality of opportunity in being considered for various program options, work assignments, and decisions concerning offender status.

2. An absence of bias in the decision process, either by intent or in result.

3. All remedies available to noninstitutionalized citizens open to prisoners in case of discriminatory treatment.

This standard would not prohibit segregation of juvenile or youthful offenders from mature offenders or male from female offenders in offender management and programming, except where separation of the sexes results in an adverse and discriminatory effect in program availability or institutional conditions.

Analysis

Within Virginia correctional facilities, there would not appear to be in existence any official discriminatory policies. In the state correctional system, segregation policies were ended by the Mason decision, rendered by United States District Court Judge Robert Mehrige, which required the end of discriminatory treatment and institutional segregation. As a result, at this time no officially sanctioned discrimination occurs as to classification, living assignment, offender status, parole, or the use of remedies. The segregation that does take place within the system is of the nature sanctioned by the National Advisory Commission, that being segregation of offender types, by age, and/or seriousness of offense, and the separation of female and male prisoners.[1]

As for local institutions, the initiation of suits on the basis of discriminatory treatment was selected as a rough gauge of the extent of discrimination. Of the 76 reponding jails, only two have reported the filing of such suits, while 97 percent have not had any litigation in this area. Of the two suits initiated, neither currently has been resolved in the inmate's favor. While such litigation is not necessarily conclusive of a lack of discrimination, it is one indicator which can be concretely examined as to the type of treatment in local facilities.

Alternative Standards

Non-discriminatory treatment was also discussed in the Uniform Correctional Policies and Procedures, published by the Association of State Correctional Administrators. This association voiced the belief that:

> There should be fair and objective classification of all inmates with respect to all aspects of institutional life. So far as possible, institutional programs should reflect the ethnic distribution of the inmate population.
>
> Where it does not interfere with necessary corrrectional requirements, both inmates and employees should be permitted to reflect current racial and cultural trends. Standards of grooming and attire should be as flexible as possible consistent with security, control, and health.
>
> The Administration should be open to complaints from any inmate concerning discrimination and should be active in investigating any such complaint, and in taking remedial action.[2]

The National Council on Crime and Delinquency in its Standard Act for State Correctional Services, recommends the adoption of a statute, reading in part:

> The Department shall provide employment opportunities, work experiences, and vocational training for all inmates...[3]

This proposal, by mentioning "all inmates" means to imply that equal opportunities should be available to each offender, regardless of race, religion, nationality, sex, or political beliefs.

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]Association of State Correctional Administrators, Uniform Correctional Policies and Procedures, 1972, p. 25.

[3]National Council on Crime and Delinquency, Standard Act for Correctional Services, 1966, p. 28.

Standard 2.9

Rehabilitation

Each correctional agency should immediately develop and implement policies, procedures, and practices to fulfill the right of offenders to rehabilitation programs. A rehabilitative purpose is or ought to be implicit in every sentence of an offender unless ordered otherwise by the sentencing court. A correctional authority should have the affirmative and enforceable duty to provide programs appropriate to the purpose for which a person was sentenced. Where such programs are absent, the correctional authority should (1) establish or provide access to such programs or (2) inform the sentencing court of its inability to comply with the purpose for which sentence was imposed. To further define this right to rehabilitative services:

1. The correctional authority and the governmental body of which it is a part should give first priority to implementation of statutory specifications or statements of purpose on rehabilitative services.

2. Each correctional agency providing parole, probation, or other community supervision, should supplement its rehabilitative services by referring offenders to social services and activities available to citizens generally. The correctional authority should, in planning its total range of rehabilitative programs, establish a presumption in favor of community-based programs to the maximum extent possible.

3. A correctional authority's rehabilitation program should include a mixture of educational, vocational, counseling, and other services appropriate to offender needs. Not every facility need offer the entire range of programs, except that:

a. Every system should provide opportunities for basic education up to high school equivalency, on a basis comparable to that available to citizens generally, for offenders capable and desirous of such programs;

b. Every system should have a selection of vocational training programs available to adult offenders; and

c. A work program involving offender labor on public maintenance, construction, or other projects should not be considered part of an offender's access to rehabilitative services when he requests (and diagnostic efforts indicate that he needs) educational, counseling, or training opportunities.

4. Correctional authorities regularly should advise courts and sentencing judges of the extent and availability of rehabilitative services and programs within the correctional system to permit proper sentencing decisions and realistic evaluation of treatment alternatives.

5. Governmental authorities should be held responsible by courts for meeting the requirements of this standard.

6. No offender should be required or coerced to participate in programs of rehabilitation or treatment nor should the failure or refusal to participate be used to penalize an inmate in any way in the institution.

Analysis

Regarding rehabilitation programs in the Virginia state correctional system, the reader should see Standard 11.4, Education and Vocational Training, for a detailed description and analysis.

As for local institutions, Tables 2.9 - 1 and 2.9 - 2 show the distribution of responses to questions asked of local jailers concerning their rehabilitation programs. This tabular presentation reveals the jails to be strongest in the areas of alcohol and drug related programs, and weakest in education and vocational training. In the area of employment, the jails again are weak, with only ten percent utilizing state or local employment representatives. Work-release programs, however, cast a more favorable light upon these facilities as some 41 percent have such programs, nearly divided as to being court or sheriff-operated. Thus, generally the local correctional institutions would appear to fall short of the requisites of these NAC recommendations regarding rehabilitive offerings.

Alternative Standards

In its Manual of Correctional Standards, the American Correctional Association states that the prison's basic purpose is "the rehabilitation of those sent there by society."[1] In responding to this, the American Civil Liberties Union has asserted:

> This sentiment is echoed in state statutes, prison regulations, court decisions, legislative reports, and other official pronouncements, but most prison officials continue to believe that "rehabilitation" is achieved only when the prisoner accepts without question the authoritarian structure and policies of the institution. It should be made clear that we speak of rehabilitation in terms of the opportunity for education and training and not in terms of thought control or institutional conformity.[2]

The Model Penal Code of the American Law Institute recommends the following section:

> Program of Rehabilitation - The Director of Correction shall establish an appropriate program for each institution, designed as far as practicable to prepare and assist each prisoner to assume his responsibilities and to conform to the requirement of law. In developing such programs, the Director shall seek to make available to each prisoner capable of benefiting therefrom academic or vocational training, participation in productive work, religious and recreational activities and such therapeutic measures as are practical. No prisoner shall be ordered or compelled, however, to participate in religious activities.[3]

Footnotes

[1]American Correctional Association, Manual of Correctional Standards, 1966.

[2]American Civil Liberties Union, An American Civil Liberties Handbook -- The Rights of Prisoners, 1973, p. 89.

[3]American Bar Association Commission on Correctional Facilities and Services, and Council of State Governments, Compendium of Model Correctional Legislation and Standards, 1972, p. iv, 43-44.

TABLE 2.9 - 1

Rehabilitation Programs in Local Correctional Facilities

	Operated by institution		Operated within institution		Not applicable		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
Group counseling	10	13.15	11	14.47	37	48.68	18	23.68
Assessment of vocational potentials through testing, work sampling, etc.	7	9.21	3	3.94	39	51.31	17	22.36
Remedial education (including GED)	7	9.21	7	9.21	37	48.68	25	32.89
Vocational training	2	2.63	5	6.57	50	65.78	19	25.00
Religious services[1]	16	21.05	56	73.68	11	14.47	0	0
Pre-vocational training (work habits, how to get along with others, etc.)	5	6.57	6	7.89	52	68.42	13	17.10
Job development and placement	9	11.84	4	5.26	47	61.83	16	21.05
Alcoholic treatment program	2	2.63	36	47.36	35	46.05	3	3.94
Drug addiction treatment program	2	2.63	20	26.31	41	53.94	13	17.10

[1]The cumulative percentage for the category exceeds 100 percent because some institutions have both internal and external programs in this area.

TABLE 2.9 - 2

Work Related Programs in Local Correctional Facilities

	Yes		No		Don't Know		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
Do you have a State or local employment representative stationed in, or regularly visiting your institution?	8	10.52	59	77.63	4	5.26	5	6.57
Does your institution have a work-release program?	31	40.78	44	57.89			1	1.31

	Court		Sheriff	
	Frequency	Percent	Frequency	Percent
If you have a work-release program, is it operated by the court or the sheriff?[1]	18	58.06	16	51.00
Does your institution have a weekend sentence program?	50	65.78	13	17.10

[1] The cumulative percentage of this category exceeds 100 percent because some three facilities have joint court/sheriff operated work-release programs.

CONTINUED

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Standard 2.10

Retention and Restoration of Rights

Each State should enact legislation immediately to assure that no person is deprived of any license, permit, employment, office, post of trust or confidence, or political or judicial rights based solely on an accusation of criminal behavior. Also, in the implementation of Standard 16.17, Collateral Consequences of a Criminal Conviction, legislation depriving convicted persons of civil rights should be repealed. This legislation should provide further that a convicted and incarcerated person should have restored to him on release all rights not otherwise retained.

The appropriate correctional authority should:

1. With the permission of an accused person, explain to employers, families, and others the limited meaning of an arrest as it relates to the above rights.

2. Work for the repeal of all laws and regulations depriving accused or convicted persons of civil rights.

3. Provide services to accused or convicted persons to help them retain or exercise their civil rights or to obtain restoration of their rights or any other limiting civil disability that may occur.

Analysis

The surrender of certain civil rights and other privileges as a result of the criminal conviction of an individual is a concept which permeates American legal tradition and the laws of the various states. In this regard the Commonwealth of Virginia is no exception, as under existing constitutional and statutory provisions the forfeiture of various rights is mandated upon felony conviction. The civil disabilities suffered by a felon in Virginia fall into three basic categories: 1) political disabilities, 2) licensing and occupational disabilities, and 3) domestic rights disabilities.[1]

Under the area of political disabilities, convicted felons are disqualified from the holding of any elective office[2] and disenfranchised by provisions of the Virginia Constitution.[3] In addition, a forfeiture of any office, profit, or trust under the Constitution of Virginia, whether elective or appointive, is required upon conviction of a felony, and this provision may not be voided by a pardon.[4] Finally, individuals convicted of the crimes of bribery, perjury, embezzlement of public funds, treason, a felony, or petty larceny may not serve as jurors.[5] The Virginia Constitution provides that the Governor may, through the use of clemency powers, remove these political disabilities, with the exception of the forfeiture of office provisions, which are collateral to a conviction of criminal behavior.[6] For the Commonwealth

to implement the thrust of NAC Standard 2.10 as it applies to political rights would require fairly extensive amending of the Constitution of Virginia, as well as a subsequent revision of the Code of Virginia.

The second major area of disability is that of the licensing and occupational regulation function conducted by the Commonwealth in exercise of the state police power. Under Virginia statute, the Alcoholic Beverage Control Board may suspend, revoke, or refuse to license the manufacture, distribution, and sale of alcoholic beverages if the applicant or licensee has been convicted of a felony or misdemeanor involving moral turpitude.[7] This action is civil in nature, thus preventing removal from this disability through the Governor's clemency and pardon power. The motor vehicle portions of the Code likewise harbor disqualifying disabilities for criminal behavior.

An individual convicted of making a false affidavit to the Division of Motor Vehicles, or a false statement in an application for an operator's or chauffeur's license, or a crime punishable as a felony under the motor vehicle laws, or a felony in which a motor vehicle is used, may not for a period of one year from the date of conviction obtain a permit. An additional period of three years may be added in cases of manslaughter committed with a motor vehicle when financial reponsibility by the offender is unable to be proved.[8] These

penalties, like the ABC restrictions above, are also civil in nature and unaffected by pardon.

Finally, the regulation and licensing of certain occupations and professions by the Commonwealth is an additional area where criminal behavior serves as a disqualification. Professional regulation is conducted in Virginia by a variety of appointed boards which oversee each category and formulate rules and procedures as necessary for the protection of the consuming public and the integrity of the occupation. In addition, the Code frequently contains statutory requirements for qualification to enter or be removed from a given profession. A common qualification for professional entry in the Commonwealth is "good moral character," as evidenced by having not been convicted of a felony offense. Each of the twenty-two regulated occupations contains such a provision. Also, each has a statutory provision which requires surrender of license upon conviction of a felony.[9] As with the previous two license provisions occupational disability represents a civil and not a penal disability, and it not subject to pardon. For the Commonwealth to comply and implement the NAC recommendation as it affects these civil penalties would again require a very extensive revision of the Code of Virginia by the General Assembly.

The third major area of disability and restriction of offenders lies in the realm of domestic rights. Under Virginia

statute, an individual whose spouse has been sentenced to confinement in a penitentiary, whether in their state or in another, has grounds for divorce from the marriage bond. The rights of marriage are not restored by a subsequent pardon or clemency.[10] In addition, the spouse of an individual convicted of an infamous offense (treason, felony, or crimen falsi) may secure divorce on the basis of that conviction if there was no knowledge of it prior to the marriage.[11] A divorce may also be procured on the basis of a continuous two-year separation of the spouses without cohabitation, regardless of fault.[12] As with the previous two areas, extensive code revision by the General Assembly would be required to implement the NAC recommendations in the domestic relations field.

In addition to the disabilities suffered in these three major areas, several other miscellaneous restrictions are written into Virginia statute. At least two Virginia localities, Norfolk and Virginia Beach, require a felon not under supervision of the laws of this state, or who has not completed a period of probation without revocation, or who has not received a pardon, and enters their boundaries with the intention of remaining longer than twenty-four hours, to register with the chief of police within twelve hours of entry and give certain information, be photographed and fingerprinted.[13] Finally, the fact of conviction of a felony, a misdemeanor involving moral turpitude, or an offense involving the witness's character for veracity may be introduced in a trial to impeach the testimony of a felon witness.[14]

The NAC recommendation also refers to the enactment of legislation to assure that no individual is deprived of a political or judicial right based solely on an accusation of criminal behavior. As was mentioned, the loss of these rights in Virginia is contingent upon conviction of criminal behavior, and no forfeiture may occur until such conviction takes place. There is, however, no existing Virginia law to regulate the transactions of the private sector such as employment as it specifically concerns the rights of convicted offenders. This private discrimination is not currently prohibited by statute or otherwise as Standard 2.10 recommends.

Alternative Standards

There are several Model Acts in the field of corrections which deal in part with the retention and restoration of the rights of convicted and incarcerated persons. Commenting upon these acts, the American Bar Association Commission on Correctional Facilities and Services, and Council of State Governments state:

> Present law on the status of convicted persons is uncertain and uneven. Some states retain concepts of "civil death" and loss of civil rights by statute, thus perpetuating punitive policies derived from early common law which made a convicted person an outcast of society. In other states, statutory provisions are not clear and how much of the old doctrines survive is left in doubt. Not only is there confusion as to what rights are lost or retained, but the duration of deprivation and the methods of restoration (or lack thereof) vary widely. Finally, the impact of a conviction in one state or in a federal court in another state is often unsettled.

> The model acts reflect the trend toward maximum retention of civil rights, restoration of those suspended during periods of confinement or other correctional supervision, and mitigation of the adverse consequences of a criminal record for the returning offender.[15]

The following legislation is recommended by the American Law Institute:

1. No person shall suffer any legal disqualification or disability because of his conviction of a crime or his sentence on such conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is:

   a. necessarily incident to execution of the sentence of the court; or

   b. provided by the Constitution or the Code; or

   c. provided by a statute other than the Code, when the conviction is of a crime defined by such statute; or

   d. provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.[16]

Footnotes

[1]Sam Wilson, Civil Disabilities of Felony Convictions (Richmond: Division of Justice and Crime Prevention, 1973), pp. 1-7.

[2]Virginia Constitution, Art. 11, Sec. 5.

[3]Virginia Constitution, Art. 11, Sec. 1; Code of Virginia, Sec. 24.1-42 (Supp. 1973).
Also; Virginia Constitution, Art. 11, Sec. 2; Code of Virginia, Sec. 24.1-26 (Supp. 1973).

[4]Virginia Constitution, Art. 11, Sec. 5; Code of Virginia, Sec. 2.1-36 (1966).

[5]Code of Virginia, Sec. 8-175 (2) (1957).

[6]Virginia Constitution, Art. 5, Sec. 12.

[7]Code of Virginia, Sec. 4-25 (Supp. 1973); Sec. 4-37 (1) (c) (1973); Sec. 4-98.9 (1973); Sec. 4-114 (1) (c); Sec. 4-105 (1) (b) (1973); Sec. 4.98.9 (1973).

[8]Code of Virginia, Sec. 46.1-362 (a) (1) (ii) (1972); Sec. 46.1-362 (a) (1) (iii) (1972); Sec. 1-362 (a) (1) (i), (b) (1972).

[9]Wilson, op. cit., p. 6, Footnotes.

[10]Code of Virginia, Sec. 20-91 (3) (Supp. 1972).

[11]Code of Virginia, Sec. 20-91 (ii) (Supp. 1973).

[12]Ibid.

[13]Norfolk City Code, Art. III, Sec. 36-30 (Supp 1969); Virginia Beach Code, Ch. 15, Sec. 1 (1965).

[14]Wilson, p. 9; see McLane v. Commonwealth, 202 Va. 197; 116 SE 2d 274 (1960).

[15]The American Bar Association Commission on Correctional Facilities and Services, and The Council of State Governments, Compendium of Model Correctional Legislation and Standards, 1972, p. v-1.

[16]The American Law Institute, "Model Penal Code - Article on Loss and Restoration of Rights Incident to Conviction or Imprisonment," 1962.

Standard 2.11

Rules of Conduct

Each correctional agency should immediately promulgate rules of conduct for offenders under its jurisdiction. Such rules should:

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.

2. Be the least drastic means of achieving that interest.

3. Be specific enough to give offenders adequate notice of what is expected of them.

4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.

5. Be promulgated after appropriate consultation with offenders and other interested parties consistent with procedures recommended in Standard 16.2, Administrative Justice.

Correctional agencies should provide offenders under their jurisdiction with an up-to-date written statement of rules of conduct applicable to them.

Correctional agencies in promulgating rules of conduct should not attempt generally to duplicate the criminal law. Where an act is covered by administrative rules and statutory law the following standards should govern:

1. Acts of violence or other serious misconduct should be prosecuted criminally and not be the subject of administrative sanction.

2. Where the State intends to prosecute, disciplinary action should be deferred.

3. Where the State prosecutes and the offender is found not guilty, the correctional authority should not take further punitive action.

Analysis

Within the Virginia correctional facilities, there is generally compliance with the requisites of Standard 2.11 regarding the promulgation and distribution of formal rules or codes of conduct for incarcerated offenders. The state correctional system has formally established policy regarding inmate conduct. The guideline, issued November 12, 1970, provides the following parameters and requirements:

I. Purpose - To establish uniform rules of conduct to regulate and to set expectations for inmate conduct and behavior. These rules are general in nature and do not preclude the further issuance of instructions, etc.

II. Administration - The rules of conduct herein will be posted in conspicuous places for the benefit of all inmates. They should, in some form, be included in the handbook issued for inmates at your institution, and every inmate should be aware of them.

III. Rules of Conduct Applicable to Inmates - The safe and orderly operation of an institution, like any community, must operate according to rules or laws. The primary purpose of these rules is to protect you and make life as peaceable and wholesome as possible for you while serving your sentence. Individuals violating such rules are subject to penalties.

1. Instructions from staff members must be obeyed fully and promptly.

2. You must conduct yourself in an orderly manner at all times.

3. You are expected to keep your person and living area clean.

4. You are to remain in your assigned work or living area unless you otherwise have persmission.

5. You are to observe the usual rules of safety at all times, giving special attention to safety instructions or signs.

6. You must not have in your personal possession any item that is not yours or any item that is not approved.

7. You are responsible for your own personal property. Valuable property is registered in your name and may not be transferred to any other individual.

8. In addition to these rules you must obey all laws of the Commonwealth of Virginia. Violation of these laws makes you subject to prosecution and/or institutional penalties. You should be especially aware of laws against: theft; assault, possession of weapons, drugs, or pornography; escape or attempt to escape; riotous behavior; destroying state property; gambling; sexual deviations; etc.

9. If there is any question about the appropriateness of any conduct or any question about rules you are advised to consult with an officer or supervisor.[1]

Closely related to the rules of conduct are those guidelines for institutional inmate discipline, which should be considered in combination with the inmate conduct guideline in order to present a true picture of the existing situation. In this distributed guideline there is an explanation of the disciplinary proceedings, as well as formal delineation as to what constitutes illegal and unsatisfactory behavior and what may be expected in the way of censure and punishments for the commitment of these violation (see Standard 2.12 for a discussion of institutional disciplinary proceedings in the Virginia correctional system). These two guidelines, when

considered in tandem, would appear to satisfy the requirements of specificity, appropriateness, gravity and severity, and distributions as contained in Standard 2.11. Regarding local correctional facilities, most do have some type of code or rules of conduct for their incarcerated offenders. The state Department of Corrections has promulgated a set of model rules of conduct for the inmates, which serve as a basis for most of the local codes. These rules read:

> Prisoners must conduct themselves with decency and in an orderly manner.
>
> Profanity, loud whistling or singing, yelling from one part of the jail to another and any indecent conduct will not be permitted at any time.
>
> Prisoners will not be permitted to have money in their possession. Any money or valuable articles that they may have with them at the time of commitment will be taken from them by the jailor and will be kept in a safe place until their release.
>
> Gambling will not be permitted.
>
> Prisoners are subject to the orders of the jailor and his authorized assistants. They should obey willingly and cheerfully all instructions that are given to them. Prisoners will be punished for any insolence or "back talk."
>
> Prisoners are required to bathe with soap and hot water at least twice a week. They can bathe oftener if they desire to do so.
>
> Prisoners must keep their underwear and other clothing clean. Tubs, soap and hot water will be provided by the institution for such washing as is necessary.
>
> Male prisoners will be required to keep themselves shaved.

A safety razor will be provided by the institution for this purpose in the event the prisoner has none. This razor must be returned to the jailor immediately after use.

All prisoners, both sentenced and unsentenced, MUST keep their cells perfectly clean at all times. This includes cleaning the walls and floors, making the beds, cleaning the toilet and basin.

Prisoners will not be permitted to close windows or ventilators except upon order of the jailor or his assistants.

Prisoners are not permitted to keep any articles of any kind whatsoever under their mattresses. This rule is necessary in order to prevent the accumulation of dirt and vermin.

Prisoners caught trying to smuggle into the institution any firearms, files, saws, narcotics or any other contraband articles, will be severely punished. Prisoners endeavoring to escape will be punished, and may also be liable to an additional term of imprisonment.

"Kangaroo courts" are forbidden. Any prisoner found to be a member of such an organization will be punished. Prisoners will not be allowed to impose fines upon each other.

No prisoner will be permitted to have any obscene or lascivious writing or picture of any kind. This includes pictures depicting nudity or sex.

Prisoners wishing to receive their mail while in the institution must give the jailor written authority to inspect it. If a prisoner does not care to do this, the mail will be kept for him until he is released or returned to the sender as the prisoner may prefer.

Prisoners desiring to forward a complaint, or to communicate any other matter with the Director of the Division of Corrections may write a letter to him any time they wish. His address is: 429 South Belvidere Street, Richmond, Virginia 23220. The jailor will furnish an addressed envelope for this purpose, which may be sealed by the prisoner. The jailor will mail the letter without opening it.[2]

The state department also mandates the procedural distribution of these rules to inmates:

> The rules and regulations of each jail, farm and lock-up shall be written. At admission, each inmate shall be given printed copies of all rules and these rules shall be posted in conspicuous places throughout the jail and farm.[3]

Table 2.11 - 1 shows the distribution of responses to questions posed to local jailers regarding the rules of conduct in their facilities. Seventy-two of the 76 responding jails reported having such a code, with some 70 making it available to offenders. However, only 4 percent received any input from the offender population in the formulation of the conduct rules. Regarding the distribution of a list of sanctions, such procedures are covered in Standard 2.12 covering disciplinary procedures. Thus, most Virginia jails would appear to be in accord with the NAC recommendations for inmate rules of conduct.

Alternative Standards

The need to have rules of conduct in writing and available to all concerned, is expressed by the Association of State Correctional Administrators. The Association feels:

> As rules are necessary to guide and govern human conduct and relationships, it is imperative that:
>
> 1. The rules be expressed in writing in clear and understandable language.
>
> 2. The rules be positive in character and minimum in number.
>
> 3. The rules be known to all concerned.

> The rules and their necessity should be explained to inmates during the orientation period.[4]

An example of model legislation recommending the drafting of rules of conduct is found in the National Council on Crime and Delinquency's Standard Act for State Correctional Services. This model act recommends the following legislation:

> Discipline -- The director shall prescribe rules and regulations for the maintenance of good order and discipline in the facilities and institutions of the department, including procedures for dealing with violations. A copy of such rules shall be provided to each inmate. Corporal punishment is prohibited.[5]

Footnotes

[1]Department of Corrections, Division Guideline No. 800.1, issued November 12, 1970.

[2]Rules and Regulations for the Administration of Local Jails and Lock-ups (Richmond: Department of Welfare and Institutions, 1970), pp. 18-19.

[3]Ibid. Revised Draft (Richmond: Department of Corrections, July 1974), unpaginated.

[4]Association of State Correctional Administrators, Uniform Correctional Policies and Procedures, 1972, p. 11.

[5]National Council on Crime and Delinquency, Standard Act for State Correctional Services, 1966, p. 29.

TABLE 2.11 - 1

Rules of Conduct in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Does your facility have a formal set of rules of conduct for offenders?	72	94.70	3	3.94	1	1.31
Are copies of this code made freely available to offenders?	70	92.10	3	3.94	3	3.94
Did members of the offender population have any input or consultation in the formulation of this code?	3	4.28	63	90.00	6	8.33

Standard 2.12

Disciplinary Procedures

Each correctional agency immediately should adopt, consistent with Standard 16.2, disciplinary procedures for each type of residential facility it operates and for the persons residing therein.

Minor violations of rules of conduct are those punishable by no more than a reprimand, or loss of commissary, entertainment, or recreation privileges for not more than 24 hours. Rules governing minor violations should provide that:

1. Staff may impose the prescribed sanctions after informing the offender of the nature of his misconduct and giving him the chance to explain or deny it.

2. If a report of the violation is placed in the offender's file, the offender should be so notified.

3. The offender should be provided with the opportunity to request a review by an impartial officer or board of the appropriateness of the staff action.

4. Where the review indicates that the offender did not commit the violation or the staff's action was not appropriate, all reference to the incident should be removed from the offender's file.

Major violations of rules of conduct are those punishable by sanctions more stringent than those for minor violations, including but not limited to, loss of good time, transfer to segregation or solitary confinement, transfer to a higher level of institutional custody or any other change in status which may tend to affect adversely an offender's time of release or discharge.

Rules governing major violations should provide for the following prehearing procedures:

1. Someone other than the reporting officer should conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the offender committed a violation. If probable cause exists, a hearing date should be set.

2. The offender should receive a copy of any disciplinary report or charges of the alleged violation and notice of the time and place of the hearing.

3. The offender, if he desires, should receive assistance in preparing for the hearing from a member of the correctional staff, another inmate, or other authorized person (including legal counsel if available.)

4. No sanction for the alleged violation should be imposed until after the hearing except that the offender may be segregated from the rest of the population if the head of the institution finds that he constitutes a threat to other inmates, staff members, or himself.

Rules governing major violations should provide for a hearing on the alleged violation which should be conducted as follows:

1. The hearing should be held as quickly as possible, generally not more than 72 hours after the charges are made.

2. The hearing should be before an impartial officer or board.

3. The offender should be allowed to present evidence or witnesses on his behalf.

4. The offender may be allowed to confront and cross-examine the witnesses against him.

5. The offender should be allowed to select someone, including legal counsel, to assist him at the hearing.

6. The hearing officer or board should be required to find substantial evidence of guilt before imposing a sanction.

7. The hearing officer or board should be required to render its decision in writing setting forth its findings as to controverted facts, its conclusion, and the sanction imposed. If the decision finds that the offender did not commit the violation, all reference to the charge should be removed from the offender's file.

Rules governing major violations should provide for internal review of the hearing officer's or board's decision. Such review should be automatic. The reviewing authority should be authorized to accept the decision, order further proceedings, or reduce the sanction imposed.

Analysis

Within the state correctional system, there exists a highly detailed procedure for inmate discipline which would appear to be in concert with the recommendations of the National Advisory Commission. These guidelines read, in part:

I. Purpose - A well-disciplined institution facilitates correctional objectives, permits individuals to live in harmony with one another and allows them to concentrate on self-improvement rather than self-protection.

To insure a safe and constructive prison community its residents are expected to behave in a manner consistent with the welfare of others, and within general security guidelines set forth by the administration.

II. Policy - When an inmate's behavior endangers or threatens to endanger the welfare of others or himself, or is contrary to the security of the institution he is subject to being disciplined for his misbehavior.

III. Administration of Discipline - The Superintendent of each institution is responsible for the guidance and direction of institutional staff in the handling of disciplinary matters. In administering disciplinary policies at the institutional level the following Division guidelines are employed:

1. Each institution will establish a committee, known as the Adjustment Committee, composed of no less than three nor more than five members to administer discipline. The Committee ordinarily includes a balanced mix of staff representing the various disciplines. Normally, the Committee is composed of Department Heads or Assistant Department Heads, and is usually chaired by an Assistant Superintendent. (Example: Assistant Superintendent, Rehabilitation Supervisor, Chief Custodial Supervisor).

Where organization and staffing permit, the counselor with specific case load responsibility will be present when any of his assigned cases are before the Committee.

Membership of the Committee will be rotated periodically for the benefit of training staff in this important function. A member of the staff bringing charges against an inmate shall not act as a member of the Committee hearing that particular case. Therefore, in any individual case, the member of the staff who charged an inmate with misbehavior will not sit in judgment of that inmate. The Committee will settle each case only on the basis of the evidence presented at the hearing, and an inmate's prior disciplinary record, if any, will not be introduced or considered in determining the inmate's guilt or innocence. Depending on the work load, this Committee would ordinarily meet three times per week.

2. Misbehavior will be promptly reported to the supervising correctional officer. A misconduct report will be initiated and will include the specific rule violated and the facts surrounding same. The report should be typewritten, and a copy will be given to the inmate as soon as practical after preparation.

3. The Correctional officer in charge of the shift may impose a minor penalty (i.e.: reprimand, or warning, or loss of privilege, cell restriction, reduction of pay not to exceed a total loss of two dollars, or other similar punishments, each for a maximum period of ten (10) days). A misconduct report will be filled out by the officer in charge, which will include the specific rule violation, the exact penalty being imposed, and its duration. A copy of this written report will be given to the inmate. The inmate is advised that he may appeal the officer's decision to the Adjustment Committee. In the case of appeal, the matter is handled as described under paragraph 4 below.

4. If the case is referred to the Adjustment Committee the inmate may be placed in detention when the correctional officers consider his behavior to be dangerous to persons or property, for a period of not more than two (2) working days, until he appears before the Committee. The hearing should take place within two (2) working days after report of the infraction.

Prior to the hearing, the inmate may request an inmate advisor from a list of those inmates who have volunteered for this job to help him present his case. The inmate will not receive his choice from this list, but will be assigned the next name in turn unless there is some good reason for not doing so. The inmate advisors are expected to be familiar with these guidelines and the rules of the institution. The job of the inmate advisors is to help the inmate charged with misbehavior to understand the proceedings before the Adjustment Committee and the possible penalties he may receive. When the Adjustment Committee proceedings may result in the loss of substantial rights, such as loss of good conduct time, isolation or an inmate being held in padlock confinement for more than ten (10) days, and the inmate desires to secure his own private attorney to represent him at the hearing, he must notify the Committee of the fact, and his hearing will be postponed for a period of four (4) working days so that he may secure the aid of his attorney, and he will be permitted to call him at that time. The inmate may indicate on the misconduct report whether or not he wants the help of an inmate advisor or private attorney. Private attorneys must be retained at the inmate's expense, including the expense of any long distance telephone calls. The private attorney must be prepared to appear at the hearing after the four (4) day continuance as no further delays need be granted. If the inmate has been placed in detention, he will remain there during the period of this four-day continuance.

The conduct of the hearing will be orderly but informal. The inmate may offer the testimony of voluntary witness in his behalf and neither members of the Adjustment Committee, nor other correctional officers will interview these witnesses concerning the testimony they will give at the Adjustment Committee hearing. The inmate may, at his request, have advice and guidance of any member of the staff of his choosing prior to, following, or at any stage of the adjustment hearing. The inmate may also request that the reporting officer be present at the hearing, so that he may ask the officer questions about the misconduct report.

The offender will be expected to present his version of the alleged offense and admit or deny the truth of the charges. The orderly cross-questioning of the reporting officer, if the inmate requested his presence, and appropriate witnesses will be permitted by the Chairman. However, the Adjustment Committee has the discretion to limit repetitive or irrelevant testimony. At the conclusion of the meeting the Chairman will read the Committee's decision to the inmate indicating the evidence they have relied upon and explain the Committee's decision and any recommended punishment ordered. A written finding and recommendation (called the "Disciplinary Report") will be made by the Committee and a copy will be furnished the prisoner.

5. If the principles outlined in this policy are followed, there is reason to expect that the inmate will recognize that he has been treated fairly.

   Nonetheless, the Chairman of the Adjustment Committee, at the conclusion of the meeting, will advise the inmate that he is allowed to notify the Director, Division of Corrections, of any grievance that he may have about decisions in the case. If the inmate wishes to ask the Director to review the action of the Adjustment Committee he will forthwith be given a special purpose letter to do so, as well as an extra copy of the disciplinary report, which is to be forwarded with the special purpose letter for purposes of review.

6. Disciplinary reports must be signed by all parties involved. A copy of all disciplinary reports, hearings and dispositions will be forwarded to the Superintendent of the institution for this review and approval and maintained in the inmate's file at the institution. A copy shall be mailed to the Assistant Director of the Division on the same day for review and inclusion in the inmate's central file. A copy shall be mailed to the Penitentiary Record Office. Should the Superintendent or Director, after the said review, decrease the punishment called for by the Adjustment Committee the reasons therefore will be set forth in a brief statement and a copy

will be furnished the prisoner. Punishments shall not be increased by the Superintendent or Director. (All decisions reviewed by Assistant Director).

IV. Penalties - In imposing penalties the Division of Corrections emphasizes the treatment and correction of the offender, rather than an arbitrary response to the offense. Therefore, a wide range of penalties is employed, consistent with the needs of the offender rather than uniform application with respect to the offense.[1]

Thus, these procedures would appear to be in large part in compliance with the requisites of the NAC. With regard to minor violation, the guidelines for the Department do provide for all the listed recommendations, with the exception of deletion of the incident from the offender's file in event of dismissal. As for major violations, all the recommendations listed are provided for within the guidelines promulgated by the Virginia correctional officials.

Regarding local correctional facilities, the state Department of Corrections has promulgated the following rules for internal due process proceedings:

V. Due Process Procedure - Each jail will establish a list of disciplinary offenses including the maximum and minimum punishments therefor, subject to the approval of the Director of the Department of Corrections. A copy shall be furnished to each inmate.

A. Disciplinary Hearing Procedure

1. Disciplinary hearings before an impartial officer, or panel where available, shall be conducted before any sentence of punitive segregation may be imposed or the recommended loss of good time taken. Inmates reasonably

believed to be dangerous may be segregated temporarily prior to the hearing.

2. The inmate shall be given advance written notice of the charges against him which shall include the following:

   a. The name of the officer or employee who observed and reported the violation. (This officer shall not serve on the panel deciding the case).

   b. Specific rule violated.

   c. Time, date and place of violation.

   d. Summary of details describing the violation.

3. The inmate has the right to be present at the hearing.

4. The hearing shall be informal but each side shall have the right to present witnesses in his own behalf and to question opposing witnesses.

5. The inmate may have the assistance of a counselor/advisor and an opportunity to prepare before the hearing. Counselors could be drawn from the following:

   a. The lay staff of the jail (e.g., teachers, doctors, psychologists, etc.).

   b. Lawyers or law students.

   c. Fellow prisoners.

   d. Community volunteers.

6. Where punitive segregation or loss of good time is imposed, written findings of fact shall be made and furnished to the inmate. They shall include the specific disciplinary action to be taken, including time limits on punishment.

7. The inmate may submit his case for review to the chief official of the facility. The chief official may review the record and decision

and suspend or reduce the sentence. He may never unilaterally increase the punishment.

B. Conditions and Limits on Punishments

1. Correspondence privileges shall not be denied as punishment unless the offense itself related to abuse of such privileges.

2. Bread and water or any other dietary restrictions shall not be imposed as punishment.

3. Physical restraints, (chains, tape, handcuffs, etc.) shall not be used to bind an inmate except for transport, where physical injury to person or property is imminent and otherwise unavoidable, or prescribed by a competent doctor for the inmate's safety.

4. Corporal punishment may not be used at any time.

5. Inmates shall not be denied bedding, clothing, or toilet articles as punishment nor shall they be so restrained as to prevent exercise for punishment.

6. Correctional officers shall not cut inmate's hair, mustache or beard for punishment.

7. There must be a time limit on <u>every</u> punishment.

8. An inmate shall never be punished for his/her political beliefs, the books which they read or the organizations to which they belong.

9. Tear gas, chemical mace or similar instruments shall not be used except in extreme emergencies where physical injury to person or property is imminent and otherwise unavoidable.

10. An inmate shall not be held in punitive segregation for more than fifteen (15) consecutive days for any one offense.[2]

Local jails were questioned regarding due process proceedings, the results of which are shown in Table 2.12 - 1. Seventy-nine percent of the responding institutions do have a standard

disciplinary procedure, with nine having none and seven giving no response. As for the specifics of the procedure, approximately 86 percent do allow an impartial hearing officer, the notification of the offender in a violation report which is placed in the offender's file, the receipt of a copy of the disciplinary report by the offender, the assistance of other offenders or staff, and the conduct of the investigation by someone other than the reporting officer. In 79 percent of the reporting jails the violator may call witnesses on his behalf and 86 percent allow confrontation and cross-examination of witnesses. In addition, as was stated in Standard 2.2 (See Table 2.2 - 1) some 62 percent of the respondents allow accused offenders to seek legal representation in major disciplinary violations. Thus, for the most part, it would appear that the majority of Virginia jails are in accord with the recommendations of the Commission regarding disciplinary procedures.

Alternative Standards

The disciplinary procedure standard has generated much comment among the various responding groups, all of which suggested some modification.

The Wardens' Association recommended as follows:

> Modify. Legal counsel should not be utilized for disciplinary hearings within the confines of a correctional institution. Providing legal counsel for the inmate would necessitate a lawyer being provided for the administration. The hearings would then take on the characteristics of a courtroom, with all the inherent problems that are existent in our present

> day courts. These include long delays, offenders being released on technicalities, etc. The deterrent and treatment aspects of the disciplinary hearing would be lost in the courtroom atmosphere.[3]

The State Correctional Administrators foresaw needed changes as well:

> Highly controversial. Need rewording. Second paragraph in the standard following "Minor violations of rules of conduct are those punishable by ..." At this point add, "sanctions such as" in place of "no more than a ... for not more than 24 hours ..." Fails to distinguish between minor and major misconducts.
>
> Paragraph 3, delete "or board" and add "selected from the staff of the institution."
>
> In the second sequence of numbered paragraphs under, "Rules governing major violations should provide for ...", in paragraph 3, delete "should" and add "may ..." Delete "including legal counsel is available.", under third sequence of numbered paragraphs.
>
> Remove paragraphs 4 and 5.
>
> In the final paragraph (unnumbered) add to the first sentence "by the superintendent or warden." Strike "Such review should be automatic."
>
> The offender should be provided with the opportunity to appeal disciplinary ruling.[4]

In response to the question, "Is there any precedent for granting due process safeguards at prison disciplinary hearings, "the American Civil Liberties Union has said:

> Yes, in extending the due process of prisoners, the courts have had substantial precedent to reply upon. The procedural due process rights now being requested by inmates go no further than those already secured by numerous persons in this country who face loss of a right or privilege through administrative action ..."

> Certainly, the substantial deprivations that may result from prison disciplinary proceedings are as serious as those just mentioned and should not be imposed without at least the rudimentary protection that due process is meant to ensure ...
>
> (T)he greater the potential impact of the disciplinary decision on the conditions of present or prospective liberty, or the physical and psychic integrity of the prisoner, the greater the need for procedural safeguards.[5]

Footnotes

[1]Department of Corrections, Division Guideline No. 800 (Revised), issued April 16, 1973, pp. 1-12.

[2]Rules and Regulations for the Administration of Local Jails and Lock-ups, Revised Draft (Richmond: Department of Corrections, July 1974), unpaginated.

[3]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

[4]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

[5]The American Civil Liberties Union, The Rights of Prisoners -- An American Civil Liberties Union Handbook, 1973, p. 23.

Standard 2.13

Procedures for Nondisciplinary Changes of Status

Each correctional agency should immediately promulgate written rules and regulations to prescribe the procedures for determining and changing offender status, including classification, transfers, and major changes or decisions on participation in treatment, education, and work programs within the same facility.

1. The regulations should:

   a. Specify criteria for the several classifications to which offenders may be assigned and the privileges and duties of persons in each class.

   b. Specify frequency of status reviews or the nature of events that prompt such review.

   c. Be made available to offenders who may be affected by them.

   d. Provide for notice to the offender when his status is being reviewed.

   e. Provide for participation of the offender in decisions affecting his program.

2. The offender should be permitted to make his views known regarding the classification, transfer, or program decision under consideration. The offender should have an opportunity to oppose or support proposed changes in status or to initiate a review of his status.

3. Where reviews involving substantially adverse changes in degree, type, location, or level of custody are conducted, an administrative hearing should be held, involving notice to the offender, an opportunity to be heard, and a written report by the correctional authority communicating the final outcome of the review. Where such actions, particularly transfers, must be made on an emergency basis, this procedure should be followed subsequent to the action. In the case of transfers between correctional and mental institutions, whether or not maintained by the correctional authority, such procedures should include specified procedural safeguards available for new or initial commitments to the general population of such institutions.

4. Proceedings for nondisciplinary changes of status should not be used to impose disciplinary sanctions or otherwise punish offenders for violations of rules of conduct or other misbehavior.

Analysis

Under existing procedures within the state corrections system, compliance with the requisites of Standard 2.13 exists in some areas and not in others. With regard to non-disciplinary changes of status which do not require an upgrading of security and the consequent loss of privileges or status, the superintendent may exercise his administrative prerogative and change the classification without formal proceedings.[1] Such a procedure would appear to be less than that suggested by the NAC with reference to the status change.

However, for changes of status which require an intensification of security and a loss of privileges, the following procedures must be followed. A hearing must be held before the Institutional Classification Committee at the institution where the inmate is incarcerated. The inmate must be notified at least twenty-four hours prior to the hearing in written form specifying the reasons for the pending charge in classification. When appearing before this classification board, usually consisting of three members of the institution staff, there is no right to counsel for the inmate, nor is there a right of confrontation. A decision made by the Institutional Classification Committee goes to the Central Classification Board which exercises the power of final review over the action. However, it should be noted that in most cases these changes of status are conducted virtually in conjunction with disciplinary

proceedings before the Adjustment Committee, with evidence submitted before the Adjustment Committee being used in such instances.

Thus, a three tier breakdown of changes of status exists within the Virginia system: 1) a change of status which involves no upgrading of security and may be done at the superintendent's discretion. Such a procedure would not appear to be in compliance with NAC guidelines; 2) a change of status which does involve a security intensification but not as a result of or in combination with formal disciplinary hearings. Here again, while there is a hearing before the Classification Committee of the institution, there is only partial compliance with the recommendations of the Commission, and 3) a change of status in combination with or as a result of formal disciplinary proceedings, in which, as a result of the due process provision incorporated in the disciplinary hearings, general compliance with the Commission's recommendations would appear to be achieved.

The Virginia system does not provide written explanation of the privileges and duties of the various classification types. Division Guidelines No. 802 (Revised) states, regarding custodial types;

There are five custody classifications that will be used, as follows:

a. "T" is a non-security designation reserved for inmates in off-grounds or community correctional

programs. Persons so classified may be assigned to educational release, work release, or any other programs that may be developed in the free communities. These inmates will be allowed off institutional grounds for scheduled program activities without being accompanied by an employee of the institution.

b. "A" is a minimum supervision classification that designates inmates whose assignments are limited to institutional grounds, but who may carry out such assignments without constant supervision of an employee. They may be eligible for furlough; otherwise when they leave institutional property they will be accompanied by an employee.

c. "B" denotes medium custody and requires that inmates so designated be under supervision of a correcticnal officer at all times.

d. "C" denotes close custody and requires inmates so designated to be under constant supervision of an armed correctional officer or confined at an institution with a perimeter under constant armed officer surveillance. Under such supervision or surveillance these inmates will be members of a general population.

e. "M" denotes maximum custody and is reserved for inmates in segregation units.[2]

However, currently there are no written, definitive criteria as to classification. Guideline 802 again states:

> Until such time as definitive standards relating to custody classification are published by the Division of Corrections, designations must necessarily be based on a subjective evaluation of the inmate's tendency toward escape and/or violence.[3]

Finally, periodic review of inmate status is likewise mandated:

> The counselor and/or treatment team will provide such reports as the Institutional Classification Committee may require, and the Institutional Classification Committee will report to Central Classification Board

> at least semi-annually on the inmate's progress. Any time the treatment personnel feel that deviation from the recommended program is necessary or desirable, the Institutional Classification Committee will propose change(s) to Central Classification Board, which has the sole responsibility and authority to amend programs.[4]

There is however, no provision for notification of the inmate that such a review is underway, nor is such material available to him or her. Finally, there is no formal provision for inmate participation in the periodic status reviews.

As for local institutions, the classification procedures contained in Standard 2.13 are not applicable to the situation regarding classification in the local jails, for, due to the small size and short terms common in these institutions elaborate and multi-category classification schemes of the nature assumed by this Standard are not common.

Alternative Standards

State correctional administrators desire a change in Standard 2.13, believing that inmate participation is not feasible in all transfers:

> Note is taken in the introductory paragraph regarding "transfers". This is questionable as is Subparagraph e under Paragraph 1, "The regulations should ..." Delete "Provide for participation of the offender in decision affecting his program." Not practical in all cases; therefore, should not become a standard.[5]

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]Department of Corrections, Division Guideline No. 802 (Revised), issued March 15, 1974, pp 5-6.

[3]Ibid., p. 6.

[4]Ibid., p. 2.

[5]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974.

Standard 2.14

Grievance Procedure

Each correctional agency immediately should develop and implement a grievance procedure. The procedure should have the following elements:

1. Each person being supervised by the correctional authority should be able to report a grievance.

2. The grievance should be transmitted without alteration, interference, or delay to the person or entity responsible for receiving and investigating grievances.

a. Such person or entity preferably should be independent of the correctional authority. It should not, in any case, be concerned with the day-to-day administration of the corrections function that is the subject of the grievance.

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

3. Promptly after receipt, each grievance not patently frivolous should be investigated. A written report should be prepared for the correctional authority and the complaining person. The report should set forth the findings of the investigation and the recommendations of the person or entity responsible for making the investigation.

4. The correctional authority should respond to each such report, indicating what disposition will be made of the recommendations received.

Analysis

Within the Virginia State penal system, a formal proceeding for airing inmates' grievances is in existance and is being utilized. The following constitutes part of the grievance procedure for incarcerated inmates in Virginia state facilities:

> Administration Procedure - Grievance forms will be made available, in duplicate, to every inmate upon request. A copy of the form to be used in grievance procedures is attached to this guideline. To begin a complaint, an inmate must fill out and submit a grievance form within a reasonable time after any incident which gives rise to a grievance. If the complaint involves a continuing policy or condition of the institution or Division, the grievance form may be filled out and submitted at any time. The inmate should keep one copy for his reference. The narrative of the complaint should contain a complete and specific account of the inmate's complaint, including the names of the people involved, date and location of the incident or condition complained of, and the remedy the inmate seeks. The grievance form will then be placed in a sealed envelope and submitted to the staff member responsible for the first step in this grievance procedure. The following is established as the proper channels for a grievance form to be submitted through:
>
> a. The inmate may submit his grievance to the Assistant Superintendent or designated Lieutenant of the Institution or Field Unit to which he is assigned. The Assistant Superintendent, or in his absence, his designee, will have five (5) calendar days within which to respond to the complaining inmate on the answer section of the grievance form. The Assistant Superintendent will have the responsibility of interviewing the inmate, determining the nature of the inmate complaint, and investigating the complaint (to include a hearing when necessary). The Assistant Superintendent, or designated Lieutenant will have the necessary authority to resolve inmate complaints filed pursuant to this Guideline. The dated response of the Assistant Superintendent will indicate what action has been taken and briefly state the reasons for his disposition of the case. A copy of the Assistant Superintendent's decision will be forwarded to the Superintendent of the Field Unit or major Institution for his review and approval. The Superintendent of the Field Unit or Institution will review all decisions of the Assistant Superintendent.
>
> b. Once the Assistant Superintendent or designated

Lieutenant has submitted his written decision to the Superintendent, the Superintendent will have three (3) calendar days within which to review the decision and reach a decision. In arriving at his decision, the Superintendent may conduct a further investigation of the facts himself (to include a hearing when necessary). The Superintendent will indicate his decision and the reasons for his decision, in writing, to both the Assistant Superintendent and in duplicate to the complaining inmate. If the decision is contrary to the remedy the inmate seeks, he will be informed of his right to appeal, and should he object to the decision and note an appeal, a copy of the Superintendent's decision will be forwarded automatically to one of the following staff members:

(1) Superintendents of the major Institutions will forward a copy of their decision to a designated Assistant Director, Division of Corrections or his designee.

(2) Superintendents of the Field Units will forward a copy of their decision to a designated Assistant Superintendent, Bureau of Correctional Units, or his designee.

c. Once the Superintendent has submitted his decision to either the Assistant Director, Division of Corrections, or the Assistant Superintendent, Bureau of Correctional Units, the responsible staff member will have ten (10) calendar days within which to reach a decision. In arriving at his decision, the Assistant Director or Assistant Superintendent, Bureau of Correctional Units, may interview the inmate, determine the continuing nature of the complaint, and investigate the complaint to include a hearing when necessary. The Assistant Director or Assistant Superintendent, Bureau of Correctional Units, will indicate his decision and the reasons for the decision in writing to both the Superintendent of the Field Unit or Institution and the complaining inmate. After receiving the decision, if the complaining inmate still disagrees with the decision, he may again note an appeal and a copy of this decision will automatically be forwarded to the Director, Division of Corrections, or his designated agent, for his review.

d. Once the Assistant Director and/or Assistant Superintendent has submitted his recommendation to the Director, or his designated agent, the Director, or his designee, will have five (5) working days within

which to reach a final decision. The Director may return the matter for further inquiry or conduct a hearing with regard to the case. However, his final decision on any grievance will be within five (5) working days after receipt of same. The Director, or his designated agent, will indicate his decision and the reasons for so deciding, in writing, to both the Superintendent of the Institution or Field Unit and the complaining inmate. The decision of the Director, or his designated agent, will be final in all respects to the grievance.

e. In the event more time is required to conduct a hearing or a more formal investigation, the Director, or his designee may extend the time for good cause shown; however, the total time from initial submission of the grievance, until final action by the Director, will not exceed thirty days.

f. In the event a hearing or an investigation is conducted, the grievance form will show what witnesses were interviewed and a brief summary of their testimony.

No action will be taken against any inmate as a result of his using the grievance procedures established herein.[1]

Thus, the Virginia system would appear to be in compliance with the recommendations of this Standard, with the sole exception being that the grievance report is sent to an official of the particular institution, and not to an entity or person independent of the facility as suggested in point 2(A) of the NAC recommendation.

At the local level, results presented in Table 2.14 - 1 indicate that approximately fifty percent of the local jails in Virginia are in compliance with the NAC recommendation that formal grievance procedures be established for offenders. Of those localities reporting a formal grievance procedure in their local jail facilities, all indicated that a written report is filed for each grievance investigated.

Alternative Standards

Realizing the importance of proper grievance procedures, the National Council on Crime and Delinquency, in its "Model Act for the Protection of Rights of Prisoners" has proposed the following section be adopted by States:

> Section 5: Grievance Procedures - The director of the State Department of Corrections (or the equivalent official) shall establish a grievance procedure to which all prisoners confined within the sytem shall have access. Prisoners shall be entitled to report any grievance, whether or not it charges a violation of this act, and to mail such communication to the head of the department. The grievance procedures established shall provide for and investigation aside from any investigation made by the institution or department of all alleged grievance by a person or agency outside of the department, and for a written report of findings to be submitted to the department and the prisoner.

TABLE 2.14 - 1

Grievance Procedures in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Does your correctional facility have a formal grievance procedure for offenders?	36	47.36	37	48.68	3	3.94
If yes, is the grievance investigated and a written report filed for each grievance?	36	100.00	0	0	0	0

Standard 2.15

Free Expression and Association

Each correctional agency should immediately develop policies and procedures to assure that individual offenders are able to exercise their constitutional rights of free expression and association to the same extent and subject to the same limitations as the public at large. Regulations limiting an offender's right of expression and association should be justified by a compelling state interest requiring such limitation. Where such justification exists, the agency should adopt regulations which effectuate the state interest with as little interference with an offender's rights as possible.

Rights of expression and association are involved in the following contexts:

1. Exercise of free speech.
2. Exercise of religious beliefs and practices. (See Standard 2.16).
3. Sending or receipt of mail. (See Standard 2.17).
4. Visitations. (See Standard 2.17).
5. Access to the public through the media. (See Standard 2.17).
6. Engaging in peaceful assemblies.
7. Belonging to and participating in organizations.
8. Preserving identity through distinguishing clothing, hairstyles, and other characteristics related to physical appearance.

Justification for limiting an offender's right of expression or association would include regulations necessary to maintain order or protect other offenders, correctional staff, or other persons from violence, or the clear threat of violence. The existence of a justification for limiting an offender's rights should be determined in light of all the circumstances, including the nature of the correctional program or institution to which he is assigned.

Ordinarily, the following factors would not constitute sufficient justification for an interference with an offender's rights unless present in a situation which constituted a clear threat to personal or institutional security.

1. Protection of the correctional agency or its staff from criticism, whether or not justified.
2. Protection of other offenders from unpopular ideas.
3. Protection of offenders from views correctional officials deem not conducive to rehabilitation or other correctional treatment.
4. Administrative inconvenience.
5. Administrative cost except where unreasonable and disproportionate to that expended on other offenders for similar purposes.

Correctional authorities should encourage and facilitate the exercise of the right of expression and association by providing appropriate opportunities and facilities.

Analysis

Within the Virginia state system, there would appear to be general accord with the provisions of Standard 2.15 regarding free association and expression. Regarding the various contexts of expression, the following areas are treated elsewhere in this volume:

1) Exercise of religious beliefs and practices (See Standard 2.16).

2) Sending and receipt of mail (See Standard 2.17).

3) Visitations (See Standard 2.17).

4) Access to the public through the media (See Standard 2.17).

Currently, there are no formal guidelines in such areas as exercise of free speech or the right of assembly. Inmates are allowed to participate in organizations and their related activities which have been approved by the administration. At the state penitentiary, for example, there are in existence such bodies as a Jaycee chapter, a chess club, an art club, as well as other associated organizations.

With regard to physical appearance as a form of expression, a formal guideline does exist for this subject. It reads:

> Purpose: This guideline is an effort to deal with the complex issue of an inmate's necessity to retain his or her personal identity and self-respect as represented by hair-styles and the requirements of institutions in regards to security and sanitation.
>
> First, the Division must maintain adequate security measures for all residents, and not the least important factor in this responsibility is proper identification. It is, therefore, expected that each respective institution will maintain whatever appropriate photographic records are deemed necessary to assure accurate identification by institutional staff as well as by members of the outside community, including criminal justice representatives.

> Second, sanitation requirements shall mean normal cleanliness except where residents are connected with medical, dental or food services. In these areas, supervisory personnel shall require the use of hair nets, caps, gloves or whatever is necessary for the particular work involved.
>
> The following guideline offers the opportunity for personal taste in styling and with considerations just mentioned establishes acceptable standards for security and sanitation requirements:
>
> Sideburns, moustaches, goatees and beards are acceptable if the following standards are met:
>
> a. They are clean and neatly groomed.
>
> b. Hair length may extend over the ears, but will not extend below the top of the collar.
>
> c. Beards, moustaches, goatees and muttonchops are permitted, but must be trimmed and held within two inches of the face.[1]

Regarding local institutions, conditions are similar to those at major state institutions. The religious practices, sending and reciept of mail, visitations, and media access are covered in other standards in this chapter. As for distinguishing hair styles, the State Department of Corrections has promulgated the following policy:

> Prisoners held less than ten (10) days may not be compelled to have haircuts. Prisoners held for ten (10) days or more shall be subject to the same regulations as apply in State institutions.[2]

Concerning membership in local community organizations, 92 percent do not allow offenders to have memberships or participate in outside local civic and social groups.

Alternative Standards

The right of free expression and association has generated much comment from the various organizations responding to the Standards.

The State of Oregon in its 1980 Standards and Goals believes the state should:

> Establish policies and procedures of correctional institutions which enable offenders to exercise rights of free expression and association, subject to regulations limiting these rights when there is shown to exist a reasonable and/or significant danger to institutional order, security, and compelling state interest or other major societal interests.[3]

The State Correctional Administrators foresee some deletions and changes to be necessary in this area:

> Attention is drawn to this standard and others in this chapter to the "uniform Correctional Policies and Procedures" copywrited 1972 by the Association of State Correctional Administrators, Access to the Media, Page 7. Recommend deletion or extensive rewording in the first column beginning "Rights of expression and association are ..." to and including the numbered paragraphs 1 to 8 as loosely worded. Also, second column, it is urged that the paragraph as follows "Ordinarily, the following factors would not constitute sufficient justification for an ..." that this be eliminated or recorded.
>
> These issues are extremely complex. Corrections should opt toward acceptance of these standards insofar as reasonable and proper. Limits should be established and maintained.
>
> Facial hair can prevent effective use of inhalator equipment.[4]

Finally, The Wardens' Association also finds some need for modification and alterations of the NAC Standard in this area as well:

> Modify. There is no way an administrator can tell whether or not an assembly of inmates will be peaceful or remain so. The same rationale exists for belonging to organizations. Too often, large groups are utilized as enforcement, coercion or making demands on the administration.
>
> Certainly, within a limited scope, hairstyles are acceptable, but beards are totally unacceptable because of identification problems. The same would hold true of civilian clothing.[5]

In its Task Force Report: Corrections, the President's commission on Law Enforcement and Administration of Justice notes that "... a system which recognizes that offenders have certain rights is not inconsistent with the goal of rehabilitation...(I)t is inconsistent with (this) goal to treat offenders as if they have no rights, and are subject to the absolute authority of correctional officials."[6] Also, in discussing the loss of civil rights, of which association and expression are among the most precious, the report continues:

> To a large extent the law in this area represents an archaic holdover from the past... Present laws regarding the loss of civil rights, inherited from this era, are simply not appropriate today, when the death penalty is nearly extinct and most offenders given life sentences are eventually released. Similarly, many laws suspending civil rights during sentence date from times when sentence for a period of years meant imprisonment for that full term; the result today is that persons released on probation or parole are subjected to deprivations appropriate only for prisoners.

The American Civil Liberties Union, in response to the question "do prisoners have any political rights," observes:

> Each particular assertion by a prisoner of his political right(s) (held to include speech, association, assembly, and belief) has been dealt with on an ad hoc basis, with each individual decision varying greatly... Therefore it is impossible to advise prisoners of their political rights, at least in terms of what kinds of speech and other political activity may be tolerated at any given time in prison.[7]

Footnotes

[1]Department of Corrections Division Guideline No. 811 (Revised) issued January 11, 1974, pp. 1-2.

[2]Rules and Regulations for the Administration of Local Jails and Lock-ups, Revised Draft Copy (Richmond: Department of Corrections, July 1974), unpaginated.

[3]Proposed 1980 Standards and Goals, Draft, (Salem: Oregon Law Enforcement Council, May 1974), p. 67.

[4]Rational and Reasoning Behind the Ratings on the Standards and Goals Study Committee of the Association of State Correctional Administrators, February 1974.

[5]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

[6]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections, 1967, p. 83.

[7]American Bar Association, Rights of Prisoners, pp. 73-74.

Standard 2.16

Exercise of Religious Beliefs and Practices

Each correctional agency immediately should develop and implement policies and procedures that will fulfill the right of offenders to exercise their own religious beliefs. These policies and procedures should allow and facilitate the practice of these beliefs to the maximum extent possible, within reason, consistent with Standard 2.15, and reflect the responsibility of the correctional agency to:

1. Provide access to appropriate facilities for worship or meditation.
2. Enable offenders to adhere to the dietary laws of their faith.
3. Arrange the institution's schedule to the extent reasonably possible so that inmates may worship or meditate at the time prescribed by their faith.
4. Allow access to clergymen or spirtual advisers of all faiths represented in the institution's population.
5. Permit receipt of any religious literature and publications that can be transmitted legally through the United States mails.
6. Allow religious medals and other symbols that are not unduly obtrusive.

Each correctional agency should give equal status and protection to all religions, traditional or unorthodox. In determining whether practices are religiously motivated, the following factors among others should be considered as supporting a religious foundation for the practice in question:

1. Whether there is substantial literature supporting the practice as related to religious principle.
2. Whether there is a formal, organized worship of shared belief by a recognizable and cohesive group supporting the practice.
3. Whether there is a loose and informal association of persons who share common ethical, moral, or intellectual views supporting the practice.
4. Whether the belief is deeply and sincerely held by the offender.

The following factors should not be considered as indicating a lack of religious support for the practice in question:

1. The belief is held by a small number of individuals.
2. The belief is of recent origin.
3. The belief is not based on the concept of a Supreme Being or its equivalent.
4. The belief is unpopular or controversial.

In determining whether practices are religiously

motivated, the correctional agency should allow the offender to present evidence of religious foundations to the official making the determination.

The correctional agency should not proselytize persons under its supervision or permit others to do so without the consent of the person concerned. Reasonable opportunity and access should be provided to offenders requesting information about the activities of any religion with which they may not be actively affiliated.

In making judgments regarding the adjustment or rehabilitation of an offender, the correctional agency may consider the attitudes and perceptions of the offender but should not:

1. Consider, in any manner prejudicial to determinations of offender release or status, whether or not such beliefs are religiously motivated.

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

Analysis

Regarding the exercise of religious beliefs, the state correctional system would appear to be in concert with the recommendations of the National Advisory Commission. As for the various provisions of Standard 2.16, access is provided to appropriate facilities to worship, and attempts are made to allow inmates to perform such worship at the appropriate times as dictated by their faith. Access to clergy of the faiths represented in the inmate population is likewise sanctioned by the administration, as is the receipt of religious literature of publications through the United States mails (see Standard 2.17, Access to the Press).

With reference to dietary laws, a program of dietary substitutes is currently available. This substitution has arisen in Virginia most frequently in the case of Muslim inmates, whose faith prohibits the eating of pork. For such prisoners, pork substitutes are condoned and the notion that completely separate diets are mandated was overruled. As for the criteria laid out by the Commission to decide the validity of a religious belief, no such formal criteria are in existence or utilized within the Virginia system, although many of these factors are informally considered when such a decision is made.[1]

As for local institutions, the administrative practices relating to exercise of religious belief are suggested in the state Department of Corrections rules and regulations for local jails:

a. Religious services should be provided periodically. An inmate may attend religious services of his/her choice during the scheduled hours. An inmate may not be required to attend such services however.

b. An inmate may request to see a chaplain by asking the jailer to arrange a visit.[2]

Only one-half of the institutions provide access for religious services, while a near-equal number do not provide such access. However, 71 percent of the facilities do attempt to allow their incarcerated offenders to adhere to the dietary laws of their religion, with nearly a quarter not making an attempt to do so. Slightly over one-third of the jails have chaplains, another one-third do not, and a final third did not respond. Finally, only two out of 76 jails allow the wearing of religious medals or symbols. Thus, in terms of the religious practices allowed, jails in Virginia show a mixed compliance with the N.A.C. standard.

Alternative Standard

In discussing the essential elements of an adequate prison religious program, the American Correctional Association, in its Manual of Correctional Standards states:

> From this firm guarantee of religious freedom by Ecclesiastical and Constitutional authority, it is appropriate to consider the functions, qualifications and numbers, facilities and organization of correctional chaplains.
>
> 1) State of Standards of Qualification for correctional chaplains.
>
> 2) Functions of the chaplain in a correctional institution.
>
> 3) The chaplaincy budget.

4) Facilities and equipment for the chaplaincy services.

5) Evaluation and research.

6) Advisory Committee for chaplaincy services and professional affiliations.[3]

Footnotes

[1]Interview with Mr. James Hopper, Assistant Attorney General for the Department of Corrections, July 31, 1974.

[2]Rules and Regulations for the Administration of Local Jails and Lockups, Draft Revision (Richmond: Department of Corrections, July 1974), unpaginated.

[3]The American Correctional Association, Manual of Correctional Standards, 1966, Chapter 25.

Standard 2.17

Access to the Public

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

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

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

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

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

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

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

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

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

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

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

3. The correctional agency may supervise the visiting area in an unobtrusive manner but should

not eavesdrop on conversations or otherwise interfere with the participants' privacy.

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

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

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

3. Publish articles or books on any subject.

4. Display and sell original creative works.

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

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

Analysis

The Virginia State corrections system would appear to be in concert with the recommendations of the National Advisory Commission in the area of access to the public.

As far as correspondence, the following Division guideline governs the sending and receiving of mail:

> Policy - All inmates regardless of their status shall be afforded equal or comparable mailing privileges.
>
> Mail may include content that is threatening, and untrue. It may include criticism of staff or institution procedures. It may be critical of the courts or law enforcement. However, as long as such mail contains no items of contraband its delivery shall not be interrupted. The Division of Corrections assumes no responsibility for the verbal content of inmate letters.
>
> No letter shall be delayed without good cause. Any delay in mails or unusual circumstances involving the processing of mail must be promptly reported to the Director, Division of Corrections.
>
> Retention of Materials in Cells
>
> 1. An inmate may retain his own typewriter, if approved by the Superintendent and if space permits in his cell. It may be used to prepare materials for other inmates as well as for the owner. However, if the typewriter is used for unauthorized purposes, the Superintendent may withdraw his permission for the retention of the typewriter. Unauthorized purposes are deemed to include but are not limited to the typing of "betting sheets," the concealment of contraband or any other purpose violative of institutional regulations or Division policy.
>
> 2. Inmates, regardless of status, may retain a reasonable accumulation of legal materials in their cells. Should the accumulation of legal materials become a fire hazard or pose a serious threat to hygiene, they will be removed.
>
> 3. An inmate may retain in his cell the materials and pleadings necessary for his own or any other case he is working on. [1]

Thus, there is no limitation as to volume of mail, and the inspection procedures used by the correctional officials

would appear to be in accord with NAC recommendations.

As for visitation, here again a departmental guideline does exist for regulation of this process. It reads:

a. Visiting Facilities - The visiting room should be arranged to provide adequate supervision and adapt to the degree of security required by the type of population. It should be as comfortable and pleasant as possible and informally arranged. Appropriate furnishings (e.g. small tables and chairs, settees and other less formal furniture arrangements) are preferable to the "conventional" prison visiting table. Correctional institution visits may be held beyond the security perimeter when the weather permits but always under supervision of an officer. Penitentiaries may establish outdoor visiting when weather and facilities permit but always inside the security perimeter. If space is available, a portion of the visiting room should be equipped and set up to provide a diversion for the children of visitors.

b. The Visiting Room Officer - Visits must be supervised to prevent the passage of contraband and to insure the security and welfare of the institution. Visits have an inevitable and extensive public relations aspect. The impressions gained by the visitor whether he be a member of the offender's family or a government official, are of the utmost importance. For these selections for this correctional assignment should not be left to chance or shifted frequently. The officer's personal appearance, his manner of speech, his ability to be tactfully firm, his altertness, his grasp of regulations and his judgment in sensing situations requiring referral to other institutional departments, will determine the effectiveness of the visit.

c. Visiting Times - Each institution will have visiting on Saturday, Sunday, and holidays. Visiting hours will be from 8:30 a.m. to 4:00 p.m., each Saturday, Sunday, and holidays. The restriction of visiting to these days may be a hardship upon some families and arrangements for suitable hours should be made if at all possible. Evening visiting hours should be established where staff resources permit.

d. Frequency of Visits - Limitations on the length or frequency of visits should be imposed only to avoid overcrowding. A reasonable number of visits or

> number of hours per month shall be established consistent with resources available. Exceptions should be made to any such rules where indicated by special circumstances, such as distance the visitor must travel, frequency of the inmate's visits, or health problems of the offender. Each inmate shall be permitted a minimum of one hour per visit with his visitor.[2]

Thus, with regard to the visitation regulations as proposed by the Commission, there is no limitation on the frequency of visits, and appropriate rooms are provided to insure privacy and some comfort to such gatherings. In addition, attempts are made to supervise the area in an unobtrusive manner. However, there currently are no provisions for supplying transportation to visitors.

Finally, as for media access, guidelines have been promulgated in this area, which read:

> Policy - Except in emergencies such as institutional disorders, inmates are allowed to present their views to the public through the communications media. The term media encompasses any printed or electronic means of conveying information to the public including but not limited to newspapers, magazines, books, or other publications regardless of the size or nature of their circulation and licensed radio and television broadcasters. Representatives of the media shall be allowed access to all correctional facilities for reporting items of public interest consistent with orderly administration and the preservation of inmate privacy. Identification of media representatives shall be by Press or Broadcasters ID card issued by State Police.
>
> General - Inmates shall be permitted to correspond with media representatives in the same manner as they are permitted all other correspondence and subject only to the restrictions concerning contraband set forth in Division Guideline No. 801.
>
> Inmates are permitted to submit manuscripts to publishers or serve as book reviewers for newspapers or other publications.
>
> Requests by media representatives for filmed interviews with inmates shall be approved, if the filming of the interview will not interfere with the orderly operation and security of the institution. Written inmate consent to such an interview shall be required prior to the interview.

> When an inmate is permitted outside an institution for rehabilitative programs or other public service, he may appear on radio or television. Written consent from the inmate shall be required prior to such appearance.
>
> Institutions - Media representatives shall be admitted to correctional institutions during administrative business hours. They shall contact the institution prior to arrival in order to make necessary arrangements. By prior arrangement, access may be permitted during other than administrative business hours.[3]

Thus, the guidelines of the Virginia State system would appear for the most part to satisfy the requisites of Standard 2.17 as it relates to media access.

With regard to local correctional facilities, it would appear that generally these institutions are in accord with the recommendations of the NAC as to public access as well. As an additional point of reference, it should be noted that the state Department of Corrections has promulgated rules for local jails in accord with its supervisory role over these institutions. The following are the guidelines for receiving and sending mail:

A. There shall be no limits on the number of letters an inmate may receive or send. There are no limits as to people he/she may send mail to or receive mail from.

B. All inmates regardless of their jail status shall be afforded the same correspondence privileges.

C. Correspondence privileges shall not be withdrawn as punishment unless the offense relates directly to abuse of these privileges.

D. No letter shall be intentionally delayed in mailing or delivery. Mail that has been delivered for an inmate who has been transferred shall be forwarded immediately.

E. An inmate will not be required to sign a waiver consenting to censorship.

F. An inmate with no money with which to buy paper, envelopes or stamps will be supplied with these materials

for correspondence with those special persons or groups listed in G below. Inmates who cannot purchase these materials shall be supplied a reasonable quantity of same for other general correspondence.

G. All letters to and from the following special categories will not be read and may be inspected only in the presence of the inmate:

1. Attorneys;
2. Federal and State elected or law enforcement officials;
3. Court officials;
4. Officials of the Division of Corrections and Department of Welfare and Institutions;
5. ACLU, NAACP, Urban League, OAR and such other organizations as may be designated by the local jail.

All mail sent out by an inmate will be sealed by the inmate. Incoming mail may be opened and examined for contraband in the inmate's presence but the letters will not be read or censored.

H. Certified checks or mail money orders will be accepted as money or cash for inmates. Cash will be accepted only if paid in person at the jail. Receipts will be given for all monies accepted.

I. All inmates may send and receive packages regardless of their status except where such privilege has been taken away by disciplinary action. All packages will be searched for contraband. Those to and from special persons or organizations in paragraph G above may not be denied for disciplinary reasons and will be searched in the presence of the inmate. Jails may establish reasonable regulations as to items which may be received.

J. Inmates may subscribe to or receive through the mail any newspaper or magazine or book with the exception of publications which violate United States Postal regulations or which advocate the violent overthrow of the government of the United States or of a state, or which advocate violence or rebellion against government authority under which the inmate is held.

K. Inmates may receive and send registered mail.

L. Notary services shall be provided for all inmates. Materials for notarization are not to be read.[4]

Few facilities limit the amount of mail that can be received, while regarding mail inspection, four out of ten responding jails inspect neither incoming nor outgoing correspondence, with an additional 40 percent inspecting only incoming mail. Some 21 percent conduct regular inspections of both incoming and outgoing mail. No jails responded that they inspected only outgoing mail. Finally, concerning cencorship of correspondence, 70 percent of the responding jails reported no editing or censorship of inmate correspondence, while 5 percent replied in the affirmative, with 25 percent not responding to the question.

Thus, for the most part in the area of mail, the local correctional institutions are in compliance with the requisites of the standards as they relate to correspondence, but with certain exceptions of non-compliance very evident.

As for visitation in local facilities, guidelines have been established here as well by the state Department of Corrections:

A. Jails shall designate hours (at reasonable times) when prisoners may have visitors, and jailers should on reasonable request allow visits outside visiting hours. The establishment of daily visiting hours is encouraged. Within a maximum fixed and posted by the sheriff, the time spent per visit is at the discretion of the inmate.

B. All visitors must register and may be searched.

C. Sheriffs should establish and post rules regarding any limitations on visitors.

D. An inmate shall have the right to confidential visits with the following persons:

   1. His attorney (or authorized members of his staff), probation officer or authorized social worker;

   2. Any minister, priest, rabbi, doctor, psychiatrist or practicing psychologist.[5]

Local jailers were also polled on visitation policies, specifically the maximum number of visits and the maximum length of these visits on weekdays and on weekends. The results were averaged to provide a composite of such practices within the state. The average number of visits per week at local jails was 1.9, with the mean visitation length computing out to 33.6 minutes on weekdays, and 21.4 minutes on weekends. Generally then, it would appear that for the most part the local correctional facilities tend to fall short of the recommendations of the Commission in the area of visitation.

Finally, concerning media access, the Department of Corrections has not as yet formally promulgated rules or guidelines in this area for local facilities. The survey of local jails reveals compliance for the most part with the NAC suggestions in this area. The responding jails showed approximately 70 percent do allow granting confidential and uncensored interviews to the media, and some 34 percent answered negatively, while 82 percent of the jails do allow uncensored communication to the press. The jails, however, for the most part do not allow inmates to sell creative works, with over one-half prohibiting this while a little less than one-third do sanction this activity. Publication of manuscripts and articles is generally allowed, with slightly over one-half replying affirmatively and 28 percent in the negative. Thus, with reference to media access from Virginia jails, the

survey reveals a mixed compliance with the standards of the Commission.

Alternative Standards

Public access has generated much comment among the various organizations. The Wardens' Association rejects the requisites of this standard, stating:

> There are just too many objectional aspects to this standard. Conjugal visiting is something that has to have legal sanctions. Opening the institution to unlimited visitation would create a real security hazard.
>
> Unlimited access to media would interfere with the possible rehabilitation of the inmate and the welfare of his family. They should not have to be subjected to the sensationalism of the press similar to that which takes place at the time of arrest, trial and conviction.
>
> Media should be allowed in to observe and report on programs but not to do follow-up on sensational crime.[6]

The State Correctional Administrators likewise recommend changes in this Standard:

> Under paragraph headed by "MAIL" extreme questions arose regarding the right to receive packages. Also, paragraph 1 in the first sequence of numbered paragraphs, "Correctional authorities..." delete "should not" as being unreasonable.
>
> Paragraph 2, second sequence of numbered paragraphs, under "VISITATION" delete paragraph 2 and subparagraphs a, b, and c. Subparagraph a, transportation cannot be provided for visitors. Subparagraph b, too vague; and subparagraph c, total and unequivocal objections to conjugal visiting.
>
> Paragraph 3, "The correctional agency may supervise visiting area in an unobtrusive manner but should not easedrop..." Recommend closed-circuit TV, thus insuring unobtrusive surveillance. Under "MEDIA"; very sensitive area. Total license is questionable. Security can be at risk; programs can be disrupted; staff can be diverted from essential duties. Reference is made to the Uniform Policies and Procedures, ASCA, 1972, under "MAIL", Page 15.[7]

In The Rights of Prisoners -- An American Civil Liberties Union Handbook, the American Civil Liberties Union (ACLU) gives extensive coverage to the issues encompassed by this Standard.

In discussing the right to freedom of communication, the ACLU states:

> The law is unclear on this issue. Court decisions are quite contradictory and, therefore, of limited use in advising prisoners of their rights to free communication. The older cases tend to uphold almost all forms of prison censorship; more recent decisions have tended to restrict the use of censorship and, in conjunction with liberalized administrative rules and policies governing censorship, have established for many prisoners a right to freer communication with the outside world than existed years ago.[8]

The Association of State Correctional Administrators (ASCA) has addressed several issues involved in the overall topic "Access to the Public." Concerning visits from family and friends, the ASCA recommends:

> As vists with family and friends are an important part of any treatment program, inmates should be encouraged and given an opportunity to maintain constructive outside contacts. Visiting should be conducted informally and openly, consistent with the security requirements and availability of space in each institution. Visitors should be identified and may be searched as a protection to the visitors, the inmates and others in the institution. This should be done as privately as possible to facilitate good public relations.[9]

The ASCA argues that special visits, i.e., visits to hospitalized inmates, those in disciplinary status, visits between attorney-client, and home-type furlough visits, should be arranged and provided for. As to media access, the following is asserted:

> Responsible reporting informs the public of the manner in which the correctional systems are operating. The media should, therefore, have access to correctional operations, except where such access would interfere with the orderly administration of the institution.[10]

Footnotes

[1]Department of Corrections Division Guideline No. 801 (Revised), issued November 14, 1973, pp. 1-7.

[2]Department of Corrections Division Guideline No. 819, issued May 24, 1974, pp. 1-3.

[3]Department of Corrections Division Guideline No. 815, issued February 21, 1973, pp. 1-3.

[4]Rules and Regulations for the Administration of Local Jails and Lockups, Revised Draft, (Richmond: Department of Corrections, July 1974), unpaginated.

[5]Ibid.

[6]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," by the Standards Committee of the American Wardens' Association, Draft Copy, August 1974.

[7]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974.

[8]The American Civil Liberties Union, The Rights of Prisoners -- An American Civil Liberties Union Handbook 1973, p. 41.

[9]The Association of State Correctional Administrators, "Uniform Correctional Policies and Procedures," 1972, p. 3.

[10]Ibid., p. 7.

Standard 2.18

Remedies for Violation of an Offender's Rights

Each correctional agency immediately should adopt policies and procedures, and where applicable should seek legislation, to insure proper redress where an offender's rights as enumerated in this chapter are abridged.

1. Administrative remedies, not requiring the intervention of a court, should include at least the following:

a. Procedures allowing an offender to seek redress where he believes his rights have been or are about to be violated. Such procedures should be consistent with Standard 2.14, Grievance Procedure.

b. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect offenders' rights.

c. Policies which:

(1) Assure wide distribution and understanding of the rights of offenders among both offenders and correctional staff.

(2) Provide that the intentional or persistent violation of an offender's rights is justification for removal from office or employment of any correctional worker.

(3) Authorize the payment of claims to offenders as compensation for injury caused by a violation of any right.

2. Judicial remedies for violation of rights should include at least the following:

a. Authority for an injunction either prohibiting a practice violative of an offender's rights or requiring affirmative action on the part of governmental officials to assure compliance with offenders' rights.

b. Authority for an award of damages against either the correctional agency or, in appropriate circumstances, the staff member involved to compensate the offender for injury caused by a violation of his rights.

c. Authority for the court to exercise continuous supervision of a correctional facility or program including the power to appoint a special master responsible to the court to oversee implementation of offenders' rights.

d. Authority for the court to prohibit further commitments to an institution or program.

e. Authority for the court to shut down an institution or program and require either the transfer or release of confined or supervised offenders.

f. Criminal penalties for intentional violations of an offender's rights.

Analysis

Regarding remedies for violation of an offender's rights, administrative remedies are explored in Standard 2.14, Grievance Procedure, and Standard 2.2, Access to Legal Services.

As for judicial remedies, all the listed remedies are available for use by the courts should it be necessary to do so in redress of violation of an offender's rights.

Alternative Standards

As with many of the previous standards in Chapter 2, this final one also has generated recommendations for its modification. The Wardens' Association states:

> Modify. By all means, we should make every effort to protect the rights of the offender; however, I do not believe the court should have continuing jurisdiction over the offender while he is incarcerated. Some judges may be experts in Criminal Law, but know little about Penology.
>
> No awards either against an institution or an individual should ever be considered unless it can be proven beyond a shadow of a doubt that the individual or group was well aware of the offender's right but still willfully violated it.[1]

The State Correctional Administrators also see a necessity for some changes here:

> Paragraph 2, "Judicial remedies for violation of rights...", subparagraph c, "Authority for the court to exercise continuous supervision..." highly controversial. Serious complications are evident. Unwise that one branch of government assume responsibility for the actions and management of another. Paragraph 1, c, (3) is beyond the authority of corrections. Paragraph 2,c; the total supplanting of judicial administration for executive administration is not acceptable. By paragraph 2,c, reasoning, courts could take over legislative functions, the military, etc.[2]

The President's Commission on Law Enforcement and Administration of Justice in the Task Force Report: Corrections did not take

a definite stand on what legal rights a prisoner should have. They stated it was too early to define absolute standards in this area but that it was of utmost importance that methods of safeguarding the rights of offenders be considered and developed, and correctional administrators should assume this authority. They should also develop guidelines defining prisoners' rights with regard to such issues as access to legal materials, correspondence, visitors, religious practice, medical care and disciplinary sanction. The development of such guidelines by correctional administrators, they concluded, would enable the courts to act in a reviewing rather than a directly supervisory capacity.[3]

The NCCD, in the Model Act for Protection of Rights of Prisoners, states in the introduction:

> If the abuses exist and the violations of rights are amendable to law, the courts must take jurisdiction, just as they do with persons who are not in prison and where litigation also burdens the court.
>
> What burdens the court is not their power to correct the abuse but rather the abuse itself. When abuses cease or become less heinous, fewer writs will be brought to the courts.[4]

The Act also maintains that a prisoner shall retain all the rights of an ordinary citizen, except those expressly or by necessary implication taken by law.[5] It also states rules and punishments for violations should be described in writing, a grievance procedure established and procedures established to provide for an investigation of alleged grievance (besides the one made by the institution). Judicial relief should include ordering the institution closed for not more than six months to permit the responsible authorities

to correct abuses, to prohibit further commitments to the institution and to order an injunction against the institution.[6]

Footnotes

[1]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Commission of the American Wardens' Association, August 1974.

[2]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974.

[3]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections, 1967, p. 85.

[4]National Council on Crime and Delinquency, Model Act for the Protection of Rights of Prisoners, 1972, p. 11.

[5]Ibid., p. 15.

[6]Ibid., p. 18.

CHAPTER THREE

Diversion From the Criminal Justice System

Diversion is a relatively recent addition to the vocabulary of the criminal justice system, having first originated in 1967 in the report of the President's Commission on Law Enforcement and Administration of Justice. However, despite the novelty of the terminology, diversion describes a phenomenon that has been occuring for a great while on an informal basis, that is, the interruption of an individual's processing through the criminal justice system in favor of disposition through a noncriminal means. Such a procedure attempts to formalize what many have recognized to be a sound principle within the context of the criminal justice system, namely, that certain individuals are best served and the society most positively benefitted by diverting their path from the usual processing and disposition and utilizing alternatives to the usual criminal sanction.

The Task Force on Corrections has fully accepted this philosophy, and envisions a wide use of processing alternatives in lieu of the current dispositions. Such a system, in their view, would provide a variety of less harsh and more individualized means to deal with certain special offender types such as juveniles, alcoholics, drug abusers, etc., for whom criminal punishment would appear to be less than satisfactory in deterring recidivism.

The situation within Virginia regarding diversion is largely one of nonutilization of the types of processing alternatives envisioned by the Commission. What diversion that does take place in the adult offender realm would appear to be strictly of the informal variety and somewhat limited in scope and degree of useage. Juvenile diversion is covered in the chapter on Juvenile Justice. As for the methodology employed in this chapter, Commonwealth's Attorney in the local subdivisions of the State were mailed a questionnaire, part of which dealt with diversionary tactics and programs. Of the 120 local prosecutors, some 65, or 54 percent, responded to the questionnaire, the results of which follow in the analysis of Standard 3.1.

Standard 3.1

Use of Diversion

Each local jurisdiction, in cooperation with related State agencies, should develop and implement by 1975 formally organized programs of diversion that can be applied in the criminal justice process from the time an illegal act occurs to adjudication.

1. The planning process and the identification of diversion services to be provided should follow generally and be associated with "total system planning" as outlined in Standard 9.1.

a. With planning data available, the responsible authorities at each step in the criminal justice process where diversion may occur should develop priorities, lines of responsibility, courses of procedure, and other policies to serve as guidelines to its use.

b. Mechanisms for review and evaluation of policies and practices should be established.

c. Criminal justice agencies should seek the cooperation and resources of other community agencies to which persons can be diverted for services relating to their problems and needs.

2. Each diversion program should operate under a set of written guidelines that insure periodic review of policies and decisions. The guidelines should specify:

a. The objectives of the program and the types of cases to which it is to apply.

b. The means to be used to evaluate the outcome of diversion decisions.

c. A requirement that the official making the diversion decision state in writing the basis for his determination denying or approving diversion in the case of each offender.

d. A requirement that the agency operating diversion programs maintain a current and complete listing of various resource dispositions available to diversion decisionmakers.

3. The factors to be used in determining whether an offender, following arrest but prior to adjudication, should be selected for diversion to a noncriminal program, should include the following:

a. Prosecution toward conviction may cause undue harm to the defendant or exacerbate the social problems that led to his criminal acts.

b. Services to meet the offender's needs and problems are unavailable within the criminal justice system or may be provided more effectively outside the system.

c. The arrest has already served as a desired deterrent.

d. The needs and interests of the victim and society are served better by diversion than by official processing.

e. The offender does not present a substantial danger to others.

f. The offender voluntarily accepts the offered alternative to further justice system processing.

g. The facts of the case sufficiently establish that the defendant committed the alleged act.

Analysis

Within the Commonwealth of Virginia it would appear that currently only limited use is made of diversionary processing alternatives in the criminal justice system. Commonwealth's Attorneys throughout Virginia were surveyed regarding this procedure, and results are as follows: sixteen reported that some type of diversion from the processing through the criminal justice system, be it formal or informal, does take place in their jurisdictions, for a total of 24.61 percent having some form of alternatives to continued movement in the system. Some forty-two, or 64.61 percent, reported no diversion taking place; and seven, or 10.76 percent, failed to respond to the question.

Concerning formal diversionary programs, as defined by the NAC Commentary, it would appear from the results of the survey of local prosecutors that at present among the responding communities there are no formal diversion procedures for adult offenders. However, in the area of juvenile justice, formal diversion is taking place in various localities. (See Chapter 8, Juvenile Intake and Detention). Therefore, in the area of adults, what limited diversion that does take place is of a highly informal nature, and it further appears that diversion remains a very new and largely untried concept among Virginia localities.

Alternative Standards

Regarding diversion, the State of Oregon has undertaken to implement standardized use of diversionary alternatives:

1.041 Legislatively establish statewide criteria to be used by prosecutors in considering cases for diversion.

1.042 Establish a coordinated seminar program relative to clients participating in diversion programs.[1]

The Wardens' Association strongly endorses the concept of diversion, but injects a note of reality:

> This standard is comparable to God, motherhood, etc. Theoretically it is great and should be utilized in every community. It would be impossible to argue against it. However, realistically speaking, we must be sure that we do not fool ourselves into believing everyone can be diverted from the criminal justice system.[2]

Footnotes

[1]Proposed 1980 Standards and Goals, Draft (Salem: Oregon Law Enforcement Council, May 1974), p. 33.

[2]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft Standards Committee of the American Wardens' Association, August 1974.

CHAPTER FOUR

Pretrial Release and Detention

The area of pretrial release and detention, like that of the rights of offenders, presents a special dilemma to the criminal justice system, lying as it does at the junction of two compelling principles: the right of society to protect itself, and the presumption of innocence of those accused of crime in our society. Many studies have stressed the importance of the pretrial period in the processing of an individual. How it is handled may affect not only the accused's job and family status on one hand and the safety of society on the other, but may directly affect the ultimate positive or negative disposition of the case, by virtue of the incarcerated offender's defense being hampered by his jailing. Throughout most of our nation's history, reliance has been placed on the use of monetary bond as the primary means of release before trial. The Task Force on Corrections clearly recommends a departure from the use of surety bail in favor of greater implementation of alternatives such as release on recognizance and release on an unsecured appearance bond. Such a movement they believe would not only relieve pressures on local detention facilities and more efficiently utilize scarce resources, but would most closely follow the dictates of the constitutional presumption of innocence as well.

Within Virginia, the area of pretrial procedures is varied, with strength emanating from the state's new bail

procedures and non-compliance coming from the planning-related areas covered by these Standards. In this chapter the chief methodological tools for data collection were the survey of local jails and the survey of Commonwealth's Attorneys, both of which contained questions about pretrial practices. The exact methodology for the survey of local jails and Commonwealth's Attorneys may be found in the introductions to Chapters 2 and 3, respectively.

Standard 4.1

Comprehensive Pretrial Process Planning

Each criminal justice jurisdiction immediately should begin to develop a comprehensive plan for improving the pretrial process. In the planning process, the following information should be collected:

1. The extent of pretrial detention, including the number of detainees, the number of man-days of detention, and the range of detention by time periods.

2. The cost of pretrial release programs and detention.

3. The disposition of persons awaiting trial, including the number released on bail, released on nonfinancial conditions, and detained.

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

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

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

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

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

9. The length of time required for bringing a criminal case to trial and, where such delay is found to be excessive, the factors causing such delay.

The comprehensive plan for the pretrial process should include the following:

1. Assessment of the status of programs and facilities relating to pretrial release and detention.

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

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

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

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

cluding a means of utilizing additional resources on a temporary basis.

The comprehensive plan for the pretrial process should be conducted by a group representing all major components of the criminal justice system that operate in the pretrial area. Included should be representatives of the police, sheriffs, prosecution, public defender, private defense bar, judiciary, court management, probation, corrections, and the community.

Analysis

Within Virginia, there would appear to be relatively few jurisdictions which have begun or implemented a comprehensive pretrial process plan. Commonwealth's Attorneys in Virginia localities were surveyed regarding the existence of a plan for improving the pretrial process in their communities. The results are contained in Table 4.1 - 1. Some ten percent of the responding localities reported affirmatively concerning comprehensive planning for the pretrial process, while 88 percent responded negatively. Those communities who reported such a plan are the counties of Bland, Chesterfield, Buchanan, Greenville, and Montgomery, and the cities of Martinsville and Virginia Beach. While the specific details of these plans are not given because of the lack of resources for in-depth research in this area, it would be fair to say that none of the pretrial plans approach the comprehensive nature of the requisites of Standard 4.1.

Alternative Standards

The State of Oregon has developed the following alternate for the planning of pretrial detention facilites:

> 1.061 - Any consideration relative to structural change of a local detention facility follow a course of problem definition which considers all relevant information pertinent to the community to be served. Problem definition should point out alternatives to detention, community based programs, and the needs and limitations of the existing facility.
>
> 1.062 - The planning process should develop a strategy of operation, based upon research showing the complexities of the problem, including national and state guidelines, court decisions, legislative actions, public opinion, administrative procedures, interagency involvements and cooperative agreements.

1.063 - After, and if, complete justification is shown for the need of a new or renovated facility, further planning should include: definition of population to be served, classification of prisoner types to be served, functional relationships between essential components in the facility, environmental impact upon the geographic area surrounding the facility, determination of staff or manpower needs, operational costs vs. available resources, and programs needs and desires.

1.064 - All pretrial detention facility planning should include a demonstrated effort to combine the need of a reasonable geographic area and multiple jurisdictions into one single facility.[1]

Footnotes

[1]Proposed 1980 Standards and Goals, Draft (Salem: Oregon Law Enforcement Council, May 1974), pp. 33-34.

TABLE 4.1 - 1

Comprehensive Pretrial Process Planning in Virginia Localities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Is there currently in existence or in the planning stages a comprehensive plan for improving the pretrial process in your locality?	7	10.76	57	87.69	1	1.53

Standard 4.2

Construction Policy for Pretrial Detention Facilities

Each criminal justice jurisdiction, State or local as appropriate, should immediately adopt a policy that no new physical facility for detaining persons awaiting trial should be constructed and no funds should be appropriated or made available for such construction until:

1. A comprehensive plan is developed in accordance with Standard 4.1.

2. Alternative means of handling persons awaiting trial as recommended in Standards 4.3 and 4.4 are implemented, adequately funded, and properly evaluated.

3. The constitutional requirements for a pretrial detention facility are fully examined and planned for.

4. The possibilities of regionalization of pretrial detention facilities are pursued.

Analysis

There is no moratorium on new jail construction in Virginia pending completion of the steps outline in Standard 4.2. In fact, there are currently a number of large pretrial detention facilities under construction, one of the largest being the new facility for the City of Newport News. In sum, there seems to be no active consideration at the state or local level of a policy that no new physical facility for detaining persons awaiting trial be constructed.

Alternative Standards

The Wardens' Association has partially accepted Standard 4.2, stating:

> Modify. Without a doubt, most county jails are not built for lengthy sentences. However, I do not believe we should completely halt construction until a workable plan is developed to handle pretrial detainers. In the meantime, adequate facilities are programs should be initiated at the city and county levels -- things such as recreation, work, education programs, etc.[1]

Footnotes

[1]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

Standard 4.3

Alternatives to Arrest

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop a policy, and seek enabling legislation where necessary, to encourage the use of citations in lieu of arrest and detention. This policy should provide:

1. Enumeration of minor offenses for which a police officer should be required to issue a citation in lieu of making an arrest or detaining the accused unless:

a. The accused fails to identify himself or supply required information;

b. The accused refuses to sign the citation;

c. The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to himself or others;

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

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

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

2. Discretionary authority for police officers to issue a citation in lieu of arrest in all cases where the officer has reason to believe that the accused will respond to the citation and does not represent a clear threat to himself or others.

3. A requirement that a police officer making an arrest rather than issuing a citation specify the reason for doing so in writing. Superior officers should be authorized to reevaluate a decision to arrest and to issue a citation at the police station in lieu of detention.

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

5. Authority to make lawful search incident to an arrest where a citation is issued in lieu of arrest.

Similar steps should be taken to establish policy encouraging the issuance of summons in lieu of arrest warrants where an accused is not in police custody. This policy should provide:

1. An enumeration of minor offenses for which a judicial officer should be required to issue a summons in lieu of an arrest warrant unless he finds that:

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

b. The accused has no ties to the com-

munity and there is a reasonable likelihood that he will fail to respond to a summons.

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

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

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

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

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

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

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

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

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

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

Analysis

At present, alternatives to arrest are authorized by statute and are being exercised by law enforcement officers in Virginia localities. In the past Virginia law allowed little discretion to police in the issuance of a citation or summons in lieu of an arrest warrant. This discretion existed only in a very limited number of areas, largely for minor offenses such as violations of the motor vehicle code and certain offenses involving liquor and other minor areas.[1] However, a recent change in the statutes by the Virginia General Assembly now authorizes the use of a summons in all misdemeanor cases when authorized by the court. The magistrate is similarly authorized to do so as well. The respective statutes read:

> After issuance of a warrant in any misdemeanor case or in any class of misdemeanor cases, the law enforcement officer in charge of the execution of the process may issue a summons in place of the warrant when authorized by the court or courts having jurisdiction over the trial of the offense or class of offenses charged. Any person on whom such summons is served shall appear on the date set forth in such summons, and if such person fails to appear in such court at such time and on such date then he shall be guilty of a misdemeanor.[2]

> In any misdemeanor case or in any class of misdemeanor cases, or in any case involving complaints made by any State or local governmental official or employee having responsibility for the enforcement of any statute, ordinance or administrative regulation, the magistrate may issue a summons instead of a warrant when specifically authorized by the court or courts having jurisdiction over the trial of the offense charged. Any person on whom such summons is served shall appear on the date set forth in same, and if such person fails to appear in such court at such time and on such date then he shall be guilty of a misdemeanor.[3]

As for the degree of implementation and exercise of this alternative, Commonwealth's Attorneys were surveyed regarding the use of the summons in their jurisdictions. Table 4.3 - 1

shows the results of this survey. Some 91 percent of the answering localities currently do utilize the statutorily authorized option of issuing a summons in lieu of an arrest warrant, suggesting that this option is possibly a viable one among Virginia jurisdictions. An indicator of the extent of summons release would be its impact on the arrest rate in various jurisdictions adopting such a policy. An investigation of this relationship was beyond the resources of this research.

Currently there is no enumeration of minor offenses for which a summons may be issued. Because of the judicial approval and police discretion, this may vary from one locality to another. No discretionary authority exists for police officers to issue a summons in all cases where the officer has reason to believe the accused will respond to a summons. Neither must an officer specify in writing the reason for making an arrest rather than issuing a summons. A criminal penalty is authorized for failure to respond to the summons, being that of a misdemeanor punishable under Virginia law by up to a year in jail and a $1,000 fine.[4]

Alternative Standards

The Wardens' Association has partially accepted Standard 4.3, stating:

> Modify. The issuance of a citation in lieu of arrest for specific minor offenses appears justified; however, I would feel the determination should be made in the station house in conjunction with the arresting officer and his superior. This procedure would reduce the possibility of corruption on the part of the arresting officer and provide a more meaningful experience to the offender. Just having to appear at the station while the officials decide whether or not a citation will be issued would be more of a deterrent to the detainee as well as to any of his friends who witnessed the event initially.[5]

In addition, Oregon has developed provisions nearly identical to those of the Commission:

> 1.021 - Every agency with the power to arrest and detain should have a written plan outlining the criteria they use in determining the use of misdemeanants citation -- field release, and citation-station release.
>
> 1.023 - Legislation requirement that courts issue summons in lieu of an arrest warrant in all cases where that court has reason to believe that the accused will respond. Issuance of a warrant is justification for said warrant, outlining the reasons why a summons was not used.[6]

The American Bar Association has also endorsed this concept, stating:

> It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. A law enforcement officer having grounds for making an arrest should take the accused into custody, or already having done so, detain him further only where such action is required by the need to carry out legitimate investigation functions, to protect the accused or others where his continued liberty would constitute a risk of immediate harm or when there are reasonable grounds to believe that the accused will refuse to respond to a citation.[7]

Footnotes

[1]Comprehensive Pretrial Release Program for Fairfax County, Preliminary Report, p. 41, submitted August 1973. For additional information on alternatives to arrest see the companion volume in this series titled Law Enforcement.

[2]Code of Virginia, Sec. 19.1 (Supp. 1973).

[3]Code of Virginia, Sec. 19.1 - 146 (Supp. 1973).

[4]Ibid.

[5]"Review of the National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

[6]Proposed 1980 Standards and Goals, Draft (Salem: Oregon Law Enforcement Council, May 1974), p. 31.

[7]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 134.

TABLE 4.3 - 1

Use of Summons in Lieu of Arrest Warrants in Virginia Localities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are alternatives to formal arrest such as the use of citations or summons in lieu of warrants and detentions currently being used in your jurisdiction?	59	90.76	5	7.69	1	1.53

CONTINUED

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Standard 4.4

Alternatives to Pretrial Detention

Each criminal justice jurisdiction, State or local as appropriate, should immediately seek enabling legislation and develop, authorize, and encourage the use of a variety of alternatives to the detention of persons awaiting trial. The use of these alternatives should be governed by the following:

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

a. Release on recognizance without further conditions.

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

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

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

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

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

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

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

i. Detention of the accused.

2. Judicial officers in selecting the form of pretrial release should consider the nature and circumstances of the offense charged, the weight of the evidence against the accused, his ties to the community, his record of convictions, if any, and his record of appearance at court proceedings or of flight to avoid prosecution.

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

4. Willful failure to appear before any court or judicial officer as required should be made a criminal offense.

Analysis

Alternatives to pretrial detention are authorized by statute and are being implemented and utilized among the various local subdivisions of Virginia. Alternatives to pretrial detention and the conditions under which they may be exercised are governed by Section 19.1-109.2 of the Code of Virginia:

> (a) If any justice of the peace, magistrate or other judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, said judicial officer shall consider the release pending trial of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused on his written promise to appear or an unsecured bond the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of whether or not the defendant is likely to absent himself from court proceedings.
>
> Should the judicial officer determine that such release will not reasonably assure the appearance of the accused as required, or, in the case of a juvenile charged with the violation of an offense which if committed by an adult would be a crime, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one, or any combination of the following conditions of release which will reasonably assure the appearance of the accused for trial:
>
> 1. Place the person in the custody of a designated person or organization agreeing to supervise him;
>
> 2. Place restrictions on travel, association or place of abode of the person during the period of release;
>
> 3. Requires the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

4. Impose any condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to section 16.1-197 of the Code (1973 c. 485).[1]

Thus, the Code of Virginia specifically authorizes and encourages the use of such alternatives to pretrial detention or money bail, and Virginia officials have at their disposal the entire arsenal of options listed by the NAC in Standard 4.4. As for what criteria are to be weighed in selecting the form of pretrial release, they are the following:

1. The nature and circumstances of the offense charged
2. The accused's family ties
3. Employment of accused
4. Financial resources of the accused
5. The length of the accused's residence in the community
6. His record of convictions
7. His record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings; and
8. Any other information deemed relevant by the judicial officer to the determination of whether or not the defendant is likely to absent himself from court proceedings.[2]

Thus, the wording of the enabling statute very closely parallels the requisites of the NAC as to considerations in the process of pretrial release, and meets or exceeds the recommendations of the Commission in every category listed.

Further, in accord with this Standard, willful failure to appear before any court or judicial officer as required is a criminal offense. The Code of Virginia reads:

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required shall, after notice to all interested

> parties, incur a forfeiture of any security which was given or pledged for his release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct orderly proceedings will be served by such forfeiture. In addition, he shall be guilty of a misdemeanor and may be punished accordingly.[3]

Concerning the degree of implementation and use of the authorized alternatives to pretrial detention, Commonwealth's Attorneys were surveyed as to the practices within their local jurisdictions. The results may be seen in Tables 4.4 - 1 and 4.4 - 2. All the listed alternatives are currently in use in varying degrees among the responding local jurisdictions.

Release on recognizance would appear to be fairly widely used in Virginia, with 94 percent of the reporting jurisdictions using this method of disposal of pretrial arrestees. As for the frequency of use, the mean average of useage of release on recognizance was 25.24 percent of the cases, or about one in four, suggesting that this method is a viable option among Virginia magistrates.

The next least drastic means, release upon an unsecured appearance bond, finds useage in some 88 percent of the responding localities, with release into custody of an individual or organization, release on traditional monetary bond, and detention of the accused being exercised in roughly 75 percent of the jurisdictions. Release into supervision of a probation officer or another public official and release with restrictions on activities or movements trail these other methods with 55 and 58 percent useage, respectively. As for

degree of usage within each community, none of the alternatives or options short of traditional monetary bond or detention is used in excess of one-half the total cases in more than 28 percent of the answering localities. With the exception of release on an unsecured appearance bond, none of the three intermediary alternatives is used often (50 percent or more of the cases) in greater than approximately 8 percent of the communities, suggesting that while some useage of these options is made, it is not yet extensive. Thus, release on recognizance appears to be generally accepted among Virginia localities, and forms the most viable alternative to traditional surety bail and detention.

Alternative Standards

The American Bar Association has formulated a general pretrial release policy:

> The law favors the release of defendants pending determination of guilt or innocence. Deprivation of liberty pending trial is harsh and oppressive in that it subjects persons whose guilt has not been judicially established to economical and psychological hardship, interferes with their ability to defend themselves, and in many cases, deprives their families of support. Moreover, the maintainance of jailed defendants and their families represent major public expense.

Specifically regarding release on recognizance, the ABA has stated:

> 1.2 - Condition of Release
>
> (a) Release on order to appear or on his own recognizance should adopt procedures designed to increase the number of defendants released on an order to appear or on their own recognizance. Additional conditions should be imposed on release only where the need is demonstrated by the facts of the individual case. Methods for providing the appropriate judicial officer with a reliable statement of the facts relevant to the release decision should be developed.

(b) Non-monetary conditions. Such non-monetary conditions as constitutionally may be imposed should be employed to assure the defendant's appearance at court and to prevent the commission of criminal violations while the defendant is at liberty pending adjudication.

(c) Money bail. Reliance on money bail should be required only in cases in which no other condition will reasonably ensure the defendant's appearance. Compensated sureties is required the defendant should ordinarily be released upon the deposit of cost or securities equal to ten percent of the amount of the bail.[5]

The American Bar Association considers pretrial release more fully in its report Standards Relating to Pretrial Release. An enumeration of these ABA Standards follows: Standard 5.1(a) states that it should be presumed that the defendant is entitled to be released on order to appear on his own recognizance, and that this presumption is overcome only if there is a substantial risk of non-appearance or if some other type of pretrial release is more appropriate.[6] Standard 5.1(b) sets out a list of factors (such as family ties, employment record, length of residence in the community), for the judicial officer to consider in determining whether there is a substantial risk of non-appearance, and Standard 5.1(d) requires the officer to list reasons if he decides that release on own recognizance is unwarranted.[7]

Standard 5.2(a) requires that when release on order to appear or on defendant's own recognizance is denied, the judicial officer should impose the onerous condition reasonably likely to assure appearance in court.[8] Standard 5.2(b) outlines such alternatives; these are essentially the same as recommended in Standard 4.4(1)(a)(i).[9] Standard 5.3(a) states that money bail

should only be set when it is evident that no other conditions on release will reasonably assure the defendant's appearance in court, and Standard 5.3(b) through (f) sets down the conditions under which bail will be administered.[10] Standard 5.4 prohibits persons acting as compensated surettes. The commentary to this standard points out the evils of the professional bail bond system and that the United States is the only major nation where bail has a major role in the criminal process.[11]

Standard 5.5 permits the judicial officer to attach an order to the defendant's release prohibiting him from associating with certain persons or classes of persons, going to certain geographical locations, possessing weapons, or engaging in certain activities.[12] Standards 5.6 through 5.9 deal with the procedure triggered by a defendant's alleged violation of conditions of release and provisions for automatic re-examination and review of the release decision.[13]

Footnotes

[1]Code of Virginia, Sec. 19.1-109.2 (Suppl. 1973). The Virginia State Bar in August 1974 began a study relating to alternatives to pretrial detention, but as of the writing of this report, no information from that effort was available.

[2]Ibid.

[3]Code of Virginia, Sec. 19.1-109.7 (Supp. 1973).

[4]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 120.

[5]Ibid., pp. 124-125.

[6]American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release, Approved Draft, 1968, p. 54.

[7]Ibid., pp. 54-55.

[8]Ibid., p. 56.

[9]Ibid.

[10]Ibid., pp. 58-59.

[11]Ibid., p. 61.

[12]Ibid., p. 65.

[13]Ibid., pp. 71-75.

TABLE 4.4 - 1

Release on Recognizance in Virginia Localities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are any arrestees within your jurisdiction released upon their own recognizance in lieu of monetary bond?	61	93.84	2	3.07	2	3.07

TABLE 4.4 - 2

Use of Alternatives to Pretrial Detention in Virginia Localities

Are any arrestees within your jurisdiction released under the following circumstances:	Total Number of Localities Using This Alternative		Degree of Usage Within Localities[1]					
			Often		Occasionally		Seldom	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
Release upon execution of an unsecured appearance bond.	57	87.69	16	28.07	25	43.85	15	26.31
Release into care of a qualified person or organization.	47	72.30	3	6.38	13	27.68	30	63.82
Release into supervision of a probation official or other public official.	36	55.38	3	8.33	8	22.22	23	63.88
Release with restrictions on activities, movements, etc.	38	58.46	3	7.89	12	31.57	23	60.52
Release on the basis of financial security provided by the accused.	51	78.46	24	47.05	20	39.21	6	11.76

TABLE 4.4 - 2 (continued)

Use of Alternatives to Pretrial Detention in Virginia Localities

Are any arrestees within your jurisdiction released under the following circumstances:	Total Number of Localities Using This Alternative		Often		Occasionally		Seldom	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
Detention of the accused.	49	75.38	2	4.08	33	67.37	14	28.57

1
The surveyed Commonwealth Attorneys were asked to characterize the use of these alternatives to pretrial detention by the following scheme: Often, 50 percent or more of cases; Occasionally, 10-49 percent of cases; Seldom, below 10% of cases.

The cumulative percentage for the degree of usage category in some cases fails to read 100 percent due to the failure of some respondents to fully complete the questionnaire.

Standard 4.5

Procedures Relating to Pretrial Release and Detention Decisions

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop procedures governing pretrial release and detention decisions, as follows:

1. A person in the physical custody of a law enforcement agency on the basis of an arrest, with or without a warrant, should be taken before a judicial officer without unnecessary delay. In no case should the delay exceed 6 hours.

2. When a law enforcement agency decides to take a person accused of crime into custody, it should immediately notify the appropriate judicial officer or agency designated by him. An investigation should commence immediately to gather information relevant to the pretrial release or detention decision. The nature of the investigation should be flexible and generally exploratory in nature and should provide information about the accused including:

a. Current employment status and employment history.

b. Present residence and length of stay at such address.

c. Extent and nature of family relationships.

d. General reputation and character references.

e. Present charges against the accused and penalties possible upon conviction.

f. Likelihood of guilt or weight of evidence against the accused.

g. Prior criminal record.

h. Prior record of compliance with or violation of pretrial release conditions.

i. Other facts relevant to the likelihood that he will appear for trial.

3. Pretrial detention or conditions substantially infringing on liberty should not be imposed on a person accused of crime unless:

a. The accused is granted a hearing, as soon as possible, before a judicial officer and is accorded the right to be represented by counsel (appointed counsel if he is indigent), to present evidence on his own behalf, to subpena witnesses, and to confront and cross-examine the witnesses against him.

b. The judicial officer finds substantial evidence that confinement or restrictive conditions are necessary to insure the presence of the accused for trial.

c. The judicial officer provides the defendant with a written statement of his findings of fact, the reasons for imposing detention or conditions, and the evidence relied upon.

4. Where a defendant is detained prior to trial or where conditions substantially infringing on his liberty are imposed, the defendant should be au-

thorized to seek periodic review of that decision by the judicial officer making the original decision. The defendant also should be authorized to seek appellate review of such a decision.

5. Whenever a defendant is released pending trial subject to conditions, his release should not be revoked unless:

a. A judicial officer finds after a hearing that there is substantial evidence of a willful violation of one of the conditions of his release or a court or grand jury has found probable cause to believe the defendant has committed a serious crime while on release.

b. The violation of conditions is of a nature that involves a risk of nonappearance or of criminal activity.

c. The defendant is granted notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel (appointed counsel if he is indigent), to subpena witnesses in his own behalf, and to confront and cross-examine witnesses against him.

d. The judicial officer provides the defendant a written statement of the findings of fact, the reasons for the revocation, and the evidence relied upon.

6. The defendant should be authorized to obtain judicial review of a decision revoking his release while awaiting trial.

7. The judicial officer or the reviewing court should be authorized to impose different or additional conditions in lieu of revoking the release and detaining the defendant.

Analysis

Regarding pretrial detention and release decisions, generally the localities of the Commonwealth would appear to be in accord with the requisites of Standard 4.5. As for the time span between arrest and initial appearance before a judicial officer, the overwhelming majority of the responding localities process the arrestees in considerably less time than the six-hour maximum recommended by the Commission. Commonwealth's Attorneys were surveyed regarding these practices in their communities, and the results are contained in Table 4.5-1. The preponderance of cases come before magistrates in a period of a single hour or less, with only 5 percent of the localities exceeding the six-hour maximum. The average of the responses to this question shows the lapse of time between arrest and appearance before a magistrate to be one hour, twelve minutes, or considerably under the maximum recommended by the Commission.

Concerning the initial appearance of an arrestee before a judge, i.e. the initial court appearance, Table 4.5 - 1 also reveals the data for the responding localities in this area as well. Most appearances occur within one to three days. Only 10 percent of the localities have a lapse between arrest and initial court appearance which exceeds seven days.

As to the determination of what kind of pretrial release or detention should be used, the Code of Virginia specifically delineates that this decision should be based upon:

1. The nature and circumstances of the crime involved;
2. The accused's family ties;
3. Employment of the accused;
4. Financial resources of the accused;

5. The length of the accused's residence in the community;
6. His record of corrections;
7. His record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings; and
8. Any other information deemed relevant by the judicial officer to the determination of whether or not the defendant is likely to absent himself from court proceedings.[1]

Under Virginia practices, the procedural steps such as a hearing requirement, right to counsel, to submit evidence, subpoena witnesses, and confront witnesses are provided for, and the judicial officer must find substantial evidence that release on recognizance will insure the return of the accused for trial.

The right of appeal of the pretrial decision is mandated by the Code of Virginia, which provides that:

> In any case in which a person is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, or conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the next higher court or judge or justice of that court having jurisdiction. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 19.1-109.2(a). The appeal shall be determined promptly.[2]

Finally, regarding bail revocation procedures, such practices are generally in keeping with the recommendations of the NAC, as a hearing is held before a judge with the full complement of procedural rights. No written statement is provided the defendant as to findings of fact or reasons for revocation. However, an appeal may be made of the decision, and the judge does have the option of modifying the conditions of the accused's release in lieu of outright revocation.[3]

Alternative Standards

The American Bar Association has formulated an alternative standard to the Commission's recommendation in this area:

4.5 Pre-trial appearance inquiry.

a. In all cases in which the defendant is in custody and the maximum penalty exceeds one year, an inquiry into the facts relevant to pretrial release should be conducted prior to or contemporaneous with the defendant's first appearance. However, no such inquiry need be conducted if the prosecution advises that it does not oppose release on order to appear or on his own recognizance.

b. The inquiry should be undertaken by an independent agency or by an arm of the court although, if these means are impracticable, the duty may be assigned to the public or other defender agency, to the prosecuting attorney, or to a law enforcement agency.

c. In appropriate cases, the inquiry may be conducted in open court. Inquiry of the defendant should carefully exclude questions concerning the details of the current charge.

d. The inquiry should be exploratory and may include such factors as:

i. the defendant's employment status and history and his financial condition;
ii. the nature and extent of his family relationships;
iii. his past and present residences;
iv. his character and reputation;
v. names of persons who agree to assist him in attending court at the proper time;
vi. the nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;
vii. the defendant's prior criminal record, if any and, if he previously has been released pending trial, whether he appeared as required;
viii. any facts indicating the possibility of violations of law if the defendant is released without restrictions; and
ix. any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction.

e. Where appropriate, the inquiring agency should make

> recommendations to the judicial officer concerning the condition, if any, which should be imposed on the defendant's release. The results of the inquiry and the recommendations should be made known to all parties at the first appearance.[4]

The State of Oregon has also promulgated alternate standards as well:

> 1.025 - Persons taken into physical custody of a law enforcement agency on the basis of an arrest should be taken before a judicial officer without necessary delay - in no case to exceed 24 hours.
>
> 1.026 - The court or designee thereof will make a decision with reference to release or detention. The accused should have the right to be represented by counsel, present evidence, subpoena witnesses, and cross-examine witnesses against him. Decisions for detention or conditions substantially infringing upon liberty should not be imposed unless the judicial officer finds substantial evidence that such measures are necessary to assure the presence of the accused for trial.[5]

Footnotes

[1]Code of Virginia, Sec. 19.1-109.2 (Supp. 1973).

[2]Ibid., Sec. 19.1-109.3 (Supp. 1973).

[3]Interview with Mr. James A. DuVal, Chief Clerk, Richmond General District Court, Criminal Division, August 21, 1974.

[4]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 164.

[5]Proposed 1980 Standards and Goals, Draft (Salem: Oregon Law Enforcement Council, May 1974), p. 31.

TABLE 4.5 - 1

Time Lapse Between Arrest and Appearance Before Judicial Officers in Localities

	One hour or less		2 to 4 hours		More than 6 hours		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
What is the customary or average amount of time that expires before a person under arrest is taken before a magistrate in your jurisdiction?	53	81.53	6	9.23	3	4.61	3	4.61

	1 to 3 days		4 to 5 days		6 to 7 days		More than 7 days	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
What is the customary or average time that expires before an arrestee first appears before a judge in your jurisdiction?	33	50.76	14	21.53	9	13.84	7	10.76

(No Response = 2)

Standard 4.6

Organization of Pretrial Services

Each State should enact by 1975 legislation specifically establishing the administrative authority over and responsibility for persons awaiting trial. Such legislation should provide as follows:

1. The decision to detain a person prior to trial should be made by a judicial officer.

2. Information-gathering services for the judicial officer in making the decision should be provided in the first instance by the law enforcement agency and verified and supplemented by the agency that develops presentence reports.

3. Courts should be authorized to exercise continuing jurisdiction over persons awaiting trial in the same manner and to the same extent as recommended for persons serving sentences after conviction. See Standard 5.9.

4. By 1983, facilities, programs, and services for those awaiting trial should be administered by the State correctional agency under a unified correctional system.

Analysis

Under existing statutes, the decision to detain an individual prior to trial must be made by a judicial officer.[1] The term "judicial officer" is defined by statute as:

> as used in this article the term "judicial officer" means, unless otherwise indicated, any justice of the peace or magistrate within his jurisdiction, any bail commissioner as that term is used in Sections 19.1-114 and 19.1-115 of this article, any judge of a court not of record and the clerk or deputy clerk of any county court or municipal court within their respective cities or counties, any judge of a corporation court or circuit court, and any justice of the Supreme Court of Virginia.[2]

Information gathering for pretrial release or detention decisions presently comes almost exclusively from law enforcement agencies. It is rarely provided by probation and parole officers, who are responsible for developing presentence reports.

Courts in Virginia do exercise continuing jurisdiction over individuals awaiting trial.

Currently facilities and programs for pretrial detainees are those of the local correctional institutions and jails, which are creatures of the local communities. The state, however, does exercise some control through its right of inspection and condemnation of such facilities, and through its financial reimbursement of at least two-thirds of the operating costs of local government jails.

Alternative Standards

The National Jail Association has stated, in regard to Standard 4.6:

> It is the consensus of this committee that the State must first update its system to meet the recommendations set forth in the National Advisory Commission of Criminal Justice Standards and Goals before a unified state correctional system be considered.

It is the consensus of this committee that if all of the other recommendations were implemented and the localities were given the necessary funds and tools with which to work, there would be no need for a central or unified state correctional system. This committee is unanimously opposed to a State takeover of the local correctional facilities meeting optimum standards.[3]

Footnotes

[1]Code of Virginia, Sec. 19.1-109.2 (Supp. 1973)

[2]Ibid., Sec. 19.1-109.1 (Supp. 1973).

[3]"Report of the National Jail Association on the Recommendation for the National Advisory Commission on Criminal Justice," Draft, August 1974, p. 3.

Standard 4.7

Persons Incompetent to Stand Trial

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop procedures and seek enabling legislation, if needed, governing persons awaiting trial who are alleged to be or are adjudicated incompetent to stand trial as follows:

1. Persons awaiting trial for a criminal offense who are alleged to be incompetent to stand trial should be eligible for bail or other alternative forms of release to the same extent as other persons awaiting trial. Where the court orders an examination and diagnosis to determine competency, the court should impose on the person the least restrictive measures required to assure his presence for trial and for effective examination and diagnosis. Outpatient diagnosis should be given preference over inpatient diagnosis.

2. Persons awaiting trial for a criminal offense who have been adjudicated incompetent to stand trial should be eligible for bail or alternative forms of release to the same extent as other persons awaiting trial. Where the court orders treatment to return the person to competency, it should impose the least restrictive measures appropriate. Outpatient treatment should be given preference over inpatient treatment, and detention should be imposed only upon substantial evidence that:

a. There is a reasonable probability that the person will regain competency within the time limits recommended herein and detention is required to assure his presence for trial; or

b. There is a substantial probability that treatment will return the person to competency and such treatment can be administered effectively only if the person is detained.

3. Each jurisdiction should adopt, through legislation or court rule, provisions which:

a. Require periodic review of cases of persons adjudged incompetent to stand trial.

b. Set a maximum time limit for the treatment of incompetency. Such maximum limits should not exceed 2 years or the maximum prison sentence for the offense charged, whichever is shorter.

c. Provide that when the time limit expires or when it is determined that restoration to competency is unlikely, the person should be released and the criminal charge dismissed.

d. Provide that where it is believed that the person adjudicated incompetent is dangerous to himself or others and should be detained, civil commitment procedures should be instituted.

Analysis

Under Virginia statutory procedures, persons awaiting trial for a criminal offense and alleged to be incompetent are eligible for bail to the same extent as other persons, except that they must be released into someone else's custody. The Code of Virginia states:

> A recognizance which would be taken of a person but for his being insane or a minor may be taken of another person and without further surety, if such other person be deemed sufficient.[1]

Regarding the adjudication of incompetence to stand trial, such procedures are governed by the following provisions of the Code of Virginia:

> §19.1-228. RAISING QUESTION OF SANITY; COMMITMENT BEFORE ARRAIGNMENT. - If, prior to arraignment of any person charged with crime, either the court or attorney for the Commonwealth or counsel for the accused has reason to believe that such person, because of mental disease or defect, is in such mental condition that he lacks substantial capacity to understand the proceedings against him or to assist in his own defense, and it is necessary for evaluation and observation in order for the court to determine whether such person is mentally competent to plead and stand trial or understand the proceedings against and assist in his own defense, the court or the judge thereof may, after hearing evidence or the representations of counsel on the subject, commit the accused to Southwestern State Hospital, Central State Hospital, or other State facility designated by the Commissioner of Mental Hygiene and Hospitals for examination, evaluation, observation, and report if it is felt by the court that temporary hospitalization, not to exceed forty-five days, is required for such determination and such commitment shall be under such limitations as the court may order, pending the determination of his mental condition. However, if in the opinion of the court such examination, evaluation and observation can be satisfactorily performed at some other appropriate facility, the court, in its discretion, may order such examination, evaluation, and observation to be performed at such facility other than the hospitals referred to herein and which facility is designated by the Commissioner of Mental Hygiene and Hospitals as being appropriate.[2]

Under this statute, the procedures would be as follows: an individual would be arraigned and sent to a mental hospital under Section 19.1-228, where a determination of incompetence to stand trial would be made within forty-five days, which with the court's permission may be extended thirty additional days. At this point, the defendant would either be certified as competent, and remanded for trial, or would be judged as incompetent, at which time the court would shift the case from the criminal to the civil side and begin civil involuntary commitment proceedings under Section 37.1 (shortly to be 37-67.1 under 1974 amendments) of the Code of Virginia.

The accused would then stay in custody of the state mental health facility until he or she is certified to be in a state of remission or cured. Subsequently, the court would receive notice, and have seventy-two hours to pick up the individual. Should the court not take custody of the accused, he is released from the facility. Thus, in answer to Standard 4.7, there is no procedure for bail or release of individuals who have been sent for observation under Section 19.1-228, as the procedure immediately switches from criminal to civil and defendant remains in custodial care. Under the civil procedure, once committed, an individual must have his or her condition reported to the committing court every forty-five days. There is no maximum time limit for the treatment of incompetency within Virginia.

Alternative Standards

The National Jail Association has recommended regarding Standard 4.7:

It is the consensus of this committee that once a person has been adjudicated incompetent under no circumstances should he be incarcerated in a local detention facility. It is further recognized by this committee that once a person is incarcerated in a local detention facility and the subject becomes incompetent, or shows signs of some sort of mental disability, he should be removed to a hospital. The Jail Administrator should have competent medical services available to examine the subject to determine if the subject is mentally incompetent, and authorize his removal from the facility as soon as possible. Due consideration should be given not to return those persons after it has been determined that the mental disorder was caused by incarceration in the local detention facility. They should be kept in a mental institution and not returned to the local detention facility which caused the condition.[3]

Footnotes

[1]Code of Virginia, Sec. 19.1-134 (1960).

[2]Code of Virginia, Sec. 19.1-228, (Supp. 1973).

[3]"Report of the National Jail Association on the Recommendation for the National Advisory Commission on Criminal Justice," Draft, August 1974, p. 3.

Standard 4.8

Rights of Pretrial Detainees

Each State, criminal justice jurisdiction, and facility for the detention of adults should immediately develop policies and procedures to insure that the rights of persons detained while awaiting trial are observed, as follows:

1. Persons detained awaiting trial should be entitled to the same rights as those persons admitted to bail or other form of pretrial release except where the nature of confinement requires modification.

2. Where modification of the rights of persons detained awaiting trial is required by the fact of confinement, such modification should be as limited as possible.

3. The duty of showing that custody requires modification of such rights should be upon the detention agency.

4. Persons detained awaiting trial should be accorded the same rights recommended for persons convicted of crime as set forth in Chapter 2 of this report. In addition, the following rules should govern detention of persons not yet convicted of a criminal offense:

a. Treatment, the conditions of confinement, and the rules of conduct authorized for persons awaiting trial should be reasonably and necessarily related to the interest of the state in assuring the person's presence at trial. Any action or omission of governmental officers deriving from the rationales of punishment, retribution, deterrence, or rehabilitation should be prohibited.

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

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

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

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

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

Analysis

Within Virginia, generally those who are being detained in the pretrial period are accorded the same rights and in some instances more rights than those already convicted and serving sentences at the local correctional institutions. Exceptions to this would be in the areas of treatment and rehabilitation, where participation would not be required of detainees in many jails and would be available on a voluntary basis in some jails as well (see Standard 4.9 - Programs for Pretrial Detainees).

One indication of differential treatment lies in the use of physical separation of detainees and convictees. Local jailers were surveyed in this connection, the results of which may be seen in Table 4.8-1. The jails responding to the survey are very evenly divided on this issue, with 46 percent assenting to separation and 45 answering in the negative. Thus, for the most part, with several aforementioned general exceptions, pretrial detainees are accorded more rights than convictees incarcerated in local jails in Virginia.

Alternative Standards

The National Jail Association rejects this standard, stating:

> There are now in existence more than 3,000 local detention facilities. It would be an impossible task to modify or replace these facilities to conform with these recommendations. It would seem that before commitments could be made along the lines recommended in this chapter, it would require an extensive study. The only portion of this chapter that could be concurred in would be Paragraph C pertaining to the separation of pretrial prisoners from those convicted or sentenced.[1]

Footnotes

[1]"Report of the National Jail Association on the Recommendations for the National Advisory Commission on Criminal Justice," Draft, August 1974.

TABLE 4.8 - 1

Separation of Pretrial Detainees and Convictees in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are sentenced prisoners usually kept apart from prisoners awaiting trial?	35	46.05	34	44.75	4	5.26

Standard 4.9

Programs for Pretrial Detainees

Each State, criminal justice jurisdiction, and agency responsible for the detention of persons awaiting trial immediately should develop and implement programs for these persons as follows:

1. Persons awaiting trial in detention should not be required to participate in any program of work, treatment, or rehabilitation. The following programs and services should be available on a voluntary basis for persons awaiting trial:

a. Educational, vocational, and recreational programs.

b. Treatment programs for problems associated with alcoholism, drug addiction, and mental or physical disease or defects.

c. Counseling programs for problems arising from marital, employment, financial, or social responsibilities.

2. Participation in voluntary programs should be on a confidential basis, and the fact of participation or statements made during such participation should not be used at trial. Information on participation and progress in such programs should be available to the sentencing judge following conviction for the purpose of determining sentence.

Analysis

Regarding programs for pretrial detainees in the local correctional facilities, the degree of compliance with this Standard is somewhat mixed. Local jailers were asked questions regarding the nature of rehabilitative and work programs for pretrial detainees. (See Standard 2.9, Rehabilitation, for a detailed account of the extent and type of work and treatment programs available in local jails.) Table 4.9-1 shows the results of this survey. In accord with the recommendations, 83 percent of the responding jails do not require participation in the programs of the jails. However, as for allowing voluntary participation in such programs, the result here is mixed; only slightly less than one-half of the reporting correctional facilities sanction selective involvement by pre-trial detainees. Generally, pretrial detainees are not compelled to enter rehabilitative programs, placing most local correctional institutions in accord with the requisites of the NAC; but compliance with Standard 4.9 is tempered by the failure of many jails to allow voluntary participation in such programs by detainees.

Alternative Standards

The National Jail Association has stated, regarding programs for pretrial detainees:

> The intention of this standard is good and protects the rights of the person on a pre-trial status. However, in participating in programs that may or could be used in detriment at his trial, should not be mandatory. This contradicts the principle of pre-trial diversion. It should be modified so an individual on a pre-trial status can waive certain constitutional rights to participate in programs on a voluntary basis. It should be agreed that participation in these programs should not be used

to the individuals detriment. The courts should be informed that he has participated in such programs, and this information could be used by the court prior to sentence. In the commentary of Standard 4.9 it specifies that local jails be placed under State Administration. This in theory is fine, however again we must repeat that if reform is made in a local detention facility and proper tools and finance be given to the local administrator, the need of a Central State Facility could be eliminated or at least be limited to those persons who are a distinct danger to society or individuals needing special treatment.

At the present time if a statistical analysis were made, it would probably be found that approximately 65 percent of the people committed to State Systems, in most states, in the United States have sentences less than two years. If you consider the factor of good time, parole and other benefits afforded these people, we contribute to the revolving door aspect. Generally the Administrator of the State System would state that this man is not committed for a long enough time to be able to be incorporated into their program, hence the individual is lost. He is used for menial type duties such as cleaning, working in the kitchen and actually receives no basic behavior control or behavior modification which would equip him to return to society as a useful citizen. If the capability were given to the local institutions, cases sentenced to two years or less would never end up in the State institution. It should be pointed out that all first offenders come into the local institution and graduate to the State institutions. If the medical profession operated like our correctional system did, and you had an infection in your toe and you reported it to your doctor, your doctor would say "I can't do anything for you, but come back a little bit later and I'll amputate your leg."[1]

Footnotes

[1]"Report of the National Jail Association on the Recommendation for the National Advisory Commission on Criminal Justice," Draft, August 1974.

TABLE 4.9 - 1

Programs for Pretrial Detainees
in Local Correctional Facilities

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are pretrial detainees held in your facility required to participate in any form of work, treatment, or rehabilitation?	10	13.15	63	82.89	3	3.84
Are pretrial detainees allowed to participate in the rehabilitation or the work programs of your facility on a voluntary basis?	35	46.05	27	35.52	14	18.42

Standard 4.10

Expediting Criminal Trials

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

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

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

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

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

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

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

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

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

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

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

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

d. All other criminal cases.

e. Civil cases.

2. For defendants detained while awaiting trial, time limits of shorter duration than that provided by statute.

3. Time limits within which the various pretrial procedures must take place and a means for altering such limits in individual cases.

Analysis

Currently, there are no existing legislative or judicial policies or procedures concerning the expedition of criminal trials within the Commonwealth. There is no comprehensive system of time limits in which a defendant must be brought to trial, nor is there a formal system of scheduling priorities by type of case as promulgated within Standard 4.10. The only existing statutory limitation as to trial delay is contained in Section 19.1-191 of the Code, which states:

> Every person against whom an indictment is found charging a felony and held in any court for trial, whether he be in custody or not, shall be forever discharged from prosecution for the offense, if there be three regular terms of the circuit or four of the corporation or hustings court in which the case is pending after he is so held without a trial, unless the failure to try him was caused:
>
> (1) By his insanity or by reason of his confinement in a hospital for the insane for care and observation.
>
> (2) By the witnesses for the Commonwealth being enticed or kept away or prevented from attending by sickness or inevitable accident.
>
> (3) By the granting of a separate trial at the request of a person indicted jointly with others for a felony.
>
> (4) By continuance granted on the motion of the accused or by reason of his escaping from jail or failing to appear according to his recognizance.
>
> (5) By the inability of the jury to agree in their verdict; or
>
> (6) Where there be no court held at the regular term or where there is court held and for any reason it would be injudicious, in the opinion of the court, to have jurors and witnesses summoned for that term, which reason shall be specially spread upon the records of that court. But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.[1]

Regarding the length of time required to move a defendant to trial within the Commonwealth, Commonwealth's Attorneys were surveyed concerning the temporal period between arrest and trial. The results of this survey are contained in Tables 4.10-1 and 4.10-2. The figures in Table 4.10-1 show that within misdemeanor cases, some 94 percent customarily have a time lapse of less than 30 days from the point of arrest to the commencement of trial, the maximum period suggested by the NAC Standard. Furthermore, some 71 percent of the responding jurisdictions have an average time lapse of under 20 days, while 30 percent process misdemeanants in under ten days.

As for felonies, Table 4.10-2 shows that the responding localities fare more poorly in this category, for here only 52 percent exceed the suggested 60 day maximum for the period from arrest to trial. Thus, approximately one-half of the localities whose Commonwealth's Attorneys responded fail to comply with this part of the requisite for the expedition of criminal trials. Consequently, for this area, compliance is mixed within the Commonwealth. No formal guidelines have been promulgated regarding what constitutes a speedy trial. Most jurisdictions are in accord with the suggested maximum period of time between arrest and trial for misdemeanants, while one-half fail to comply with the maximum time limit for felony cases.

Alternative Standards

The American Bar Association has published an extensive alternative to Standard 4.10, covering their feelings regarding

a speedy trial:

1.1 Priorities in scheduling criminal cases.
To effectuate the right of the accused to a speedy trial and the interest of the public in prompt disposition of criminal cases, insofar as is practicable:

(a) the trial of criminal cases should be given preference over civil cases; and

(b) the trial of defendants in custody and defendants whose pretrial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases.

2.1 Speedy trial time limits.
A defendant's right to speedy trial should be expressed by rule or statute in terms of days or months running from a specified event. Certain periods of necessary delay should be excluded in computing the time for trial, and these should be specifically identified by rule or statute insofar as is practicable.

2.2 When time commences to run.
The time for trial should commence running, without demand by the defendant, as follows:

(a) from the date the charge is filed, except that if the defendant has been continuously held in custody or on bail or recognizance until the date to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, then the time for trial should commence running from the date he was held to answer;

(b) if the charge was dismissed upon motion of the defendant and thereafter the defendant was held to answer or charged with an offense, from the date the defendant was so held to answer or charged, as above; or

(c) if the defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, from the date of the mistrial, order granting a new trial, or an appeal or collateral attack, from the date of the mistrial, order granting a new trial, or remand.

2.3 Excluded periods.
The following periods should be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial, hearings on pretrial motions, interlocutory appeals, and trial of other charges.

(b) The period of delay resulting from congestion of the trial docket when the congestion is attributable to exceptional circumstances.

(c) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent.

(d) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) the continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case.

(e) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his whereabouts are unknown and in addition he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. A defendant should be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained or he resists being returned to the state for trial.

(f) If the charge was dismissed upon motion of the prosecuting attorney and thereafter a charge is filed against the defendant for the same

offense, or an offense required to be joined with that offense, the period of delay from the date the charge was dismissed to the date the time limitations would commence running as to the subsequent charge had there been previous charge.

(g) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to him.

(h) Other periods of delay for good cause.[2]

Footnotes

[1]Code of Virginia, Sec. 19.1-191 (1960).

[2]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 244-245.

TABLE 4.10 - 1

Length of Time Between Arrest and Trial on Misdemeanor Cases

What is the customary or average time it takes for misdemeanor prosecution to move from the time of arrest to come to trial within your jurisdiction?

	Frequency	Percent
Under 10 days	20	30.76
10 to 20 days	26	40.00
21 to 30 days	15	23.07
31 to 40 days	1	1.53
41 to 60 days	0	0
61 to 90 days	1	1.53
over 90 days	0	3.07
no answer	2	

TABLE 4.10 - 2

Length of Time Between Arrest
and Trial in Felony Cases

What is the customary or average time for a felony prosecution from time of arrest to come to trial within your jurisdiction?[1]

	Frequency	Percent
Under 20 days	2	3.07
21 to 40 days	9	13.84
41 to 60 days	23	35.38
61 to 80 days	12	18.46
80 to 100 days	12	18.46
100 to 120 days	3	4.61
over 120 days	7	10.46
no answer	0	0

CHAPTER FIVE

Sentencing

In any correctional system the process of sentencing represents the keystone upon which all other parts of the whole are built. The types of sentences meted out form the parameter of nearly all that follows in the criminal justice system. Perhaps more than any other factor, the type and length of sentences control what kind of institutions we build, what types of programs are implemented within them, and constitute a very basic statement about the purposes behind the incarceration of offenders.

Indeed, the most telling statement of all regarding the importance placed on sentencing may be the simple fact that the length of incarceration is the single most crucial matter to the offender. The gist of the recommendations of the Task Force on Corrections is abundantly clear: too many people are being incarcerated for too long. The Commission envisions a system where the standard sentence would be that of probation, and incarceration would be the exception rather than the rule.

Within Virginia, generally there is a high degree of non-accord and non-compliance with the recommendations of the National Advisory Commission as to sentencing. It would appear that the process of sentencing is heavily constricted by the dictates of the statutory framework of the state, which sets the requirements and requisites of most of the various

aspects of the punitive procedure. Methodologically, reliance in this chapter has been placed chiefly upon use of the Code of Virginia, as well as the previously described survey of Commonwealth's Attorneys (see introductions to Chapters 2 and 3).

Standard 5.1

The Sentencing Agency

States should enact by 1975 legislation abolishing jury sentencing in all cases and authorizing the trial judge to bear full responsibility for sentence imposition within the guidelines established by the legislature.

Analysis

Virginia currently operates under a mixed system of judge and jury sentencing. In criminal cases where the defendant pleads guilty or is tried and found guilty by the presiding judge, with the right to trial by jury therefore having been waived, the judge is responsible for passing sentence. However, in criminal cases where the accused is tried and found guilty by a jury, this jury then is empowered to pass sentence upon the convicted individual. The Code of Virginia specifically states regarding the imposition of sentence in criminal cases:

> The punishment in all criminal cases tried by a jury shall be ascertained by the jury trying the same within the limits prescribed by law.[1]

The Code of Virginia further states:

> The terms of confinement in the penitentiary or in jail of a person convicted of felony, if that punishment is prescribed, and the amount of fine, if the felony be also punishable by fine, shall be ascertained by the jury, if there be one, or by the court trying the case without a jury, so far as the term of confinement and the amount of the fine are not fixed by law.[2]

The cited statutes have been construed to confer upon the jury power to impose sentences in all felony and misdemeanor cases.[3]

Bills which would abolish jury sentencing have been introduced into the past four sessions in the Virginia General Assembly. None of this legislation has ever succeeded in securing passage. The most recent session in 1974 again saw the identical phenomenon, with some three bills (House Bills 531 and 708, and Senate Bill 223) introduced which would have had the effect of ending the system of jury sentencing within

the Commonwealth. A measure was passed by both Houses, however, which established a commission to study sentencing in Virginia. This commission, to be composed from members of the Senate and House Courts of Justice Committees, was created by House Joint Resolution 125 and mandated to do a complete study of the state sentencing system. Among the principal subjects to be addressed by this study commission is the question of jury sentencing, and a recommendation as to the future of this practice is expected to be made to the 1975 General Assembly.[4]

Alternative Standards

Regarding the sentencing agent, the American Bar Association has stated:

> 8.1 - Duties of the judge in sentencing. The trial judge, and not the jury, should be empowered to determine sentence, except possibly in capital cases. Whenever feasible, the sentence should be imposed by the judge who presided at the trial or who accepted the plea of guilty or nolo contendere, in accordance with ABA Standards, Sentencing Alternatives and Procedures, and ABA Standards, Probation.[5]

Footnotes

[1]Code of Virginia, Sec. 19.1-291 (1960).

[2]Ibid., Sec. 19.1-292 (1960).

[3]Witcher v. Peyton, 382 F. 2d 707 (4th Cir., 1967).

[4]Records of the Division of Legislative Services, Virginia General Assembly (Cumulative File of Bills Introduced, 1970-1974).

[5]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 380.

Standard 5.2

Sentencing the Nondangerous Offender

State penal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed 5 years for felonies other than murder. No minimum sentence should be authorized by the legislature.

The sentencing court should be authorized to impose a maximum sentence less than that provided by statute.

Criteria should be established for sentencing offenders. Such criteria should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with public safety. The court should impose the first of the following alternatives that will reasonably protect the public safety:

a. Unconditional release.

b. Conditional release.

c. A fine.

d. Release under supervision in the community.

e. Sentence to a halfway house or other residential facility located in the community.

f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.

g. Total confinement in a correctional facility.

2. A provision against the use of confinement as an appropriate disposition unless affirmative justification is shown on the record. Factors that would justify confinement may include:

a. There is undue risk that the offender will commit another crime if not confined.

b. The offender is in need of correctional services that can be provided effectively only in an institutional setting, and such services are reasonably available.

c. Any other alternative will depreciate the seriousness of the offense.

3. Weighting of the following in favor of withholding a disposition of incarceration:

a. The offender's criminal conduct neither caused nor actually threatened serious harm.

b. The offender did not contemplate or intend that his criminal conduct would cause or threaten serious harm.

c. The offender acted under strong provocation.

d. There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.

e. The offender had led a law-abiding life for a substantial period of time before commission of the present crime.

f. The offender is likely to respond affirm-

atively to probationary or other community supervision.

g. The victim of the crime induced or facilitated its commission.

h. The offender has made or will make restitution or reparation to the victim of his crime for the damage or injury which was sustained.

i. The offender's conduct was the result of circumstances unlikely to recur.

j. The character, history, and attitudes of the offender indicate that he is unlikely to commit another crime.

k. Imprisonment of the offender would entail undue hardship to dependents.

l. The offender is elderly or in poor health.

m. The correctional programs within the institutions to which the offender would be sent are inappropriate to his particular needs or would not likely be of benefit to him.

Analysis

Under existing Virginia statutory law, the traditional use of legislated maximum and minimum sentences for most crimes still forms the basis of the judicial sentencing system. The sentences mandated by the acts of the Virginia General Assembly are for the most part considerably lengthier than the NAC recommendation of a maximum of five years for an offender judged not to represent a substantial threat to others.

The Code of Virginia currently does not make the formal distinction between the nondangerous and dangerous offender as recommended in Standards 5.2 and 5.3. The sentencing statutes do not provide for such a differentiation of category of offender, as the same sentencing requisites apply to each individual offender. However, the categorization of an offender as dangerous or nondangerous is obviously an informal process conducted by sentencing judges and juries, with some such determination of the character of the offender entering into the type and amount of sentence given. In addition, the broad continuum of sentence length supplied by the Acts of the General Assembly allows for some exercise of discretion and differentiation of the offender relative to his risk to society by the sentencing actors. The Code of Virginia provides the following sentencing guidelines for criminal offenses:

Offense	Maximum Penalty-Imprisonment	Minimum Penalty-Imprisonment	Maximum Fine
Misdemeanor for which no maximum or minimum penalties are prescribed by statute	12 months	none	$1,000

Accessory after the fact to any felony	1 year	none	$1,000
Causing or encouraging children under 18 years of age to commit misdemeanors	12 months	none	$1,000
Conspiracy to commit felony:			
a) offense punishable by death	10 years	1 year	no fine
b) a non-capital felony	10 years	1 year	no fine
	or at the discretion of the sentencing judge or jury:		
	1 year in jail	none	$500
c) non-capital felony punishable by confinement in the penitentiary for less than five years	1 year	none	$500
	or at the discretion of the sentencing judge or jury:		
	1 year in jail	none	$500
Attempts to commit capital offenses	20 years	1 year	no fine
Attempts to commit rape, other than rape not punishable with death	death	3 years	no fine
Attempts to commit non-capital felonies	10 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Attempts to commit felonies punishable by less than 5 years in penitentiary	1 year	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500

Attempts to commit misdemeanors	6 months	none	$500
Murder in the First Degree	death/life imprisonment	20 years	no fine
Murder in the Second Degree	20 years	5 years	no fine
Voluntary manslaughter	5 years	1 year	no fine
Involuntary manslaughter	5 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Shooting, stabbing, etc., with intent to maim, kill, etc.	20 years	1 year	no fine
Abduction, kidnapping	20 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Abduction with intent to extort money or of female for immoral purpose	life	3 years	no fine
Threatening, assisting or attempting such abduction	20 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Withholding of information relative to an abduction	6 months	10 days	$500
Seduction	10 years	2 years	no fine
Rape	death/life	5 years	no fine

Unlawful transportation of dangerous articles	60 days	none	$50
Driving while intoxicated	6 months	1 month(or)	$1,000
Driving after forfeiture of license	6 months	10 days	$500
Producing abortion or miscarriage	10 years	1 year	no fine
Shooting, stabbing with intent to maim	20 years	3 years	no fine
Discharging firearms in occupied buildings	3 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Malicious bodily injury by means of a caustic substance	life	1 year	no fine
Shooting, etc., in commission of a felony	5 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Willfully discharging firearms in public places	1 year	none	$1,000
Illegal use of tear gas	10 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Hazing	1 year	none	$500

Setting spring gun or other deadly weapon	3 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Brandishing firearms	1 year	none	$1,000
Inhaling drugs or other noxious chemical substances	6 months	none	$500
Handling snakes so as to endanger human life	6 months	none	$150
Burning or destroying dwelling at night	life	5 years	no fine
a) if no person was in dwelling	20 years	5 years	no fine
b) destruction in daytime	10 years	3 years	no fine
Burning or destroying barn at night	10 years	3 years	no fine
Burning or destroying meeting place	15 years	3 years	no fine
If no person in building	10 years	2 years	no fine
Threats to bomb, burn, or destroy	10 years	1 years	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Manufacture, possession, etc. of firebombs or explosives	5 years	1 year	no fine
Burning or destroying personal property			
a) over $100 value	10 years	3 years	no fine
b) under $100 value	5 years	2 years	no fine
Burning or destroying any building			
a) over $100 value	10 years	2 years	no fine
b) under $100 value	5 years	1 year	no fine

Burglary	death	5 years	no fine
Entering dwelling with intent to:			
a) commit murder, rape, or robbery	20 years	1 year	no fine
b) commit misdemeanor	20 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
c) commit larceny or felony	20 years	1 year	$1,000
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Robbery	death	5 years	no fine
Forgery	10 years	2 years	no fine
Grand larceny	20 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Petty larceny	1 year in jail	none	$1,000
Larceny of certain animals	10 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	12 months	none	$500
Selling of goods distrained or levied on	10 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	12 months	none	$500
Fraudulent entries in financial accounts	20 years	1 year	no fine

Obtaining money by false pretense	10 years	2 years	no fine
Making false statements to obtain property or credit	5 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$500
Defrauding Innkeepers	3 months in jail	none	$100
Defrauding Garage keeper	3 months in jail	none	$100
Concealment of Merchandise	1 year in jail	none	$1,000
Changing tradesmarks	1 year in jail	none	$1,000
Obstructing or injuring canal, railroad, etc.	3 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	12 months	none	$500
Shooting at trains	3 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	12 months	none	$500
Injuring railroad signal	3 years	1 year	no fine
	or at discretion of sentencing judge or jury:		
	12 months	none	$500
Killing beasts	10 years	2 years	no fine
Maiming or wounding beasts	1 year	none	$1,000
Receipt of stolen vehicle	5 years	1 year	$5,000
Larceny of gasoline pumps	10 years	1 year	no fine

Willfully destroying a vessel	10 years	1 year	no fine
Extortion	10 years	1 year	$1,000
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Prostitution	1 year in jail	none	$1,000
Detaining female for prostitution	10 years	1 year	no fine
Crimes against nature	3 years	1 year	no fine
with force	10 years	3 years	no fine
Enticing children to enter vehicle	5 years	2 years	no fine
Exposure to children	5 years	2 years	no fine
	or at discretion of sentencing judge or jury:		
	1 year in jail	none	$1,000
Perjury	1 year	none	$1,000
Bribery of public officials	10 years	1 year	no fine

As this survey of crimes and punishments indicates, the range of penalties in Virginia is fairly narrowly prescribed by the General Assembly, with fifty-two of the listed seventy-two offenses carrying a maximum sentence of over 5 years in the penitentiary. In addition, sixty-three of seventy-two offenses carry at least some required temporal period of incarceration. Thus, no provisions as recommended by the NAC regarding the abolition of minimum sentences exist, while the statutory requirements still contain substantial periods of imprisonment

for most crimes. The sentencing court, however, is empowered by the Commonwealth to impose a sentence less than the maximum statutory penalty. In addition, many crimes in Virginia are possessed of a very wide latitude between the maximum and minimum sentences, allowing the use of a great deal of sentencing discretion within the limitation of these wide parameters. Thus, considerable discretion may be exercised as to an individual's sentencing in many cases, but with generally harsher penalties than the National Advisory Commission Task Force recommends.

In order for the state of Virginia to implement the recommendations of the NAC as to the sentencing of the non-dangerous offender, a massive revision of the Code of Virginia would be necessary. In addition, such a recommendation as the NAC sentencing standards would require a very basic change in the philosophy of incarceration which now underlies the existing statutes.

Alternative Standards

The American Bar Association has stated, regarding sentencing non-dangerous offenders:

> 2.3 Sentences not involving confinement.
>
> a. The legislature should authorize the sentencing court in every case to impose a sentence of probation or a similar sentence not involving confinement. It may be appropriate to provide for limited exceptions to this principle, but only for the most serious offenses.
>
> b. The following general principles should apply to such sentences:

i. The court should specify at the time of sentencing the length of any term during which the defendant is to be supervised and during which the court will retain power to revoke the sentence for the violation of specified conditions;

ii. Neither supervision nor the power to revoke should be permitted to extend beyond a legislatively fixed time, which should in no event exceed two years for a misdemeanor or five years for a felony;

iii. The sentence to be imposed in the event of the violation of a condition should not be fixed prior to a finding that a violation has occured.

Standards governing the procedures for revocation or modification of such a sentence are set forth in section 5.5. Standards governing the alternatives which should be available upon the violation of a condition are set forth in section 6.4. Detailed standards dealing with the types of sentences not involving confinement which should be authorized, as well as the terms and conditions which could appropriately accompany such a sentence, will be set forth in a separate report on probation.

c. A sentence not involving confinement is to be preferred to a sentence involving partial or total confinement in the absence of affirmative reasons to the contrary.[2]

Footnotes

[1]Code of Virginia, Sec. 18.1-9 (Supp. 1973); 18.1-11, 14 (1960); 18.1-15.3 (Supp. 1973); 18.1-16, 17, 18 (1960); 18.1-19 (Supp. 1973); 18.1-22, 23, 24, 25, 30, 37 (1960); 18.1-38, 39 (Supp. 1973); 18.1-40, 41 (1960); 18.1-44 (Supp. 1973); 18.1-50 (1960); 18.1-58, 59, 62 (Supp. 1973); 18.1-65, 66, 67, 68, 69, 70, 71 (1960); 18.1-69.1, 69.2, 70.1 (Supp. 1973); 18.1-72, 75, 76, 78, 78.1 (1960); 18.1-78.6, 79 (Supp. 1973); 18.1-80 (1960); 18.1-86, 88, 88.1, 89, 91 (Supp. 1973); 18.1-92 (1960); 18.1-100, 101 (Supp. 1973); 18.1-102, 108, 111, 118, 119, 120, 121, 126, 129, 147, 152, 153, 159, 165, 169, 170, 184, 194, 204 (1960); 18.1-212, 213, 214 (Suppl. 1973); 18.1-274, 278 (1960).

[2]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 400.

Standard 5.3

Sentencing to Extended Terms

State penal code revisions should contain separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incapacitate them for substantial periods of time.

The following provisions should be included:

1. Authority for the judicial imposition of an extended term of confinement of not more than 25 years, except for murder, when the court finds the incarceration of the defendant for a term longer than 5 years is required for the protection of the public and that the defendant is (a) a persistent felony offender, (b) a professional criminal, or (c) a dangerous offender.

2. Definition of a persistent felony offender as a person over 21 years of age who stands convicted of a felony for the third time. At least one of the prior felonies should have been committed within the 5 years preceding the commission of the offense for which the offender is being sentenced. At least two of the three felonies should be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another.

3. Definition of a professional criminal as a person over 21 years of age, who stands convicted of a felony that was committed as part of a continuing illegal business in which he acted in concert with other persons and occupied a position of management, or was an executor of violence. An offender should not be found to be a professional criminal unless the circumstances of the offense for which he stands convicted show that he has knowingly devoted himself to criminal activity as a major source of his livelihood or unless it appears that he has substantial income or resources that do not appear to be from a source other than criminal activity.

4. Definition of a dangerous offender as a person over 21 years of age whose criminal conduct is found by the court to be characterized by: (a) a pattern of repetitive behavior which poses a serious threat to the safety of others, (b) a pattern of persistent aggressive behavior with heedless indifference to the consequences, or (c) a particularly heinous offense involving the threat or infliction of serious bodily injury.

5. Authority for the court to impose a minimum sentence to be served prior to eligibility for parole. The minimum sentence should be limited to those situations in which the community requires reassurance as to the continued confinement of the offender. It should not exceed one-third of the maximum sentence imposed or more than three years.

6. Authority for the sentencing court to permit the parole of an offender sentenced to a minimum term prior to service of that minimum upon request of the board of parole.

7. Authority for the sentencing court in lieu

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

Analysis

Under current Virginia statutes, no separate provision exists for categorizing offenders as dangerous or non-dangerous according to the formal dichotomy of classification as recommended by the National Advisory Commission (see text, Standard 5.2, Sentencing the Non-Dangerous Offender). There is in Virginia no formal provision requiring differentiation of offenders relative to their potential threat to society nor is there in existence any provision for two sentencing systems. Under the Code of Virginia, a single sentencing system serves all offenders; however, obviously an informal judgment is made by the sentencing agent as to the threat to the public of each offender sentenced, and the wide continuum of sentencing length contained within the statutes allows some measure of discretion to be exercised as well.

No provision exists as well in the Code for the definition of an offender as a persistent felony offender, professional offender, or dangerous offender as formally provided for in the NAC recommendations. Here again, a similar informal definition of such an offender is made and may be utilized in sentencing. However, in Virginia an offender may be sentenced to an extended term whose history and circumstances do not approximate one of the three criminal categories.

As for the terms of confinement suggested by the NAC, current provisions of the Code require more extended terms of incarceration than the recommended twenty-five year maximum in several instances. With the exception of the crime of murder,

some six offenses, including attempt to commit rape, abduction with intent to extort money, rape, malicious bodily injury by means of a caustic substance, burning or destroying a dwelling at night, robbery and burglary, carry possible sentences of over twenty-five years in prison (see chart, Standard 5.2 - Sentencing of Non-Dangerous Offender).[1]

As for the minimum sentence provision of Standard 5.3, Virginia statutes include a minimum sentence for some twenty crimes which is equal to or exceeds either one-third of the maximum sentence or three years (see chart, Standard 5.2). The following crimes are punished under the minimum sentence provision of the Code in excess of what is recommended by the National Advisory Commission:

Offense	Minimum Sentence
Attempts to commit rape	3 years
Murder in the First Degree	5 years
Attempts to commit felonies punishable by less than 5 years in the penitentiary	1 year (in excess of 1/3 of maximum sentence)
Murder in the Second Degree	5 years
Abduction with intent to extort money or a female for immoral purposes	3 years
Rape	5 years
Shooting, Stabbing with intent to maim	3 years
Discharging firearms in occupied building	1 year (equals 1/3 of maximum sentence)
Setting spring gun or other deadly weapon	1 year (equals 1/3 of maximum sentence)

Offense	Minimum Sentence
Burning or destroying dwelling at night	5 years
a) if no person was in dwelling	5 years
b) destruction in day-time	3 years
Burning or destroying barn at night	3 years
Burning or destroying a meeting place	3 years
Burning or destroying personal property	3 years
Burglary	5 years
Robbery	5 years
Obstructing or injuring canal, railroad, etc.	1 year (equal to 1/3 of maximum sentence)
Shooting at trains	1 year (equal to 1/3 of maximum sentence)
Injuring railroad signal	1 year (equal to 1/3 of maximum sentence)
Crimes against nature[2]	1 year (equal to 1/3 of maximum sentence)
With force	3 years

As was documented in Standard 5.2, the majority of criminal penalties in the Commonwealth do carry some mandated minimum sentence, and in addition there is no requirement that the offender be determined a threat to the public before receiving such.

The recommendations contained in Standard 5.3 regarding the provisions for sentencing court intervention into the parole system are also somewhat at variance with existing statutory requirements in the Commonwealth. The Code of Virginia specifically states in reference to the eligibility of offenders for parole:

> (1) Except as herein otherwise provided, every person convicted of a felony, and sentenced and committed under the laws of this Commonwealth to any State correctional institution shall be eligible for parole after serving one fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment imposed if one fourth of the term of imprisonment imposed is more than twelve years. In case of terms of imprisonment to be served consecutively, the total time shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served consecutively, the longest term shall be the term of imprisonment.
>
> (2) Persons sentenced to die shall not be eligible for parole.
>
> (3) Persons sentenced to life imprisonment shall be eligible for parole after serving fifteen years.[3]

In addition, the Code states regarding jail offenders:

> Persons convicted of felonies or misdemeanors who are sentenced to jails, not eligible under section 53-251.1, shall be eligible for parole in the same manner as provided in section 53-251; provided the total sentences to be served, exclusive of fines are more than twelve months; and provided, further, that such jail inmates are incarcerated by transfer or commitment to the same State penal institutions as set forth in section 53-251. The Virginia Probation and Parole Board shall have the same powers and duties to carry out the provisions of this section as set forth in section 53-238.[4]

Thus, these statutes specifically provide that in the exercise of their functions of adult parole selection, release, discharge or revocation, the Virginia Probation and Parole Board has exclusive jurisdiction.[5] Consequently, subpoint 5 of Standard 5.3, which grants the sentencing court the statutory authority to permit parole of an offender sentenced to a minimum term, is unnecessary, as all offenders fall eligible for parole under the same temporal criterion, regardless of whether the sentence is the minimum, the maximum or any length of time in between. The same principle holds

true in the case of subpoint 7, as a sentencing judge or jury is mandated to levy the minimum sentence required by the given statute. In addition, as the Probation and Parole Board has exclusive jurisdiction over post-conviction release, a recommendation by the sentencing authority as to when an offender should be paroled would in fact be just that and no more, and would carry no statutory authority.

For the gist of Standard 5.3 to be implemented within the Commonwealth would require a major and substantial overhaul of the Code of Virginia, entailing not only substantive statutory amending by the General Assembly, but in many of the areas, a basic revision of the philosophy underlying the general statutory policy of the Commonwealth that sentencing should be a part of correctional process.

Alternative Standards

The American Bar Association has formulated standards for dangerous offenders which read:

> 2.5 Total confinement.
>
> (a) For each of the categories of offenses designated pursuant to section 2.1(a), the legislature should specify the term, if any, for which a sentence of commitment to a correctional institution can be imposed. Such sentences should be authorized in accordance with the structure detailed in Part III of this report.
>
> (b) As stated in section 2.1(d), many sentences authorized by statute in this country are, by comparison to other countries and in terms of the needs of the public, excessively long for the vast majority of cases. Their length is undoubtedly the product of concern for protection against the most exceptional cases, most notably the particularly dangerous offender and the professional criminal. It would be more desir-

able for the penal code to differentiate explicitly between most offenders and such exceptional cases, by providing lower, more realistic sentences for the former and authorizing a special term for the latter. The Advisory Committee would endorse a special term in such a context, but only on the following assumptions:

(i) Provision for such a special term will be accompanied by a substantial and general reduction of the terms available for most offenders; and

(ii) Adequate criteria will be developed and stated in the enabling legislation which carefully delineate the type of offender on whom such a special term can be imposed; and

(iii) Precautions will be taken, such as by the requirement of procedures which assure the adequate development of information about the offender and by provision for appellate review of the sentence, to assure that such a special term will not be imposed in cases where it is not warranted; and

(iv) The sentence authorized in such cases will be structured in accordance with the principles reflected in section 3.1(c); and

(v) The necessary procedures will be developed in accordance with the principles reflected in section 5.5. Such special terms should not be authorized for misdemeanors and other lesser offenses.

(c) A sentence not involving total confinement is to be preferred in the absence of affirmative reasons to the contrary. Examples of legitimate reasons for the selection of total confinement in a given case are:

(i) Confinement is necessary in order to protect the public from further criminal activity by the defendant; or

(ii) The defendant is in need of correctional treatment which can most effectively be

provided if he is placed in total confinement; or

(iii) It would unduly depreciate the seriousness of the offense to impose a sentence other than total confinement. On the other hand, community hostility to the defendant is not a legitimate basis for imposing a sentence of total confinement.

(d) It would be appropriate for the legislature to endorse in the penal code standards such as those specified in subsection (c). They are in any event commended to sentencing courts as guides to the exercise of discretion.[6]

Footnotes

[1] Code of Virginia, Sec. 18.1-16, 38, 75, 86, 91, 67 (1960).

[2] Code of Virginia, Sec. 18.1-16, 18, 22, 23 (1960); Sec. 18.1-38, 44 (Supp. 1973); Sec. 18.1-65, 66 (1960); Sec. 18.1-69.1 (Supp. 1973); Sec. 18.1-76, 78.1 (1960); Sec. 18.1-79, 86, 91 (Supp. 1973); Sec. 18.1-147, 153, 159 (1960); Sec. 18.1-212 (Supp. 1973).

[3] Code of Virginia, Sec. 53-251 (1972).

[4] Code of Virginia, Sec. 53-251.2 (1972).

[5] General Parole Policy and Rules, Richmond: Virginia Probation and Parole Board, adopted June 1, 1967.

[6] Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards for Criminal Justice of the American Bar Association (Washington, D. C.: American Bar Association, 1974), p. 486.

Standard 5.4

Probation

Each sentencing court immediately should revise its policies, procedures, and practices concerning probation, and where necessary, enabling legislation should be enacted, as follows:

1. A sentence to probation should be for a specific term not exceeding the maximum sentence authorized by law, except that probation for misdemeanants may be for a period not exceeding one year.

2. The court should be authorized to impose such conditions as are necessary to provide a benefit to the offender and protection to the public safety. The court also should be authorized to modify or enlarge the conditions of probation at any time prior to expiration or termination of sentence. The conditions imposed in an individual case should be tailored to meet the needs of the defendant and society, and mechanical imposition of uniform conditions on all defendants should be avoided.

3. The offender should be provided with a written statement of the conditions imposed and should be granted an explanation of such conditions. The offender should be authorized to request clarification of any condition from the sentencing judge. The offender should also be authorized on his own initiative to petition the sentencing judge for a modification of the conditions imposed.

4. Procedures should be adopted authorizing the revocation of a sentence of probation for violation of specific conditions imposed, such procedures to include:

a. Authorization for the prompt confinement of probationers who exhibit behavior that is a serious threat to themselves or others and for allowing probationers suspected of violations of a less serious nature to remain in the community until further proceedings are completed.

b. A requirement that for those probationers who are arrested for violation of probation, a preliminary hearing be held promptly by a neutral official other than his probation officer to determine whether there is probable cause to believe the probationer violated his probation. At this hearing the probationer should be accorded the following rights:

(1) To be given notice of the hearing and of the alleged violations.

(2) To be heard and to present evidence.

(3) To confront and cross-examine adverse witnesses unless there is substantial evidence that the witness will be placed in danger of serious harm by so testifying.

(4) To be represented by counsel and to have counsel appointed for him if he is indigent.

(5) To have the decisionmaker state his reasons for his decision and the evidence relied on.

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

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

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

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

e. A requirement that at the probation revocation hearing the probationer should have notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel including the right to appointed counsel if he is indigent, the right to subpena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him.

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

g. Authorization for the court, upon finding a violation of conditions of probation, to continue the existing sentence with or without modification, to enlarge the conditions, or to impose any other sentence that was available to the court at the time of initial sentencing. In resentencing a probation violator, the following rules should be applicable:

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

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

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

5. Probation should not be revoked for the commission of a new crime until the offender has been tried and convicted of that crime. At this time criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

Analysis

Under the existing Virginia statutes, the legislative guidelines for probation practices are specifically mandated. The authorization for probationary practices lies in section 53-272, which states:

> After a plea, a verdict or a judgment of guilty in any court having jurisdiction to hear and determine the offense, with which the prisoner at the bar is charged, if there are circumstances in mitigation of the offense, or if it appears compatible with the public interest, the court may suspend the execution of the sentence, in whole or in part, or the imposition of sentence or commitment, and may also place the defendant on probation under the supervision of a probation officer, during good behavior for such time and under such conditions of probation as the court shall determine. In case the prisoner has been sentenced for a misdemeanor and commited, or in case a jail sentence has been imposed upon the prisoner upon conviction of a felony, the court, or judge of such court in vacation may at any time before the sentence has been completely served, suspend the unserved portion of any such sentence.
>
> In case the prisoner has been sentenced but not actually committed and delivered to the penitentiary for a felony the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may place the defendant on probation under the supervision of a probation officer during good behavior, for such time and under such conditions of probation as the court shall determine.
>
> In any case wherein a court is authorized to suspend imposition or execution of sentence, such court may fix the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the prisoner has been sentenced.
>
> In case the prisoner has been sentenced and committed to the penitentiary for a felony and the sentence is partially suspended, for purposes of good behavior credit and for parole eligibility, the term of imprisonment shall be that portion of the sentence which was not suspended.[1]

Thus, the Virginia procedures regarding the granting of probation are at variance with the Commission recommendations in some instances, while generally conforming to the Standards in others. First of all, there is no maximum temporal ceiling on the length an individual may be required to stay on probation as mandated by the standards. Whereas the Commission requires that the specific term not exceed the maximum sentence of incarceration allowable for a given offense, the Code specifically instructs the judges to "fix the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the prisoner might have been sentenced."[2] Virginia does adhere to the facet of the recommendation which suggests probation should be levied against an offender for a specific term or length of time, as probationary sentences in Virginia are for a definite time period set by the presiding judge.[3]

The Virginia statutes likewise are in agreement with the NAC in the practice of authorizing the imposition of certain specific conditions and requirements on the offender. As is recommended by the Commission, these conditions as well as the length of the probation period may be modified or enlarged at any time or point within the duration of such supervision; the Code specifically states:

> The Court may subsequently increase or decrease the probation period and may revoke or modify any condition of probation.[4]

Regarding the nature and extent of these requisite conditions, the administrative practices of the Probation

and Parole Board resemble the statutory codes in that some of the probation requirements are in compliance with the NAC Standards, while others do not reflect the philosophy of the Commission. In agreement with the recommendations of the NAC, probationers in Virginia do receive a written statement of the conditions imposed and an explanation of such conditions, and may request clarification of any condition from the sentencing judge. In addition, a probationer may petition the sentencing judge for a modification of such conditions.

However, the administrative practices deviate from the recommendations of the Commission with regard to the conditions themselves, as a somewhat mechanical imposition of general conditions does occur in all probationary cases in the Commonwealth. The following set of conditions are imposed upon each probationer within the Commonwealth:

1. I will obey all Municipal, County, State and Federal laws and ordinances. I will report any arrests or citations within 3 days to the district Probation Officer.

2. I will maintain regular employment and support myself and legal dependents to the best of my ability. I will notify my Probation Officer promptly of any changes in my employment.

3. I will obtain the written permission of my Probation Officer before buying or operating a motor vehicle.

4. I will submit a written report at the end of each month to my Probation Officer on forms furnished by him and will report as otherwise instructed.

5. I will permit my Probation Officer to visit my home or place of employment.

6. I will follow my Probation Officer's instructions and will be truthful and cooperative.

7. I will not use alcoholic beverages to excess. The excessive use of alcohol here is understood to mean that the effects disrupt or interfere with my domestic life, employment or orderly conduct.

8. I will not illegally use, possess or distribute narcotics, dangerous drugs, controlled substances or related parphernalia.

9. I will not use, own, possess, transport or carry a firearm without the written permission of my Probation Officer.

10. I will not change my residence without the permission of my Probation Officer. I will not leave the State of Virginia or travel outside of a designated area without permission.[5]

In addition, the sentencing court may impose such special conditions as it sees fit upon the probationer. Thus, in this sense an effort may be made to tailor the conditions to the needs of the individual; however, for the most part a general set of probation conditions is imposed on each offender.

Currently in Virginia, there are no state-wide standardized operating procedures for conducting a preliminary hearing in a probation revocation. Generally, the procedure has been for judges not to conduct a preliminary hearing if the violation occurs within the original sentencing court's jurisdiction, but rather to combine the preliminary and final hearings into a single proceeding. If, however, the violation occurs outside the court's jurisdiction, then generally a preliminary hearing is held in the jurisdiction of the violation. At such a hearing, the accused is afforded the same rights as granted

in preliminary hearings in parole revocations by the Supreme Court decision of Morrisey v. Brewer (see Chapter 12 on Parole). Under this ruling, the accused is accorded the right to notice, presentation of evidence, confrontation and cross-examination of witnesses, and to be represented by counsel. However, among Virginia courts, the Morrisey decision has not been fully and uniformly implemented. As for the final judicial hearing, definite guidelines have been developed and written into the Code:

> §53-275. REVOCATION OF SUSPENSION OF SENTENCE AND PROBATION. - The court may, for any cause deemed by it sufficient which occurred at any time within the probation period, or if none, within the period of suspension fixed by the court, or if neither, within the maximum period for which the defendant might originally have been sentenced to be imprisoned, revoke the suspension of sentence and any probation, if the defendant be on probation, and cause the defendant to be arrested and brought before the court at any time within one year after the probation period, or if no probation period has been prescribed then within one year after the maximum period for which the defendant might originally have been sentenced to be imprisoned, whereupon, in case the imposition of sentence has been suspended, the court may pronounce whatever sentence might have been originally imposed. In case the execution of the sentence has been suspended, the original sentence shall be in full force and effect, and neither the time of probation or of suspension shall be taken into account to diminish the original sentence. In the event that any person placed on probation shall leave the jurisdiction of the court without the consent of the judge, or having obtained leave to remove to another locality violates any of the terms of his probation, he may be apprehended and returned to the court and dealt with as provided above. Provided, however, that nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit or corporation court having criminal jurisdiction from a judgment or order revoking any suspended sentence.[6]

Under the elaborations of the statutes by the Supreme Court of Virginia, additional procedures have been established to supplement the requisites of the Code regarding the final revocation hearing. In the cases of Griffen v. Cunningham, 205 Va. 349, 136 S.E. 2d 840 (1964) and Brown v. Slayton, 337 F. Supp. 10 (W.D. Va. 1971), the court ruled that the accused in revocation hearings is entitled to a judical hearing at which the accused has the right to appear and testify and to be represented by counsel. Such a conclusion was also reached in Cook v. Commonwealth, 211 Va. 290, 176 S.E. 2d 815 (1970), where the Court ruled that, since the revocation of a suspension of sentence deprives the probationer of his liberty, he is entitled to a judical hearing, but a summary hearing is sufficient. Thus, the accused has a right to notice and the requisites of a trial, such as access to official records, right to counsel, right to subpoena witnesses, and to confront and cross-examine witnesses against him. As for the grounds necessary for revocation, this also has been elaborated upon in Virginia Supreme Court litigation.

In Coffey v. Commonwealth, 209 Va. 760, 167 S.E. 2d 343 (1969), the Supreme Court ruled that all suspensions include a condition of good behavior, and Marshall v. Commonwealth, 202 Va. 217, 116 S.E. 2d 270 (1960) ruled that substantial misconduct constituted grounds for revocation of suspension. In addition, in Marshall the court ruled a suspension of a sentence for cause is not a trial for the commission of a new criminal offense; the alleged

violation by the probationer of the conditions of the suspension of sentence need not be proven beyond a reasonable doubt.

Alternative Standards

Regarding probation, the American Bar Association has promulgated the following standards:

PART I. General Principles

1.1 Nature of sentence to probation.

(a) The legislature should authorize the sentencing court in every case to impose a sentence of probation. Exceptions to this principle are not favored and, if made, should be limited to the most serious offenses.

(b) In this report the term "probation" means a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of the sentence or to resentence the offender if he violates the conditions. Such a sentence should not involve or require suspension of the imposition or the execution of any other sentence.

(c) Upon a sentence to probation, the court should not be required to attach a condition of supervision by the probation department if in its judgment supervisions is not appropriate for the particular case.

(d) The court should specify at the time of sentencing the length of any term during which the defendant is to be supervised and during which the court will retain power to revoke the sentence for the violation of specified conditions. Neither supervision beyond a legislatively fixed time, which should in no event exceed two years for a misdemeanor of five years for a felony.

(e) A sentence to probation should be treated as a final judgment for purposes of appeal and similar procedural purposes.

(f) Upon revocation of probation the court should have available the same sentencing alternatives that were available at the time of initial sentencing. The court should not foreclose any of these alternatives before revocation.

1.3 Criteria for granting probation.

(a) The probation decision should not turn upon generalizations about types of offenses or the existence of a prior criminal record, but should be rooted in the facts and circumstances of each case. The court should consider the nature and circumstances of the crime, the history and character of the offender, and available institutional and community resources. Probation should be the sentence unless the sentencing court finds that:

(i) confinement is necessary to protect the public from further criminal activity by the offender; or

(ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or

(iii) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.

(b) Whether the defendant pleads guilty, pleads not guilty or intends to appeal is not relevant to the issue of whether probation is an appropriate sentence.[7]

Footnotes

[1]Code of Virginia, Sec. 53-273 (1972).

[2]Ibid.

[3]Ibid.

[4]Code of Virginia, Sec. 53-273 (1972).

[5]Virginia Probation and Parole Board, "Conditions of Probation," PB Form 2 Revised 7-74.

[6]Code of Virginia, Sec. 53-275 (1972).

[7]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 470, 476.

Standard 5.5

Fines

In enacting penal code revisions, State legislatures should determine the categories of offenses for which a fine is an appropriate sanction and provide a maximum fine for each category.

Criteria for the imposition of a fine also should be enacted, to include the following:

1. A fine should be imposed where it appears to be a deterrent against the type of offense involved or an appropriate correctional technique for an individual offender. Fines should not be imposed for the purpose of obtaining revenue for the government.

2. A fine should be imposed only if there is a reasonable chance that the offender will be able to pay without undue hardship for himself or his dependents.

3. A fine should be imposed only where the imposition will not interfere seriously with the offender's ability to make reparation or restitution to the victim.

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

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

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

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

4. Authority for the imprisonment of a person who intentionally refuses to pay a fine or who fails to make a good-faith effort to obtain funds necessary for payment. Imprisonment solely for inability to pay a fine should not be authorized.

Legislation authorizing fines against corporations should include the following special provisions:

1. Authority for the court to base fines on sales, profits, or net annual income of a corporation where appropriate to assure a reasonably even impact of the fine on defendants of various means.

2. Authority for the court to proceed against specified corporate officers or against the assets of the corporation where a fine is not paid.

Analysis

Like most state penal codes, the Code of Virginia makes extensive use of fines as a punitive sanction. Of the 80 criminal offenses catalogued in the Code, some forty-seven or 58.75 percent have the option of an imposition of a fine authorized by the state legislature (see Standard 5.2-Sentencing the Non-Dangerous Offender for a tabular listing of crimes and punishments within the Commonwealth). There are no minimum fines, and the maximum authorized fine for a criminal act is $1,000. As for the types of crimes associated with imposition of a fine, generally the use of monetary punishment is restricted to the less serious infractions.

Table 5.5-1 shows the relationship of imprisonment and imposition of financial penalty in Virginia. As may be clearly seen, the delineation as to the use of fines is the one year point. For a single crime with a maximum sentence of a year or under there is no option of a fine, while no criminal punishment of over a year has any financial penalty in combination with incarceration.

Virginia courts are authorized to impose fine payments in installments. The Code reads:

> §19.1-347.1. AUTHORITY OF COURT TO ORDER PAYMENT OF FINE AND COSTS IN INSTALLMENTS OR UPON OTHER TERMS AND CONDITIONS. - Whenever a defendant is convicted of a violation of any criminal law of the Commonwealth or of any county, city, town or regional government, or found not innocent in the case of a juvenile, and is sentenced to pay a fine, and it shall appear to the court on its own motion or on motion of the defendant that such defendant is unable to pay such fine forthwith, the court may order the defendant to pay

such fine any costs which the defendant may be required to pay in installments or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine and costs.[1]

§19.1-347.2. PETITION OF DEFENDANT. - (a) In determining whether the defendant is unable to pay such fine forthwith, the court may require such defendant to file a petition, under oath, with the court, upon a form provided by the court setting forth the financial condition of the defendant. (b) Such form shall be a questionnaire, and shall include, but shall not be limited to: the name and residence of the defendant; his occupation, if any; his family status and the number of persons dependent upon him; his monthly income; whether or not his dependents are employed and, if so, their approximate monthly income; his banking accounts, if any; real estate owned by the defendant, or any interest he may have in real estate; income produced therefrom; any independent income accruing to the defendant; tangible and intangible personal property owned by the defendant, or in which he may have an interest; and a state listing the approximate indebtedness of the defendant to other persons. Such form shall also include a payment plan of the defendant, if the court should exercise its discretion in permitting the payment of such fine and costs in installments or other conditions to be fixed by the court. At the end of such form there shall be printed in bold face type, in a distinctive color the following: THIS STATEMENT IS MADE UNDER OATH, ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE PERJURY UNDER THE PROVISIONS OF §18.1-273 OF THE CODE OF VIRGINIA. THE MAXIMUM PENALTY FOR PERJURY IS CONFINEMENT IN THE PENITENTIARY FOR A PERIOD OF TEN YEARS. A copy of the petition shall be retained by the defendant. (c) If the defendant is unable to read or write, the court, or the clerk, may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.[2]

In addition, courts may revoke part or all of a fine imposed to avoid hardship to the defendant.[3] The jail sentence in connection with a fine, i.e. the "30 dollars or 30 days" is no longer used in Virginia, as the authorizing sections

for such procedures were repealed by the Virginia General Assembly in 1973 (Acts of the Assembly, c. 342). Finally, the Code specifically authorizes a formal procedure for the default in payment of a fine:

> §19.1-347.6 PROCEDURE ON DEFAULT IN PAYMENT OF FINE OR INSTALLMENT THEREOF. - (a) When an individual sentenced to pay a fine defaults in the payment of a fine or an installment, the court upon the motion of the Commonwealth or upon its own motion, may require him to show cause why he should not be imprisoned for nonpayment.
> (b) Following an order to show cause, unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned as for a contempt for a term not to exceed sixty days. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the defendant to his release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.
> (c) If it appears that the default is excusable under the standards set forth in subsection (b) hereof, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the fine or of each installment, or remitting the unpaid portion in whole or in part.
> (d) Nothing in this section shall be deemed to alter or interfere with employment for collection of fines or any means authorized for the enforcement of money judgments rendered in favor of the Commonwealth.[4]

Furthermore, the United States Supreme Court has ruled in Williams v. Illinois (1970) that imprisonment for willful refusal to pay a fine is not precluded by the Constitution.[5] Thus, the clear authority exists in Virginia for imprisonment of up to sixty days for contempt of court due to the willful refusal to pay a fine.

Alternative Standards

The American Bar Association has formulated standards for the imposition of fines:

2.7 Fines.

(a) The legislature should determine the offenses or categories of offenese for which a fine would be an appropriate sentence, and should state the maximum fine which can be imposed. Except in the case of offenses committed by a corporation, the legislature ordinarily should not authorize the imposition of a fine for a felony unless the defendant has gained money or property through the commission of the offense.

(b) Whether to impose a fine in a particular case, its amount up to the authorized maximum, and the method of payment should remain within the discretion of the sentencing court. The court should be explicitly authorized to permit installment payments of any imposed fine, on conditions tailored to the means of the particular offense.

(c) In determining whether to impose a fine and its amount, the court should consider:

(i) the financial resources of the defendant and the burden that payment of a fine will impose, with due regard to his other obligations;

(ii) the ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court;

(iii) the extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and

(iv) whether there are particular reasons which make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.

Revenue production is not a legitimate basis for imposing a fine.

(d) It would be appropriate for the legislature to endorse in the penal code standards such as those specified in subsection (c). They are in any event commended to sentencing courts as guides to the exercise of discretion.

(e) The court should not be authorized to impose alternative sentences, e.g., "thirty dollars or thirty days". The effect of nonpayment of a fine should be determined after the fine has not been paid and after examination of the reasons for nonpayment. The court's response to nonpayment should be governed by the standards set forth in Section 6.5.

(f) In fixing the maximum fine for some offenses, the legislature should consider the feasibility of employing an index other than a dollar amount in cases where it might be appropriate. For example, a fine relative to the amount of the gain might be appropriate in cases where the defendant has profited by his crime, or a fine relative to sales, profits, or net annual income might be appropriate in some cases, such as business or antitrust offenses, in order to assure a reasonably even impact of the fine on defendants of variant means.

(g) Legislative attention should also be devoted to the desirability of a special schedule of fines for offenses committed by corporations.[6]

Footnotes

[1] Code of Virginia, Sec. 19.1-347.1 (Supp. 1973).

[2] Code of Virginia, Sec. 19.1-347.2 (Supp. 1973).

[3] Code of Virginia, Sec. 19.1-347.6 (Supp. 1973).

[4] Ibid.

[5] Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, L. Ed. 2d 586 (1970).

[6] Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 418.

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TABLE 5.5 - 1

Relationship of Imprisonment with Imposition of Fines in Virginia

	Maximum Length of Imprisonment				
	One year or under	1 to 4 years	5 to 9 years	10 to 19 years	20 years or over
With Fine	48	0	0	0	0
No Fine	1	6	11	25	20

The category of "one year or under" includes some seventeen crimes for which a dual optional penalty exists, such that a lengthier prison sentence and no fine is one sentencing alternative and a sentence of under a year with a fine is the other. The statutes leave the selection of which option to be used up to the sentencing judge or jury.

Standard 5.6

Multiple Sentences

State legislatures should authorize sentencing courts to make disposition of offenders convicted of multiple offenses, as follows:

1. Under normal circumstances, when an offender is convicted of multiple offenses separately punishable, or when an offender is convicted of an offense while under sentence on a previous conviction, the court should be authorized to impose concurrent sentences.

2. Where the court finds on substantial evidence that the public safety requires a longer sentence, the court should be authorized to impose consecutive sentences. However, a consecutive sentence should not be imposed if the result would be a maximum sentence more than double the maximum sentence authorized for the most serious of the offenses involved.

3. The sentencing court should have authority to allow a defendant to plead guilty to any other offenses he has committed within the State, after the concurrence of the prosecutor and after determination that the plea is voluntarily made. The court should take each of these offenses into account in setting the sentence. Thereafter, the defendant should not be held further accountable for the crimes to which he has pleaded guilty.

4. The sentencing court should be authorized to impose a sentence that would run concurrently with out-of-State sentences, even though the time will be served in an out-of-State institution. When apprised of either pending charges or outstanding detainers against the defendant in other jurisdictions, the court should be given by interstate agreements the authority to allow the defendant to plead to those charges and to be sentenced, as provided for in the case of intrastate criminal activity.

Analysis

Under Virginia law, the discretion to allow concurrent sentences lies with the sentencing judge. The Code of Virginia states:

> When any person is convicted of two or more offenses, and sentenced to confinement, such sentence shall not run concurrently, unless expressly ordered by the court.[1]

As for frequency with which this concurrent term option is exercised, Commonwealth's Attorney's were asked questions regarding the use of concurrent sentencing by judges in their jurisdiction. The responding attorneys showed that 64 of 65 answering localities do have some concurrent sentencing taking place. The average frequency of such sentencing was 53.5 percent of the cases involving multiple offenses. Thus, concurrent sentencing is an option available to Virginia judges and it would appear that Virginia is basically in accord with the requisites of Standard 5.6.

Alternative Standards

The American Bar Association has promulgated standards for multiple offenses which read:

3.4 Multiple Offenses: same state; concurrent and consecutive terms.

(a) After convictions of multiple offenses which are separately punishable or in cases where the defendant is serving a prison sentence at the time of conviction, the question of whether to impose concurrent or consecutive sentences should be a matter for the discretion of the sentencing court.

(b) Consecutive sentences are rarely appropriate. Authority to impose a consecutive sentence

should be circumscribed by the following statutory limitations:

(i) The aggregate maximum of consecutive terms should not be permitted to exceed the term authorized for an habitual offender (Section 3.3) for the most serious of the offenses involved. If there is no provision for a habitual offender for the offense involved, there should be a ceiling on the aggregate of consecutive terms which is related to the severity of the offenses involved; and

(ii) The aggregate minimum of consecutive terms should be governed by the limitations stated in Section 3.2; and

(iii) The court should not be authorized to impose a consecutive sentence until a presentence report (Sections 4.1-4.5), supplemented by a report of the examination of the defendant's mental, emotional and physical condition (Section 4.6), has been obtained and considered; and

(iv) Imposition of a consecutive sentence should require the affirmative action of the sentencing court. The court should be authorized to impose a consecutive sentence only after a finding that confinement for such a term is necessary in order to protect the public from further criminal conduct by the defendant.

These limitations should also apply to any sentence for an offense committed prior to the imposition of sentence for another offense, whether the previous sentence for the other offense has been served or remains to be served.

(c) Corrections and parole authorities should be directed to consider an offender committed under multiple sentences as though he had been committed for a single term the limits of which were defined by the cumulative effect of the multiple sentences.[2]

The standards of the National Council on Crime and Delinquency vary considerably from those of the NAC in the

area of multiple sentencing. The NCCD prefers a situation of minimal discretion for judges as follows:

> Separate sentences of commitment imposed on a defendant for two or more crimes constituting a single criminal episode shall run concurrently. Sentences for two or more crimes not constituting a single criminal episode shall run concurrently unless the judge otherwise orders.[3]

Footnotes

[1] Code of Virginia, Sec. 19.1-294 (1960).

[2] Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 428.

[3] Model Sentencing Act (New York: National Council on Crime and Delinquency, 1972), Section 17.

Standard 5.7

Effect of Guilty Plea in Sentencing

Sentencing courts immediately should adopt a policy that the court in imposing sentence should not consider, as a mitigating factor, that the defendant pleaded guilty or, as an aggravating factor, that the defendant sought the protections of right to trial assured him by the Constitution.

This policy should not prevent the court, on substantial evidence, from considering the defendant's contrition, his cooperation with authorities, or his consideration for the victims of his criminal activity, whether demonstrated through a desire to afford restitution or to prevent unseemly public scrutiny and embarrassment to them. The fact that a defendant has pleaded guilty, however, should be considered in no way probative of any of these elements.

Analysis

Currently there are no written or formal policies taking into account a guilty plea at the time of sentencing in Virginia state courts.

Alternative Standards

The National Advisory Commission seems to be the first group to have addressed itself to evaluation of guilty pleas as factors in judicial sentencing practices.

Standard 5.8

Credit for Time Served

Sentencing courts immediately should adopt a policy of giving credit to defendants against their maximum terms and against their minimum terms, if any, for time spent in custody and "good time" earned under the following circumstances:

1. Time spent in custody arising out of the charge or conduct on which such charge is based prior to arrival at the institution to which the defendant eventually is committed for service of sentence. This should include time spent in custody prior to trial, prior to sentencing, pending appeal, and prior to transportation to the correctional authority.

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

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

The court should assume the responsibility for assuring that the record reveals in all instances the amount of time to be credited against the offender's sentence and that such record is delivered to the correctional authorities. The correctional authorities should assume the responsibility of granting all credit due an offender at the earliest possible time and of notifying the offender that such credit has been granted.

Credit as recommended in this standard should be automatic and a matter of right and not subject to the discretion of the sentencing court or the correctional authorities. The granting of credit should not depend on such factors as the offense committed or the number of prior convictions.

Time spent under supervision (in pretrial intervention projects, release on recognizance and bail programs, informal probation, etc.) prior to trial should be considered by the court in imposing sentence. The court should be authorized to grant the offender credit in an amount to be determined in the discretion of the court, depending on the length and intensity of such supervision.

Analysis

In most cases in Virginia, credit is given for time served under the circumstances outlined in Standard 5.8. Commonwealth's Attorneys were surveyed as to the practices of judges within their jurisdictions. The results may be seen in Table 5.8-1. The categories listed represent the three most frequently occurring instances in which an offender may be granted credit for time served. Ninety-eight percent of the respondants reported that the judges in their jurisdiction do allow an individual to receive credit for time spent in pre-trial detention or while awaiting sentencing, while 88 percent of the answering localities reported their judges allow credit for time served pending appeal. In addition, 81 percent stated judges in their jurisdictions allow credit for time served while awaiting transfer to an institution. Thus, it would seem that the Commonwealth is for the most part in accord and compliance with the requisites of Standard 5.8.

Alternative Standards

Regarding credit for time served, the American Bar Association has formulated the following alternative standards:

3.6 Credit.

(a) Credit against the maximum term and any minimum term should be given to a defendant for all time in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. This should specifically include credit for time spent in custody prior to trial, during trial, pending sentence, pending

the resolution of an appeal, and prior to arrival at the institution to which the defendant has been committed.

(b) Credit against the maximum term and any minimum term should be given to a defendant for all time spent in custody under a prior sentence if he is later re-prosecuted and re-sentenced for the same offense or for another offense based on the same conduct. In the case of such re-prosecution, this should include credit in accordance with subsection (a) for all time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same conduct.

(c) If a defendant is serving multiple sentences, and if one of the sentences is set aside as the result of direct or collateral attack, credit against the maximum term and any minimum term of the remaining sentences should be given for all time served since the commission of the offenses on which the sentences were based.

(d) If the defendant is arrested on one charge and later prosecuted on another charge growing out of conduct which occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution should be given for all time spent in custody under the former charge which has not been credit against another sentence.

(e) The credit required to be given by this section should be awarded by the procedure specified in Section 5.8.[1]

Footnotes

[1]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 430, 432.

TABLE 5.8 - 1

Credif for Time Served in Virginia Courts

Do judges in your jurisdiction ever allow an offender before your court to receive credit against either their maximum or minimum sentence under time spent in custody under any of the following circumstances?	Yes		No Response	
	Frequency	Percent	Frequency	Percent
a. Time served prior to trial or sentencing	64	98.46	1	1.53
b. Time served while an appeal is pending	57	87.69	8	12.30
c. Time served while awaiting transfer to an institution	53	81.53	12	18.46

Standard 5.9

Continuing Jurisdiction of Sentencing Court

Legislatures by 1975 should authorize sentencing courts to exercise continuing jurisdiction over sentenced offenders to insure that the correctional program is consistent with the purpose for which the sentence was imposed. Courts should retain jurisdiction also to determine whether an offender is subjected to conditions, requirements, or authority that are unconstitutional, undesirable, or not rationally related to the purpose of the sentence, when an offender raises these issues.

Sentencing courts should be authorized to reduce a sentence or modify its terms whenever the court finds, after appropriate proceedings in open court, that new factors discovered since the initial sentencing hearing dictate such modification or reduction or that the purpose of the original sentence is not being fulfilled.

Procedures should be established allowing the offender or the correctional agency to initiate proceedings to request the court to exercise the jurisdiction recommended in this standard.

Analysis

The sentencing court does not continue to exercise jurisdiction over sentenced offenders in the correctional system of the Commonwealth. Virginia law provides that jurisdiction over convicted and sentenced offenders shifts to the Department of Corrections and the Virginia Probation and Parole Board.

Alternative Standards

The standards committee of the American Wardens' Association objects strongly to the idea of sentencing courts exercising continuing jurisdiction:

> Reject. This country was founded on the idea of three separate branches of government. The courts already have too much power and have moved into executive and legislative branches of government. The courts do not have the expertise or the time to run corrections.[1]

Footnotes

[1] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Draft, Standards Committee of the American Wardens' Association, August 1974.

Standard 5.10

Judicial Visits to Institutions

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

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

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

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

Analysis

Under existing practices within the Commonwealth, no formal plan or requirements exist for judicial visits to institutions. Any visits which take place are on an informal basis at the discretion of the individual judge. No information is currently available as to how many judges have visited correctional facilities, or the frequency with which these visits take place.

Alternative Standards

The National Jail Association has stated regarding judicial visits to insitutions:

> This Committee whole heartedly endorses the practice of judges visiting the local detention facility at least annually, but strongly recommends that the court visit four (4) times each year. The visit should include touring the facility, talking with the staff, talking with the prisoners, checking the food, and other programs at the institutions. It is further recommended that Boards of Supervisors, City Councils, County Commissioners and other governing bodies should also visit the local detention facilities at least once each year. It is highly recommended that they visit such facilities four times each year, talking to the staff, the inmates, checking the food and programs, etc.[1]

> The American Bar Association also endorses this concept in its Standard 7.4, Standards relating to sentencing alternatives and procedures. Provisions should be made for regular visits by every sentencing judge to each of the custodial and non-custodial facilities which can be utilized in framing a sentence. In cases where the judge chooses incarceration but does not select the institution of commitment, such visits should include familiarization with the process by which an offender is assigned to an institution.[2]

Footnotes

[1]"Report of the National Jail Association on the Recommendations for the National Advisory Commission on Criminal Justice," Draft, August 1974.

[2]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 464.

Standard 5.11

Sentencing Equality

The following procedures should be implemented by 1975 by court rule or legislation to promote equality in sentencing:

1. Use of sentencing councils for individual sentences. (See Standard 5.13.)

2. Periodic sentencing institutes for all sentencing and appellate judges. (See Standard 5.12.)

3. Continuing sentencing court jurisdiction over the offender until the sentence is completed. (See Standard 5.9.)

4. Appellate review of sentencing decisions.

As an alternative to review of sentences through normal appellate procedures, a jurisdiction may wish to establish a sentencing appeals board whose sole function would be to review criminal sentences. If such a board is established it should consist of not less than three nor more than seven members who would serve staggered 6-year terms. Appointment should be made through a procedure that assures competence and protects against political pressures and patronage. The recommendations set forth below, applicable to appellate review of sentences by courts, should be applicable to a sentencing appeals board.

Procedures for implementing the review of sentences on appeal should contain the following precepts:

1. Appeal of a sentence should be a matter of right.

2. Appeal of a sentence of longer than 5 years under an extended-term provision should be automatic.

3. A statement of issues for which review is available should be made public. The issues should include:

   a. Whether the sentence imposed is consistent with statutory criteria.

   b. Whether the sentence is unjustifiably disparate in comparison with cases of similar nature.

   c. Whether the sentence is excessive or inappropriate.

   d. Whether the manner in which the sentence is imposed is consistent with statutory and constitutional requirements.

Analysis

Standard 5.11 basically provides a compilation of various other sentencing standards covered elsewhere in this chapter which, taken as a whole, would promote greater equality in sentences. They are:

1. Use of sentencing councils (see Standard 5.13)
2. Use of sentencing institutes (see Standard 5.12)
3. Continuing sentencing court jurisdiction (see Standard 5.9)

Currently within the Commonwealth there are no provisions for a sentencing appeal board of any type or function.

Alternative Standards

The American Bar Association standards are in agreement with the objectives of this standard; however, the ABA objects to specialized courts whose only purpose would be oversight of sentencing practices.[1]

Footnotes

[1] Standards Relating to Appellate Review of Sentences (New York: American Bar Association, 1968), Section 2.1.

Standard 5.12

Sentencing Institutes

Court systems immediately should adopt the practice of conducting sentencing institutes to provide judges with the background of information they need to fulfill their sentencing responsibilities knowledgeably. The practice should be governed by these considerations:

1. Each State should provide for a biennial sentencing institute, which all sentencing judges should be eligible to attend without cost or expense.

2. Each judge who has been appointed or elected since the last convening should be required to attend the institute in order to acquaint himself further with sentencing alternatives available.

3. The institute should concern itself with all aspects of sentencing, among which should be establishment of more detailed sentencing criteria, alternatives to incarceration, and reexamination of sentencing procedures.

4. Defense counsel, prosecutors, police, correctional administrators, and interested members of the bar and other professions should be encouraged to attend. A stipend for at least some persons, including students, should be established.

5. To the extent possible, sentencing institutes should be held in a maximum or medium security penal institution in the State.

Analysis

Virginia has no formal sentencing institutes of the type envisioned in Standard 5.12. The closest approximations are the state judicial conferences, conducted by the Virginia Supreme Court and funded through a grant from the Virginia Division of Justice and Crime Prevention. These annual conferences are conducted in two sessions, one being for Circuit Court judges and another for District Court judges, with attendance made mandatory by the Supreme Court. The annual sessions are usually three days in length, and provide a series of educational workshops and seminars.

While the topic of sentencing was not formally devoted a block of time at the most recent conference, past meetings have had sentencing and related items as major points of discussion and presentation. In addition to these required conferences, other conferences of a voluntary nature are also held.[1] There are no other similar programs in the Commonwealth, as other legal organizations such as the State Bar, the Virginia Bar Association, etc. have no such institutes which deal with the sentencing issue.[2]

Alternative Standards

The American Bar Association has formulated a standard regarding the use of sentencing institutes:

> 7.2 Sentencing institutes.
>
> Provision should be made in every state for the convening of sentencing judges from time to time for the purpose of holding institutes or seminars to discuss problems related to sentencing. The particular goal of such proceedings should be to develop criteria for the imposition of sentences, to provide a forum in which newer judges can be exposed to more experienced judges, and to expose all

sentencing judges to new developments and techniques. Prosecutors, members of the defense bar, appellate judges, and corrections and releasing authorities should be encouraged to participate in such proceedings in order to develop a better understanding of their roles in the sentencing process.

7.3 Orientation of new judges.

In addition to regular sentencing institutes, a program should be developed for the formal orientation of new judges. This should include familiarization with sentencing alternatives, with the services available to the sentencing judge, with purposes of sentencing and sentence procedures, with the nature of non-custodial facilities which can be utilized in sentencing, and with the nature of the facilities to which a sentenced offender may be committed.[3]

Footnotes

[1]Interview with the Executive Secretary, Virginia Supreme Court, July 22, 1974.

[2]Interview with James Woodson, Public Information Director, Virginia State Bar, July 16, 1974. Interview with Murry Janus, past president, Criminal Bar Section, Virginia State Bar, July 22, 1974.

[3]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 464.

Standard 5.13

Sentencing Councils

Judges in courts with more than one judge immediately should adopt a policy of meeting regularly in sentencing councils to discuss individuals awaiting sentence, in order to assist the trial judge in arriving at an appropriate sentence. Sentencing councils should operate as follows:

1. The sentencing judge should retain the ultimate responsibility for selection of sentence, with the other members of the council acting in an advisory capacity.

2. Prior to the meeting of the council, all members should be provided with presentence reports and other documentary information about the defendant.

3. The council should meet after the sentencing hearing conducted by the sentencing judge but prior to the imposition of sentence.

4. Each member of the council should develop prior to the meeting a recommended sentence for each case with the factors he considers critical.

5. The council should discuss in detail those cases about which there is a substantial diversity of opinion among council members.

6. The council through its discussions should develop sentencing criteria.

7. The council should keep records of its agreements and disagreements and the effect of other judges' recommendations on the sentencing judge's final decision.

Analysis

Under existing Virginia statutes there is no provision for a formal council of judges sitting as a panel to assist or suggest alternatives in the sentencing process. The process of formal sentencing is governed by Sections 19.1-291 and 19.1-292 of the Code of Virginia which states:

> The punishment in al criminal cases tried by jury shall be ascertained by the jury trying the same within the limits prescribed by law.[1]
>
> The terms of confinement in the penitentiary or in jail of a person convicted of a felony, if that punishment is prescribed, and the amount of the fine, if the felony be also punishable by fine, shall be ascertained by the jury, if there be one, or by the court trying the case without a jury, so far as the term of confinement and the amount of the fine are not fixed by law.[2]

Thus, the Code of Virginia specifically vests sole responsibility for sentencing in the presiding judge of the trial and the jury, where a jury trial is chosen. As a result, the use of a sentencing council first of all would be precluded in a number of trials because of the continued use of jury sentencing in the Commonwealth (see Standard 5.1 - The Sentencing Agency), and secondly, would have to be on an informal basis because of the direct vestment of sentencing prerogative in the presiding trial judge. For the implementation of such a formal council, specific statutory authorization would be necessary. Any such judicial counseling which currently does take place is of an informal and unstructured nature among the various judges, and would most likely take the form of one judge simply soliciting another's opinion on a given case, with an understanding that the sole responsibility of sentence does rest with the presiding official.

Alternative Standards

The American Bar Association has promulgated a standard on the use of sentencing councils, which reads:

> 7.1 Sentencing Council - In all courts where more than one judge sits regularly at the same place, and whenever else it is feasible, it is desirable that meetings of sentencing judges be held prior to the imposition of sentence in as many cases as is practical. The meeting should be precluded by distribution of the presentence report and any other documentary information about the defendant to each of the judges who will participate. The purpose of the meeting should be to discuss the appropriate disposition of the defendants who are then awaiting sentence and to assist the judge who will impose the sentence in reaching a decision. Choice of the sentence should nevertheless remain the responsibility of the judge who will actually impose it.[3]

Footnotes

[1]Code of Virginia, Sec. 19.1-291 (1960).

[2]Ibid., Sec. 19.1-292 (1960).

[3]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 462.

Standard 5.14

Requirements for Presentence Report and Content Specification

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions. The guidelines should reflect the following:

1. A presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration and in all cases involving felonies or minors.

2. Gradations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.

3. A full presentence report should be prepared where the court determines it to be necessary, and without exception in every case where incarceration for more than 5 years is a possible disposition. A short-form report should be prepared for all other cases.

4. In the event that an offender is sentenced, either initially or on revocation of a less confining sentence, to either community supervision or total incarceration, the presentence report should be made a part of his official file.

5. The full presentence report should contain a complete file on the offender—his background, his prospects of reform, and details of the crime for which he has been convicted. Specifically, the full report should contain at least the following items:

a. Complete description of the situation surrounding the criminal activity with which the offender has been charged, including a full synopsis of the trial transcript, if any; the offender's version of the criminal act; and his explanation for the act.

b. The offender's educational background.

c. The offender's employment background, including any military record, his present employment status, and capabilities.

d. The offender's social history, including family relationships, marital status, interests, and activities.

e. Residence history of the offender.

f. The offender's medical history and, if desirable, a psychological or psychiatric report.

g. Information about environments to which the offender might return or to which he could be sent should a sentence of nonincarceration or community supervision be imposed.

h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, re-

habilitative programs of various institutions, and similar programs.

i. Views of the person preparing the report as to the offender's motivations and ambitions, and an assessment of the offender's explanations for his criminal activity.

j. A full description of defendant's criminal record, including his version of the offenses, and his explanations for them.

k. A recommendation as to disposition.

6. The short-form report should contain the information required in sections 5 a, c, d, e, h, i, and k.

7. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

Analysis

The use of presentence reports and inquiries in the Commonwealth is formally governed by the statutory provisions of the Code of Virginia as enacted by the Virginia General Assembly. The Code of Virginia states regarding presentence reports:

> When a person is tried upon a felony charge for which a sentence of death or confinement for a period of over ten years may be imposed and pleads guilty, or upon a plea of not guilty is tried by the court without a jury as provided by law, and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before fixing punishment or imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused and any and all other relevant facts, to the end that the court may be fully advised as to the appropriate and just sentence to be imposed. The probation officer shall present his report in open court in the presence of the accused who shall be advised of the contents of the same and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter which he may desire to present. The report of the investigation shall be filed as a part of the record in the case.[1]

Thus, the range of cases in which a presentence report is formally required by statute is fairly narrow in Virginia. The foremost statutory limitation lies in the fact that upon conviction of the defendant by a jury, such a presentence report as prescribed by Sec. 53-278.1 is denied the jury in its functioning as a sentencing body. As this statute is currently applied, such a report is supplied largely at the request of the sentencing judge. Presentence reports are compiled by probation and parole officers of the Department of Corrections; and, while some guidelines are in use as to content, such reports in fact vary to some extent from one district to another.

Generally the presentence report is prepared as follows: When a defendant is found guilty without a jury trial, a presentence report may be required by the judge, and in certain instances, may be statutorily mandated if requested by the defendant. In most individual cases the formal report will contain the following information:

1. a description of the offense involved.
2. the prior record of criminal behavior.
3. a general investigation of the offender's life history
    a. record of formal education and schooling
    b. record of the offender's health
    c. record of previous employment
    d. record of any specific problems, i.e. medical, psychological, etc.
4. sentence recommendation by the probation officer.

The question of sentence recommendation is one which varies considerably from one judicial district to another. In some districts, a suggestion for length or severity of sentence is included in the formal report, whereas in other courts a recommendation is very rarely made. The most typical recommendation made is in the case of granting probation, where the officer may suggest either a positive or negative endorsement. In addition, in some districts a recommendation may be made as to the length of the probationary period should such a sentence alternative be chosen by the presiding judge. Finally, in some cases, a probation officer will make a verbal recommendation to the judge as to where the offender should be incarcerated. While it is clear that these practices do in fact occur within the Commonwealth, the absence of centralized and specific recordkeeping in this area precludes the offering of hard statistics.

As for the degree of coverage of the presentence report, it would appear that a majority of the convicted felons do now receive a formal report before sentencing, and that virtually all of those offenders placed on probation in fact are subject to the scrutiny of such a report. In some districts the range of these presentence procedures has been extended to misdemeanants as well as felons. However, the number of misdemeanor cases in which a presentence report is filed are still comparatively few. Here again, there is an absence of concrete statistics. Finally, there is no provision for the use of the short-form presentence report as recommended by the NAC.[2]

Alternative Standards

The American Bar Association has promulgated standards regarding the presentence report and its contents, which read:

PART IV. INFORMATIONAL BASIS FOR SENTENCE

4.1 Presentence report: general principles.

a. The legislature should supply all courts trying criminal cases with the resources and supporting staff to permit a presentence investigation and a written report of its results in every case.

b. The court should explicitly be authorized by statute to call for such an investigation and report in every case. The statute should also provide that such an investigation and report should be made in every case where incarceration for one year or more is a possible disposition where the defendant is less than (21) years old, or where the defendant is a first offender, unless the court specifically orders to the contrary in a particular case.

c. Standards relating to the preparation and contents of the presentence report will be developed in a separate report on probation.

PART II. THE PRESENTENCE REPORT

2.1 Availability and use.

a. All courts trying criminal cases should be supplied with the resources and supporting staff to permit a presentence investigation and a written report of its results in every case.

b. The court should explicitly be authorized by statute to call for such an investigation and report in every case. The statute should also provide that such an investigation and report should be made in every case where incarceration for one year or more is a possible disposition, where the defendant is less than (21) years old, or where the defendant is a first offender, unless the court specifically orders to the contrary in a particular case.

2.2 Purpose of report.

The primary purpose of the presentence report is to provide the sentencing court with succinct and precise information upon which to base a rational sentencing decision. Potential use of the report by other agencies in the correctional process should be recognized as a factor in determining the content and length of the report, but should be subordinated to its primary purpose. Where the presentence investigation discloses information useful to other correctional agencies, methods should be developed to assure that this data is made available for their use.

2.3 Content, scope and length of report.

Presentence reports should be flexible in format, reflecting differences in the background of different offenders and making the best of use available resources and probation department capabilities. Each probation department should develop graduations of reports between:

i. a short-form report for primary use in screening offenders in order to assist in a determination of when additional and more complete information is desirable. Short-form reports could also be useful in courts which do not have adequate probation services;

ii. a full report, which normally should contain the following items:

(a) a complete description of the offense and the circumstances surrounding it, not limited to aspects developed for the record as part of the determination of guilt;

(b) a full description of any prior criminal record of the offender;

(c) a description of the educational background of the offender;

(d) a description of the employment background of the offender, including any military record and including his present employment status and capabilities;

(e) the social history of the offender, including family relationships, marital status, interests and activities, residence history and religious affiliations;

(f) the offender's medical history and, if desirable, a psychological or psychiatric report;

(g) information about environments to which the offender might return or to which he could be sent should probation be granted;

(h) supplementary reports from clinics, institutions and other social agencies with which the offender has been involved;

(i) information about special resources which might be available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions to which the offender might be committed, special programs in the probation department, and other similar programs which are particularly relevant to the offender's situation;

(j) a summary of the most significant aspects of the report, including specific recommendations as to the sentence if the sentencing court has so requested.

A special effort should be made in the preparation of presentence reports not to burden the court with irrelevant and unconnected details.[3]

Footnotes

[1]Code of Virginia, Sec. 53-278.1 (1972).

[2]Interview with W. E. Boldin, Jr., Acting Director, Division Probation and Parole Services, Department of Corrections, July 1, 1974.

[3]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 434, 476, 478, 480, 482, 484.

Standard 5.15

Preparation of Presentence Report Prior to Adjudication

Sentencing courts immediately should develop guidelines as to the preparation of presentence reports prior to adjudication, in order to prevent possible prejudice to the defendant's case and to avoid undue incarceration prior to sentencing. The guidelines should reflect the following:

1. No presentence report should be prepared until the defendant has been adjudicated guilty of the charged offense unless:

a. The defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication; and

b. The defendant presently is incarcerated pending trial; and

c. Adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to adjudication.

2. Upon a showing that the report has been available to the judge prior to adjudication of guilt, there should be a presumption of prejudice, which the State may rebut at the sentence hearing.

Analysis

Under the existing statutory authorization for the preparation of presentence reports within the Commonwealth, such reports are not initiated nor requested until after formal adjudication is completed and a verdict of guilty rendered by the trial judge.[1] In the overwhelming majority of instances where a presentence report is filed, the procedures are not begun until after the presiding judge has found the defendant guilty and the formal trial is over.[2]

In the past a comparatively small number of cases has arisen where the judge has authorized the probation and parole officer to proceed in the compilation of data on an individual before either a plea of guilty or a conviction. Nearly all of these cases share a common set of circumstances, those being that the judge had been directly involved in the prosecutor-defense negotiations beforehand, and, in anticipation of a plea of guilty and the acceptance of such by the judge, a presentence report was compiled in order to expedite the sentencing process. As the usual time necessary to compile a presentence report is two to six weeks, such a procedure allows the sentencing judge to have this document at the moment of a guilty plea, making a rapid passing of sentence feasible and avoiding a lengthy delay between the verdict and the start of incarceration.[3] Generally then, Virginia would appear to be in accord with the provisions suggested in NAC recommendations as to preparation and disclosure of the presentence report.

Alternative Standards

The American Bar Association has prepared its own standard for the preparation of the presentence report:

2.4 When prepared.

a. Except as authorized in subsection (b), the presentence investigation should not be initiated until there has been an adjudication of guilt.

b. It is appropriate to commence the presentence investigation prior to an adjudication of guilt only if:

i. the defendant, with the advice of counsel if he so desires, has consented to such action; and

ii. adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to an adjudication of guilt. The court should be authorized, however, to examine the report prior to the entry of a plea on request of the defense and prosecution.[4]

Footnotes

[1]Code of Virginia, Sec. 53-278.1 (1972).

[2]Interview with Mr. W. E. Boldin, Jr., Acting Director, Division Probation and Parole Services, Department of Corrections, July 1, 1974.

[3]Ibid.

[4]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), p. 486.

Standard 5.16

Disclosure of Presentence Report

Sentencing courts immediately should adopt a procedure to inform the defendant of the basis for his sentence and afford him the opportunity to challenge it.

1. The presentence report and all similar documents should be available to defense counsel and the prosecution.

2. The presentence report should be made available to both parties within a reasonable time, fixed by the court, prior to the date set for the sentencing hearing. After receipt of the report, the defense counsel may request:

a. A presentence conference, to be held within the time remaining before the sentencing hearing.

b. A continuance of one week, to allow him further time to review the report and prepare for its rebuttal. Either request may be made orally, with notice to the prosecutor. The request for a continuance should be granted only:

(1) If defense counsel can demonstrate surprise at information in the report; and

(2) If the defendant presently is incarcerated, he consents to the request.

Analysis

Under the Virginia statute governing the procedures surrounding the preparation and disclosure of a presentence report, the accused must be granted access to the information compiled and released to the sentencing judge. The Code of Virginia specifically states:

> The probation officer shall file his report in open court in the presence of the accused who shall be advised of the contents of the same and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter which he may desire to present. The report of the investigation shall be filed as a part of the record of the case.[1]

Thus, the statutory provisions mandate that the defendant be apprised of the contents of this document. In addition, the attorney for the Commonwealth likewise must be apprised of the contents. In practice, the probation and parole officer does make the report available to both the Commonwealth's Attorney and the counsel for the accused five days before the data is released in open court, allowing the preparation of rebuttal to the contents.[2] There is no provision in Virginia law for a presentence conference as envisioned by the NAC recommendations.

Alternative Standards

The American Bar Association has developed standards regarding the disclosure of the presentence report, which state:

> 4.3 Presentence report: disclosure, general principles.
>
> The presentence report should not be a public record. It should be available only to the following persons or agencies under the conditions stated:
>
> i. The report should be available to the sentencing court for the purpose of assisting it in determining

the sentence. The report should also be available to all judges who are to participate in a sentencing council discussion of the defendant (section 7.1);

ii. The report should be available to persons or agencies having a legitimate professional interest in the information likely to be contained therein. Examples of such persons or agencies would be a physician or psychiatrist appointed to assist the court in sentencing, an examining facility, a correctional institution, or a probation or parole department;

iii. The report should be available to reviewing courts where relevant to an issue on which an appeal has been taken;

iv. The report should be available to the parties under the conditions stated in section 4.4.

4.4 Presentence report: disclosure; parties.

a. Fundamental fairness to the defendant requires that the substance of all derogatory information which adversely affects his interests and which has not otherwise been disclosed in open court should be called to the attention of the defendant, his attorney, and others who are acting on his behalf.

b. This principle should be implemented by requiring that the sentencing court permit the defendant's attorney, or the defendant himself if he has no attorney, to inspect the report. The prosecution should also be shown the report if it is shown to the defense. In extraordinary cases, the court should be permitted to except from disclosure parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which has been obtained on a promise of confidentiality. In all cases where parts of the report are not disclosed under such authority, the court should be required to state for the record the reasons for its action and to inform the defendant and his attorney that information has not been disclosed. The action of the court in excepting information from disclosure should be subject to appellate review.

c. The resolution of any controversy as to the accuracy of the presentence report should be governed by the principles stated in sections 4.5(b), 5.3(d), 5.3(f), and 5.4(a).

4.5 Presentence report: time of disclosure; presentence conference.

a. The information made available to the parties under section 4.4 should be disclosed sufficiently prior to the imposition of sentence as to afford a reasonable opportunity for verification.

b. In cases where the presentence report has been open to inspection, each party should be required prior to the sentencing proceeding to notify the opposing party and the court of any part of the report which he intends to controvert by the production of evidence. It may then be advisable for the court and the parties to discuss the possibility of avoiding the reception of evidence by a stipulation as to the disputed part of the report. A record of the resolution of any issue at such a conference should be preserved for inclusion in the record of the sentencing proceeding (section 5.7(a)(iii).[3]

Footnotes

[1]Code of Virginia, Sec. 53-278.1 (1972)

[2]Interview with Mr. W. E. Boldin, Jr., Acting Director, Division of Probation and Parole Services, Department of Corrections, July 11, 1974.

[3]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 436, 438, 440.

Standard 5.17

Sentencing Hearing—Rights of Defendant

Sentencing courts should adopt immediately the practice of holding a hearing prior to imposition of sentence and should develop guidelines for such hearing reflecting the following:

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

a. To be represented by counsel or appointed counsel.

b. To present evidence on his own behalf.

c. To subpena witnesses.

d. To call or cross-examine the person who prepared the presentence report and any persons whose information, contained in the presentence report, may be highly damaging to the defendant.

e. To present arguments as to sentencing alternatives.

2. Guidelines should be provided as to the evidence that may be considered by the sentencing court for purposes of determining sentences, as follows:

a. The exclusionary rules of evidence applicable to criminal trial should not be applied to the sentencing hearing, and all evidence should be received subject to the exclusion of irrelevant, immaterial, or unduly repetitious evidence. However, sentencing decisions should be based on competent and reliable evidence. Where a person providing evidence of factual information is reasonably available, he should be required to testify orally in order to allow cross-examination rather than being allowed to submit his testimony in writing.

b. Evidence obtained in violation of the defendant's constitutional rights should not be considered or heard in the sentence hearing and should not be referred to in the presentence report.

c. If the court finds, after considering the presentence report and whatever information is presented at the sentence hearing, that there is a need for further study and observation of the defendant before he is sentenced, it may take necessary steps to obtain that information. This includes hiring of local physicians, psychiatrists, or other professionals; committing the defendant for no more than 30 days to a local or regional diagnostic center; and ordering a more complete investigation of the defendant's background, social history, etc.

Analysis

Under existing Virginia statutes, there is no provision for the sentencing hearing as recommended by the Commission. Virginia statutes provide that the jury or the presiding judge shall fix punishment within the limits of the law.[1] Thus, as Virginia has no provision for sentencing hearings, the standards promulgated regarding defendant rights are currently inapplicable to the criminal procedures of the Commonwealth. Implementation of such a proposal would require a basic statutory change by the legislature.

Alternative Standards

National organizations have not been as specific as the NAC concerning the elements that are necessary in order to guarantee fairness at the sentencing hearing. The position of the National Council on Crime and Delinquency is typical:

> There shall be a hearing on the sentence and the defendant shall be given reasonable notice of it. At the hearing he shall have the right to subpoena and present witnesses and to confront and cross-examine those who have rendered reports to the court.[2]

Footnotes

[1] Code of Virginia, Sec. 19.1-291 (1960).

[2] Model Sentencing Act (New York: National Council on Crime and Delinquency, 1968), Section 10.

Standard 5.18

Sentencing Hearing—Role of Counsel

Sentencing courts immediately should develop and implement guidelines as to the role of defense counsel and prosecution in achieving sentencing objectives.

1. It should be the duty of both the prosecutor and defense counsel to:

a. Avoid any undue publicity about the defendant's background.

b. Challenge and correct, at the hearing, any inaccuracies contained in the presentence report.

c. Inform the court of any plea discussion which resulted in the defendant's guilty plea.

d. Verify, to the extent possible, any information in the presentence report.

2. The prosecutor may make recommendations with respect to sentence. He should disclose to defense counsel any information he has that is favorable or unfavorable to the defendant and is not contained in the presentence report.

3. It should be the duty of the defense counsel to protect the best interest of his client. He should consider not only the immediate but also the long-range interest in avoiding further incidents with the criminal justice system. He should, to this end:

a. Challenge, and contradict to the extent possible, any material in the presentence report or elsewhere that is detrimental to his client.

b. Familiarize himself with sentencing alternatives and community services available to his client and, to the extent consistent with his position as an officer of the court and a servant of society, recommend that sentence which most accurately meets the needs of his client and enhances his liberty.

Analysis

Regarding the role of counsel in sentencing hearings, as stated in Standard 5.16, Virginia currently has no provisions for dual trial as assumed in this Standard. However, the respective counsels do play a role in sentencing under Virginia criminal procedures. Under existing practices, the duties listed under subpoint one are provided for and carried out in Virginia court procedures and the rules of the State Bar. The same is true for the listed duties of the defense counsel, who may challenge the contents of the presentence report (see Standard 5.14, Requirements for Presentence Report and Content Specification) and may make a recommendation regarding what length or type of sentence best suits his client.

Finally, Commonwealth's Attorneys were surveyed regarding the role they play in making a sentence recommendation in courts in their respective jurisdictions. Table 5.18 shows the distribution of responses to these questions. Of the 65 responding Commonwealth's Attorneys, 59 or 90.76 percent report that customarily they are allowed to make a sentencing recommendation. Thus, the overwhelming majority do customarily make a recommendation; seven out of ten respondents reported their recommendations are followed in at least 70 percent of the cases involved, which suggests that the Commonwealth's Attorneys play a major role in assisting the court in determining sentence.

Alternative Standard

The American Bar Association has drafted rather extensive alternate standards as to the roles the respective counsels should pay in the sentencing process:

5.3 Duties of counsel

a. The duties of the prosecution and defense attorneys do not cease upon conviction. While it should be recognized that sentencing is the function of the court, the attorneys nevertheless have a duty of assisting the court in as helpful a manner as possible.

b. The prosecutor should recognize that the severity of the sentence is not necessarily an indication of the effectiveness or the efficiency of his office. In addition, the prosecutor, no less than the judge, has the duty to resist public clamor or improper outside pressure of any sort.

c. Although there will be occasions when sentencing recommendations by the prosecutor are appropriate, the prosecutor ordinarily should not make any specific recommendations as to the appropriate sentence.

d. The duties of the prosecutor with respect to each specific sentence should include the following steps:

i. The prosecutor should satisfy himself that the factual basis for the sentence will be both adequate and accurate, and that the record of the sentencing proceeding will accurately reflect relevant circumstances of the offense and characteristics of the defendant which were not disclosed during the guilt phase of the case:

(a) If the prosecutor has access to the presentence report, he should measure it against information at his disposal and prepare himself to amplify parts which do not sufficiently reveal matters which are relevant to a proper sentence. The prosecutor should also take proper steps to controvert any inaccuracies in the report. The first such step should normally involve an attempt to avoid the formal production of evidence in open court by reaching an informal agreement with the defense attorney;

(b) If the prosecutor does not have access to the presentence report, he should present at the sentencing proceeding those facts at his disposal which are not known by him to be before the court and which are relevant to a proper sentence.[1]

Footnotes

[1]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 444, 446.

TABLE 5.18 - 1

Role of Commonwealth's Attorney in Sentencing

	Yes		No		No Response	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Are you customarily allowed to make a recommendation for the Commonwealth as to disposition or length of sentence?	59	90.76	4	6.15	2	3.07
If Yes, how frequently is the recommendation followed?						
A. 90 to 100% of cases involved			31	47.69		
B. 70 to 89%			16	24.61		
C. 50 to 69%			7	10.76		
D. 25 to 49%			4	6.15		
E. Under 25%			1	1.53		

Standard 5.19

Imposition of Sentence

Sentencing courts immediately should adopt the policy and practice of basing all sentencing decisions on an official record of the sentencing hearing. The record should be similar in form to the trial record but in any event should include the following:

1. A verbatim transcript of the sentencing hearing including statements made by all witnesses, the defendant and his counsel, and the prosecuting attorney.

2. Specific findings by the court on all controverted issues of fact and on all factual questions required as a prerequisite to the selection of the sentence imposed.

3. The reasons for selecting the particular sentence imposed.

4. A precise statement of the terms of the sentence imposed and the purpose that sentence is to serve.

5. A statement of all time spent in custody or under supervision for which the defendant is to receive credit under Standard 5.8.

6. The record of the sentencing hearing should be made a part of the trial record and should be available to the defendant or his counsel for purposes of appeal. The record also should be transmitted to correctional officials responsible for the care or custody of the offender.

Analysis

As has been documented previously in Standards 5.17 and 5.18, there is no provision for a sentencing hearing in Virginia criminal procedures.

Alternative Standards

The American Bar Association has drafted standards for the imposition of sentence which read:

> 5.6 Imposition of Sentence.
>
> In addition to reaching the conclusions required as a prerequisite to imposition of the sentence selected, when sentence is imposed the court:
>
> i. should make specific findings on all controverted issues of fact which are deemed relevant to the sentencing decision;
>
> ii. normally should state for the record in the presence of the defendant the reasons for selecting the particular sentence to be imposed. In the exceptional cases where the court deems it in the best interests of the defendant not to state fully in his presence the reasons for the sentence, the court should prepare such a statement for inclusion in the record;
>
> iii. should assure that the record accurately reflects time already spent in custody for which credit will be given under the provisions of section 3.6; and
>
> iv. should state with care the precise terms of the sentence which is imposed.[1]

Footnotes

[1]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association (Washington, D.C.: American Bar Association, 1974), pp. 450, 452.

CHAPTER SIX

Classification of Offenders

Correctional specialists are in agreement that a strong classification system enhances the quality of correctional efforts. The National Advisory Commission definition of classification as "a process for determining the needs and requirements of those for whom correction has been ordered and for assigning them to programs according to their needs and the existing resources" is one that is widely accepted.

For some time the question has been raised as to whether Virginia's classification system for adult male offenders is a convenience for the administration or whether it benefits the rehabilitation of the incarcerated offender. As the analysis within indicates, the system of classification serves the offender more than it has in the past. The Virginia classification system is moving toward the model recommended by the NAC, but is far from being in total compliance. In fact, in the area of comprehensive community classification teams, Virginia finds itself in a situation of virtual noncompliance. As many highly trained specialists are a requirement of the community classification teams, large commitments of funds would be required in order to achieve compliance.

The data for this chapter were obtained from interviews with classification and management personnel of the Department of Corrections as well as an examination of written policy guidelines of the Department.

Standard 6.1

Comprehensive Classification Systems

Each correctional agency, whether community-based or institutional, should immediately reexamine its classification system and reorganize it along the following principles:

1. Recognizing that corrections is now characterized by a lack of knowledge and deficient resources, and that classification systems therefore are more useful for assessing risk and facilitating the efficient management of offenders than for diagnosis of causation and prescriptions for remedial treatment, classification should be designed to operate on a practicable level and for realistic purposes, guided by the principle that:

   a. No offender should receive more surveillance or "help" than he requires; and

   b. No offender should be kept in a more secure condition or status than his potential risk dictates.

2. The classification system should be developed under the management concepts discussed in Chapter 13 and issued in written form so that it can be made public and shared. It should specify:

   a. The objectives of the system based on a hypothesis for the social reintegration of offenders, detailed methods for achieving the objectives, and a monitoring and evaluation mechanism to determine whether the objectives are being met.

   b. The critical variables of the typology to be used.

   c. Detailed indicators of the components of the classification categories.

   d. The structure (committee, unit, team, etc.) and the procedures for balancing the decisions that must be made in relation to programming, custody, personal security, and resource allocation.

3. The system should provide full coverage of the offender population, clearly delineated categories, internally consistent groupings, simplicity, and a common language.

4. The system should be consistent with individual dignity and basic concepts of fairness (based on objective judgments rather than personal prejudices).

5. The system should provide for maximum involvement of the individual in determining the nature and direction of his own goals, and mechanisms for appealing administrative decisions affecting him.

6. The system should be adequately staffed, and the agency staff should be trained in its use.

7. The system should be sufficiently objective and quantifiable to facilitate research, demonstration, model building, intrasystem comparisons, and administrative decisionmaking.

8. The correctional agency should participate in or be receptive to cross-classification research toward

the development of a classification system that can be used commonly by all correctional agencies.

Analysis

Virginia correctional officials feel that they are in compliance with subpoint one of this standard which states "no offender should be kept in a more secure condition or status than his potential risk dictates."

The custody classifications in the Virginia system are five:

1. "T" is a non-security designation reserved for inmates in off-grounds or community correctional programs. Persons so classified may be assigned to educational release, work release, or any other programs that may be developed in the free communities. These inmates will be allowed off institutional grounds for scheduled program activities without being accompanied by an employee of the institution.

2. "A" is a minimum supervision classification that designates inmates whose assignments are limited to institutional grounds, but who may carry out such assignments without constant supervision of an employee. They may be eligible for furlough; otherwise when they leave institutional property they will be accompanied by an employee.

3. "B" denotes medium custody and requires that inmates so designated be under supervision of a correctional officer at all times.

4. "C" denotes close custody and requires inmates so designated to be under constant supervision of an armed correctional officer or confined at an institution with a perimeter under constant armed officer surveillance. Under such supervision or surveillance these inmates will be members of a general population.

5. "M" denotes maximum custody and is reserved for inmates in segregation units.[1]

The type of custody and the treatment program for an inmate are determined by a number of factors. Among the more important are the length of sentence, type of offense, and prior criminal pattern. The initial custody classification possibilities for inmates are categories two through four mentioned above.

Virginia classification officials state that the basic objective of the classification program is, as recommended by

NAC, the "social reintegration of offenders," but that the practical reality of limited resources makes for a less than ideal system at times. More specifically, the staff of three professionals and four paraprofessionals in the Classification Section must spend most of its time building a record for and getting to know the correctional system's new client. In addition, there are situations where all the places in a treatment program are filled and an alternate and less desirable program has to be found for the offender. The progress of offenders is cataloged by the Classification Section, but there is little sophisticated monitoring and evaluation of whether program methods are achieving their objectives. However, the Classification Section has recently been assigned two case analysts who will, as part of their duties, conduct statistical analyses. While the file compiled by the Classification Section is extensive (the file might include such items as personal identification, offense and sentence information, eligibility dates for parole consideration and discharge, medical and dental information, social background information, parole interviews if available, psychological evaluation, and other information furnished by criminal justice and social service agencies), detailed indicators of the components of the classification categories seem not to be part of the classification guidelines. This conclusion might be drawn from the following guideline for classification personnel: "Until a such time as definitive standards relating to custody classification are published by the Division of Corrections

designations must necessarily be based on a subjective evaluation of the inmate's tendency toward escape and/or violence."[2]

Virginia officials feel, again, that the classification system is consistent with individual dignity and basic concepts of fairness. The practicalities of limited resources, however, such as scarcity of bed space, no openings in a program, and individuals not being suitable for institutional placement close to their homes, may mean at times that the institutional assignment is less than the ideal for a particular offender.

With court imposed requirements and administrative efforts to systematize the classification process in the last few years, variability in the classification process is less than it has been in past years and seems closer to the NAC goal of "objective judgments rather than personal prejudices."

The offender is allowed some input toward determining the nature and direction of program participation while incarcerated. Soon after an offender is placed in the receiving unit he is given a form to complete which allows him to express his goals for the period of incarceration.

Whether a classification unit is inadequately staffed will vary with the evaluator. However, it seems fair to observe that the Classification Section in the Division of Adult Services is not over-staffed, given the importance of the function it performs. The staff of this central classification unit consists of three professional classification officers, four paraprofessionals, and eight clerical personnel.

The classification unit provides information upon request to other criminal justice social service agencies. The information readily provided to these agencies is that obtainable from the records on file with agencies such as the courts. Personal information gathered while an individual is incarcerated is not released unless an individual signs a waiver. Information in this category would be medical and psychological reports.

Alternative Standards

None.

Footnotes

[1]Department of Corrections, Division Guideline No. 802, issued March 15, 1974, p. 3.

[2]Ibid., p. 4.

Standard 6.2

Classification for Inmate Management

Each correctional agency operating institutions for committed offenders, in connection with and in addition to implementation of Standard 6.1, should reexamine and reorganize its classification system immediately, as follows:

1. The use of reception-diagnostic centers should be discontinued.

2. Whether a reception unit or classification committee or team is utilized within the institution, the administration's classification issuance described in Standard 6.1 also should:

   a. Describe the makeup of the unit, team, or committee, as well as its duties and responsibilities.

   b. Define its responsibilities for custody, employment, and vocational assignments.

   c. Indicate what phases of an inmate program may be changed without unit, team, or committee action.

   d. Specify procedures relating to inmate transfer from one program to another.

   e. Prescribe form and content of the classification interview.

   f. Develop written policies regarding initial inmate classification and reclassification.

3. The purpose of initial classification should be:

   a. To screen inmates for safe and appropriate placements and to determine whether these programs will accomplish the purposes for which inmates are placed in the correctional system, and

   b. Through orientation to give new inmates an opportunity to learn of the programs available to them and of the performance expected to gain their release.

4. The purpose of reclassification should be the increasing involvement of offenders in community-based programs as set forth in Standard 7.4, Inmate Involvement in Community Programs.

5. Initial classification should not take longer than 1 week.

6. Reclassification should be undertaken at intervals not exceeding 6 weeks.

7. The isolation or quarantine period, if any, should be as brief as possible but no longer than 24 hours.

Analysis

The State of Virginia began construction of a large reception-diagnostic center, but recently a decision was made to terminate that project. At present, policies for the construction of new facilities and the renovating of existing facilities are under reconsideration.

Guidelines of the Division of Adult Services describe the nature of the classification system and define its responsibilities. An inmate's program may not be changed without the approval of the Central Classification Board (the professional personnel of the Classification Section in Richmond). If institutional treatment personnel feel that a change in an inmate's program is desirable, the institutional treatment personnel can only recommend, as the Central Classification Board "has sole responsibility and authority to amend programs."[1] Within the program framework, however, institutions are allowed some leeway: "at any institution, authority to make assignments to academic school, vocational training, or work is vested in the Institutional Classification Committee, so long as the assignments are consistent with the inmate's program."[2]

The general purpose of classification guidelines seems to be in compliance with the NAC recommendation that initial classification should be to screen inmates for safe and appropriate placements. The purpose of classification in Virginia is stated in the following terms:

> ... every inmate assignment be made consistent with the treatment program that was developed in light of the individual's strengths, weaknesses, attitude, and interest. It is through proper assignments that opportunities

> are made available to the inmate to improve himself. Nowhere in the classification process is there a place for arbitrary, capricious, or whimsical assignments. Job placement needs of the institution must give way to program needs of the inmate when they conflict.[3]

Formal orientations for new inmates have been irregular events in the Virginia correctional system. At one time handbooks were distributed to all new inmates going into the penitentiary in Richmond, but it seems that the more formal orientation and the distribution of the handbooks ended when the supply of handbooks was exhausted. The only facility conducting a formal orientation for new inmates on a regular basis seems to be the Southampton Correctional Center. Correctional officials expect that in the future a structured orientation for new inmates will be institutionalized.

Initial classification in the Virginia system takes approximately three weeks which is longer than the NAC recommendation of one week. Virginia officials feel that three weeks is necessary in order to gather and evaluate information on incoming offenders. With few exceptions, reclassification in the Virginia system takes place every six months. Officials indicate that the recommended six week intervals for evaluation of inmate progress is not a long enough period to make a meaningful evaluation; and, secondly, the staff is not large enough to effect reclassification every six weeks for all offenders in the system. Finally, since incoming prisoners are placed immediately into reception cells and classification activities are conducted in the receiving areas, the recommendation regarding isloation is not applicable to Virginia because there is no isolation or quarantine.

Correctional officials emphasize that classification is an area that will receive considerable upgrading in the near future. Positions such as psychologist, vocational rehabilitation specialist, and educational counselor have been recommended for addition to the staff of the Classification Section. Virginia officials feel that a very adequate battery of tests is administered to incoming offenders, but the classification system lacks, to a large degree, the capability to evaluate these tests and other classification data.

Alternative Standards

The Florida Division of Corrections is in disagreement with the section of this standard dealing with reception centers and six week reclassification periods:

> We are in general disagreement with sub-Standard 1 regarding the discontinuance of reception and diagnostic centers. Although we can see merit in a community classification process prior to an offender arriving at a reception center, we do not feel that this process can supplant our existing reception center. The Division is considering the establishment of a second reception unit in the South Florida area. However, we are not enthusiastic regarding the establishment of regionalized reception centers in the various institutions because it is not economically feasible and we feel it will pose some management problems within the various institutions.
>
> We generally disagree with the provision in sub-Standard 6; that reclassification should be undertaken at intervals not exceeding six weeks. We think it would be rare indeed for significant progress to occur in such a brief time period. However, we are of the opinion that reclassification should occur more often than is current practice and we recommend reclassification every four months. To implement this stepped up procedure, it would be necessary for the Division to request additional classification position.

Footnotes

[1]Department of Corrections, Division Guideline No. 802, issued March 15, 1974, p. 2.

[2]Ibid.

[3]Ibid., p. 6.

[4]Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Department of Health and Rehabilitative Services, February 1974), p. 90.

Standard 6.3

Community Classification Teams

State and local correctional agencies should establish jointly and cooperatively by 1978, in connection with the planning of community-based programs discussed in Chapter 7 and Chapter 9, classification teams in the larger cities of the State for the purpose of encouraging the diversion of selected offenders from the criminal justice system, minimizing the use of institutions for convicted or adjudicated offenders, and programming individual offenders for community-based programs. Establishment of community classification teams should be governed by Standard 6.1, Comprehensive Classification Systems, and the following considerations:

1. The planning and operation of community classification teams should involve State and local correctional personnel (institutions, jails, probation, and parole); personnel of specific community-based programs (employment programs, halfway houses, work-study programs, etc.); and police, court, and public representatives.

2. The classification teams should assist pretrial intervention projects in the selection of offenders for diversion from the criminal justice system, the courts in identifying offenders who do not require institutionalization, and probation and parole departments and State and local institutional agencies in original placement and periodic reevaluation and reassignment of offenders in specific community programs of training, education, employment, and related services.

3. The classification team, in conjunction with the participating agencies, should develop criteria for screening offenders according to:

   a. Those who are essentially self-correcting and do not need elaborate programming.

   b. Those who require different degrees of community supervision and programming.

   c. Those who require highly concentrated institutional controls and services.

4. The policies developed by the classification team and participating agencies also should consider the tolerance of the general public concerning degrees of "punishment" that must be inflicted. In this connection the participation of the public in developing policies, as discussed in Chapter 7, would be useful.

5. The work of the classification team should be designed to enable:

   a. Departments, units, and components of the correctional system to provide differential care and processing of offenders.

   b. Managers and correctional workers to array the clientele in caseloads of varying sizes and programs appropriate to the clients' needs as opposed to those of the agencies.

c. The system to match client needs and strengths with department and community resources and specifically with the skills of those providing services.

6. The classification team should have a role in recommending the establishment of new community programs and the modification of existing programs to involve volunteers, ex-offenders, and paraprofessionals as discussed in Chapter 7 and elsewhere in this report (see Related Standards). It should also have an evaluative and advisory role in the operation of community programs as they affect the fulfillment of the needs of offenders assigned to them.

7. The organization of the classification team should be flexible and involve rotating membership and chairmen selected on an alternating basis among participating agencies.

Analysis

State correctional officials indicate that nothing comparable to the system recommended in this standard is operating in Virginia, nor do these same officials foresee any such system by the year 1978. The State Board of Corrections, since July 1, 1974, has been authorized to pay two-thirds of salaries for classification officers in local jails (five facilities now have classification officers), so that the linkage of state and local classification programs may be effected once these systems are developed at each level.

Alternative Standards

The correctional community seems in agreement about the merit of this standard, but they also agree that few states approach the elements of this standard and that considerable financial resources would be needed to implement.[1]

Footnotes

[1]Standards and Goals Comparison Project, Corrections (Columbus: Ohio State University, 1974), pp. 78-79 and Florida Division of Corrections, Response to National Standards and Goals (Tallahassee: Department of Health and Rehabilitation, February 1974), p. 93.

CHAPTER SEVEN

Corrections and the Community

The National Advisory Commission's Task Force on Corrections recognizes the failure of massive, impersonal institutions far removed from population centers. It realizes the importance of working with the offender in his home community, or near it, where ties with family and friends can be used to advantage in rehabilitation. Because of this viewpoint this Task Force recommends that all correctional activities take place in the community. The community base, according to the NAC, must be an alternative to institutional confinement of an offender at any point in the correction process. The NAC argument for community-based corrections is tripartite: humanitarian, restorative, and managerial.

There are many types of community and transitional release programs that have demonstrated value in rehabilitating the offender and reducing the social costs of recidivism. Under work release, the offender is confined in an institution only at night and/or on weekends and is permitted to pursue "normal" life the rest of the time. Pre-release programs are designed to ease the transition from total confinement to freedom by involving people from the community who come to prison to provide information in areas of vital interest to the inmate who is about to be released.

Virginia's Department of Corrections is just beginning to develop its community-based correctional programs, although

the Division of Youth Services makes extensive use of group homes for juvenile offenders. Virginia does make use of work release, study release, and pre-release in the rehabilitation of inmates, but these programs are the extent of current community programs.

The research for this chapter consisted of interviews with officials in the Department of Corrections, and examination of the Code of Virginia and other pertinent documents.

Standard 7.1

Development Plan for Community-Based Alternatives to Confinement

Each State correctional system or correctional system of other units of government should begin immediately to analyze its needs, resources, and gaps in service and to develop by 1978 a systematic plan with timetable and scheme for implementing a range of alternatives to institutionalization. The plan should specify the services to be provided directly by the correctional authority and those to be offered through other community resources. Community advisory assistance (discussed in Standard 7.3) is essential. The plan should be developed within the framework of total system planning discussed in Chapter 9, Local Adult Institutions, and State planning discussed in Chapter 13, Organization and Administration.

Minimum alternatives to be included in the plan should be the following:

1. Diversion mechanisms and programs prior to trial and sentence.

2. Nonresidential supervision programs in addition to probation and parole.

3. Residential alternatives to incarceration.

4. Community resources open to confined populations and institutional resources available to the entire community.

5. Prerelease programs.

6. Community facilities for released offenders in the critical reentry phase, with provision for short-term return as needed.

Analysis

The National Advisory Commission recommends that each state correctional system develop a plan for community-based alternatives to confinement. The Code of Virginia authorizes such a plan:

> The Director of the Department of Welfare and Institutions is hereby authorized to establish and maintain such a system of community correctional facilities as he may from time to time purchase, construct or rent for the care, custody, education and rehabilitation of offenders sentenced to the penitentiary and who are deemed by the Department to have the potential for rehabilitation which justifies their confinement therein.
>
> The Director is further authorized to employ necessary staff personnel for such facilities and to promulgate such rules and regulations for the operation of such facilities as may be appropriate.[1]

As of the fall of 1974, other than two halfway houses, work release, study release, furlough, and a few other activities for inmates in the community, the only plan for community-based alternatives is that for a halfway house for women. The funds for this facility have not yet been appropriated. It is hoped that this venture will serve as a demonstration of what can be accomplished through the utilization of community-based programs.[2] Obviously, Virginia is not at all in compliance with the comprehensive community-based programs recommended in this standard.

Alternative Standards

The Association of State Correctional Administrators makes the following observation concerning this standard:

Target date 1978 unrealistic. Otherwise, completely acceptable.[3]

Footnotes

[1]Code of Virginia, Section 53-128.7 (1972).

[2]Joseph Lewis, Assistant Director, Community Corrections, Division of Adult Services, Interview September 11, 1974.

[3]"Rationale and Reasoning Behind the Ratings on the Standards and Goals" Study Committee of the Association of State Correctional Administrators, February 1974, p. 10.

Standard 7.2

Marshaling and Coordinating Community Resources

Each State correctional system or the systems of other units of government should take appropriate action immediately to establish effective working relationships with the major social institutions, organizations, and agencies of the community, including the following:

1. Employment resources—private industry, labor unions, employment services, civil service systems.

2. Educational resources—vocational and technical, secondary college and university, adult basic education, private and commercial training, government and private job development and skills training.

3. Social welfare services—public assistance, housing, rehabilitation services, mental health services, counseling assistance, neighborhood centers, unemployment compensation, private social service agencies of all kinds.

4. The law enforcement system—Federal, State, and local law enforcement personnel, particularly specialized units providing public information, diversion, and services to juveniles.

5. Other relevant community organizations and groups—ethnic and cultural groups, recreational and social organizations, religious and self-help groups, and others devoted to political or social action.

At the management level, correctional agencies should seek to involve representatives of these community resources in policy development and interagency procedures for consultation, coordinated planning, joint action, and shared programs and facilities. Correctional authorities also should enlist the aid of such bodies in formation of a broad-based and aggressive lobby that will speak for correctional and inmate needs and support community correctional programs.

At the operating level, correctional agencies should initiate procedures to work cooperatively in obtaining services needed by offenders.

Analysis

The Virginia correctional system has done a great deal to establish an effective working relationship with major employers in the state. As a result, there have been as many as 450 inmates involved in work release programs. The Department of Vocational Rehabilitation, the Virginia Employment Commission, Offender Aid and Restoration, and Aide-Sir are various agencies and organizations that have assisted in obtaining employment for those persons incarcerated within Virginia's penal system.[1]

Virginia's utilization of educational resources has been discussed in Standard 11.4, "Educational and Vocational Training," in this document.

The emphasis on the use of social welfare services is greater now due to the assistance of the Department of Vocational Rehabilitation. The DVR and Aide-Sir counselors attempt to provide individuals and families with needed assistance. The Veteran's Administration also provides services for inmates. Housing assistance is handled through the parole plan for an offender.

Standards 11.7, "Religious Programs," and 11.8, "Recreation Programs," discussed in this document include information on the working relationships of the Department of Corrections to relevant community organizations.

Advisory groups are now being established for every institution and will consist of representatives from many elements of the community. These groups will advise in decision-making situations. This venture is also viewed as an opportunity to inform citizens of the complexities of Virginia's

correctional system.[2] As of this time such advising bodies have not participated in lobbying for correctional and inmate needs.

Alternative Standards

The State of Oregon in their Proposed 1980 Standards and Goals recommends the following standards be implemented:

1.182 Correctional facilities holding prisoners will have the services of a Community Corrections Agent who will coordinate the needs and requirements of the prisoners with the available community resources. The use of volunteers should be continued and expanded.

1.183 All public agencies should be held accountable for making their particular services available to correctional clients in their jurisdiction.[3]

Footnotes

[1]Joseph Lewis, Assistant Director, Community Corrections, Division of Adult Services, Interview September 11, 1974.

[2]Ibid.

[3]Proposed 1980 Standards and Goals, Draft (Salem: Oregon Law Enforcement Council, April 8, 1974), p. 46.

Standard 7.3

Corrections' Responsibility for Citizen Involvement

Each State correctional system should create immediately: (a) a multipurpose public information and education unit, to inform the general public on correctional issues and to organize support for and overcome resistance to general reform efforts and specific community-based projects; and (b) an administrative unit responsible for securing citizen involvement in a variety of ways within corrections, including advisory and policymaking roles, direct service roles, and cooperative endeavors with correctional clients.

1. The unit responsible for securing citizen involvement should develop and make public a written policy on selection process, term of service, tasks, responsibilities, and authority for any advisory or policymaking body.

2. The citizen involvement unit should be specifically assigned the management of volunteer personnel serving in direct service capacities with correctional clientele, to include:

a. Design and coordination of volunteer tasks.

b. Screening and selection of appropriate persons.

c. Orientation to the system and training as required for particular tasks.

d. Professional supervision of volunteer staff.

e. Development of appropriate personnel practices for volunteers, including personnel records, advancement opportunities, and other rewards.

3. The unit should be responsible for providing for supervision of offenders who are serving in volunteer roles.

4. The unit should seek to diversify institutional programs by obtaining needed resources from the community that can be used in the institution and by examining and causing the periodic reevaluation of any procedures inhibiting the participation of inmates in any community program.

5. The unit should lead in establishing and operating community-based programs emanating from the institution or from a satellite facility and, on an ongoing basis, seek to develop new opportunities for community contacts enabling inmate participants and custodial staff to regularize and maximize normal interaction with community residents and institutions.

Analysis

The Bureau of Information and Communication in the Department of Corrections serves as the unit to inform and educate the general public on correctional issues. Further information on the operations of this unit can be found in Standard 11.3, "Social Environment of Institutions."

There is no citizen involvement unit in operation at this time in Virginia's correctional system.[1] However, there are plans for employing a coordinator for volunteer services in the near future. The functions of this position would include many of those specified in this standard.

Alternative Standards

The Ohio Standards and Goals Comparison Project presents extensive suggestions on the development of citizen involvement in corrections:

> The AMERICAN CORRECTIONAL ASSOCIATION (ACA) in its Manual of Correctional Standards outlines ways in which corrections personnel can develop plans to increase citizen involvement in their institutions. The manual recommends the creation of Citizens Advisory Committees representing the community's varied interests as a possible means of involving the local citizens in the community correctional centers' activities. The ACA also has extensive suggestions on how these Citizens Advisory Committees can operate in central correctional institutions. The following paragraph suggests a procedure for stimulating community participation:
>
> > A committee, headed by a responsible service club, which will work with parolees and establish communications between the public and the correctional system is formed under the auspices of the correctional agency. The committee must also include local members of the clergy, labor, education and industry. Each member is assigned by the correctional officials to work with parolees. A meeting is held monthly to report on the progress of parolees and to hear speakers in the field of corrections. To obtain understanding and cooperative action, correctional officials must first inform the community. The monthly meeting serves as a means of communications; it accelerates the learning process; it gives continuity to the program

> and kindles continued enthusiasm in the members. It is also a forum in which new ideas can be presented and in which local resources can be brought to bear on the problem. Although the community must be prepared to expect failures, it should have encouragement and support in continuing its efforts.[2]

Footnotes

[1]Joseph Lewis, Assistant Director, Community Corrections, Division of Adult Services, Interview September 11, 1974.

[2]Standards and Goals Comparison Project, Corrections (Columbus: Ohio State University, 1974), p. 85.

Standard 7.4

Inmate Involvement in Community Programs

Correctional agencies should begin immediately to develop arrangements and procedures for offenders sentenced to correctional institutions to assume increasing individual responsibility and community contact. A variety of levels of individual choice, supervision, and community contact should be specified in these arrangements, with explicit statements as to how the transitions between levels are to be accomplished. Progress from one level to another should be based on specified behavioral criteria rather than on sentence, time served, or subjective judgments regarding attitudes.

The arrangements and procedures should be incorporated in the classification system to be used at an institution and reflect the following:

1. When an offender is received at a correctional institution, he should meet with the classification unit (committee, team, or the like) to develop a plan for increasing personal responsibility and community contact.

2. At the initial meeting, behavioral objectives should be established, to be accomplished within a specified period. After that time another meeting should be held to make adjustments in the individual's plan which, assuming that the objectives have been met, will provide for transition to a lower level of custody and increasing personal responsibility and community involvement.

3. Similarly, at regular time intervals, each inmate's status should be reviewed, and if no strong reasons exist to the contrary, further favorable adjustments should be made.

4. Allowing for individual differences in time and progress or lack of progress, the inmate should move through a series of levels broadly encompassing movement from (a) initial security involving few outside privileges and minimal contact with community participants in institutional programs to (b) lesser degrees of custody with participation in institutional and community programs involving both citizens and offenders, to (c) partial-release programs under which he would sleep in the institution but have maximum participation in institutional and outside activities involving community residents, to (d) residence in a halfway house or similar noninstitutional residence, to (e) residence in the community at the place of his choice with moderate supervision, and finally to release from correctional supervision.

5. The presumption should be in favor of decreasing levels of supervision and increasing levels of individual responsibility.

6. When an inmate fails to meet behavioral objectives, the team may decide to keep him in the same status for another period or move him back. On the other hand, his behavioral achievements may

indicate that he can be moved forward rapidly without having to go through all the successive stages.

7. Throughout the process, the primary emphasis should be on individualization—on behavioral changes based on the individual's interests, abilities, and priorities. Offenders also should be afforded opportunities to give of their talents, time, and efforts to others, including other inmates and community residents.

8. A guiding principle should be the use of positive reinforcement in bringing about behavioral improvements rather than negative reinforcement in the form of punishment.

Analysis

The Virginia system varies substantially from the system recommended in this standard. Length of sentence and time served, different from the NAC recommendation, are very important factors in determining whether an inmate will be able to participate in community programs. As mentioned in the analysis of classification activities in Chapter Six, an inmate is not allowed to participate in community activities until he or she has spent at least six months in the system. Also, except for release programs in institutions, relatively few programs allowing community contact exist. In sum, a comprehensive classification system and related treatment programs do not exist in Virginia at present and do not seem likely to become reality in the next few years. The reader is referred to the analysis of Standards 6.1 and 6.2 if a description of the current classification system is desired.

Alternative Standards

None

CHAPTER EIGHT

Juvenile Intake and Detention

The main focus of this chapter is on the mechanisms used to divert juveniles from official processing (use of diversion by local policemen, intake screening, and informal dispositions) and on those events taking place prior to adjudication (filing a petition and release or detention). The Division of Youth Services is currently in the process of revising its standards for secure detention and court services for juveniles which may soon alter some aspects of youth offender processing discussed in this chapter. Adjudication refers to the process to determine whether the allegations of a petition are supported by the evidence beyond a reasonable doubt or by a preponderance of evidence.

The use of discretion on the part of the police in handling juveniles has been found to be more a function of informal police-community relations, the nature of the community, and its geographical location than the observance of abstract principles of law enforcement. The NAC recommends that jurisdictions establish legislation to facilitate early police screening techniques and to develop criteria and programs for their use. Virginia has only a few police departments that have promulgated guidelines for handling juvenile offenders.

Juveniles who are not diverted at this stage enter the juvenile justice system. The procedure of the juvenile court begins with a complaint against a child. Complaints or referrals can come from the police, other law enforcement agencies,

school authorities, social agencies, or citizens. Upon receiving a complaint or referral, a juvenile court probation officer or counselor investigates the case. This is a point where much informal service can occur. Informal service denotes any provisions made for the child without the filing of a petition. If a petition is filed, there are generally two hearings or, at least, two parts of a hearing, though they may take place consecutively. If a child denies the allegations and desires an attorney, then there must be, in effect, three hearings. The first one is when allegations were made and denied, the second one follows civil rules of evidence and procedure to establish the facts, and the third one is for the disposition of the case if the child is found delinquent.

The decision to detain a juvenile is another emphasis of this chapter. The Task Force on Corrections believes detention should only be used as a last resort and detention decisions should be made only by the court or intake personnel and not police officers. Instead of detention, release of children to parents or guardians, release to a third party with the consent of the parent or guardian and the child, and diversion into temporary nonresidential programs are recommended.

The constitutional rights of juveniles have been provided for under the decision In Re Gault, 387 U.S.1 (1967) which asserted a juvenile's right against self-incrimination and his right to counsel. A young person is entitled to the same warnings provided by the Miranda v. Arizona decision, 384 U.S. 436 (1966), for adults: i.e., a child in custody must be apprised of his right to counsel and the right to remain silent

while under questioning.

The defining of several terms common to the juvenile justice system assists in a fuller understanding of this system. The definitions come from the National Advisory Commission report. A "petition" is an application for an order of court or for some other judicial action. A "delinquent act" is an act that if committed by an adult would be called a crime. A delinquent act is to be differentiated from such noncrimes as "being ungovernable," "truancy," "incorrigibility," and "disobedience."

Standard 8.1

Role of Police in Intake and Detention

Each juvenile court jurisdiction immediately should take the leadership in working out with local police agencies policies and procedures governing the discretionary diversion authority of police officers and separating police officers from the detention decision in dealing with juveniles.

1. Police agencies should establish written policies and guidelines to support police discretionary authority, at the point of first contact as well as at the police station, to divert juveniles to alternative community-based programs and human resource agencies outside the juvenile justice system, when the safety of the community is not jeopardized. Disposition may include:

   a. Release on the basis of unfounded charges.

   b. Referral to parents (warning and release).

   c. Referral to social agencies.

   d. Referral to juvenile court intake services.

2. Police should not have discretionary authority to make detention decisions. This responsibility rests with the court, which should assume control over admissions on a 24-hour basis.

When police have taken custody of a minor, and prior to disposition under Paragraph 2 above, the following guidelines should be observed.

1. Under the provisions of Gault and Miranda, police should first warn juveniles of their right to counsel and the right to remain silent while under custodial questioning.

2. The second act after apprehending a minor should be the notification of his parents.

3. Extrajudicial statements to police or court officers not made in the presence of parents or counsel should be inadmissible in court.

4. Juveniles should not be fingerprinted or photographed or otherwise routed through the usual adult booking process.

5. Juvenile records should be maintained physically separate from adult case records.

Analysis

Standard 8.1 calls for police agencies to establish written policies and guidelines governing the discretionary diversion authority of police officers. The approaches of police to juvenile diversion vary from locality to locality. There seem to be few written policies that govern the behavior of a Virginia police officer in his dealing with juveniles.[1]

The police department of the City of Norfolk is one of the few to establish written guidelines for dealing with juveniles. In addition, Chesapeake, Virginia Beach, and Portsmouth have also developed written guidelines. The "Police Juvenile Handbook" put out by Norfolk's Department of Police includes such topics as when a juvenile requires police handling, the alternatives available to the police officer when a juvenile commits an offense, information on informal handling, and a list of applicable Virginia statutes and local ordinances.[2]

The Virginia police are in compliance with three of the methods of disposition recommended here (release on the basis of unfounded charges, referral to parents, and referral to juvenile court intake services), but the ability of policemen to refer juveniles to social agencies is questionable. Many believe that policemen are only able to do those things provided for in Section 16.1-197 (quoted at length below), but the Virginia Code is not clear.

When considering the statutory regulations dealing with a police officer's authority to make detention decisions, one

must review the changes that have been made to Section 16.1-197.

In 1973 the law read:

> Whenever a child under the age of eighteen years is taken into custody the officer taking custody, depending upon the circumstances existing at the time custody is taken, shall use the following procedure or such appropriate parts thereof:
>
> (1) If it is during such hours as the court is open, take the child immediately to the judge, clerk or probation officer, who may release the child to the custody of a parent, guardian, custodian or other person used by the court, either on bail or recognizance or otherwise; or the said judge, clerk or probation officer may order the child detained in such manner as it determines subject to further order of the court; or
>
> (2) If it is during such hours when the court is not open, the child may be released to the custody of a parent, guardian or custodian upon promise of such parent, guardian or custodian to bring the child to the court at such time as is fixed by rules of the court; or the child may be delivered by the officer to a probation officer; or in any case where the officer taking custody deems it to be to the best interest of the child, or in the best interest of the public, then the said officer, after first obtaining a warrant from any person authorized to issue criminal warrants, may take the said child to the special place of detention for juveniles or to a separate cell of the jail apart from criminals or vicious or dissolute persons.
>
> (3) Immediately upon a child being placed in detention other than by order of the court, or as soon thereafter as is reasonably practical, the officer taking the child into custody or another officer at his direction shall notify the judge of the juvenile and domestic relations court, or its clerk or probation officer, of such detention, and shall request that the judge issue a proper process and order of commitment therefor; the officer shall thereafter notify, or cause to be notified, as soon as is practical, a parent, guardian, or other person having custody of the child of said detention. (1950, p. 684; 1954, c. 270; 1956, c. 555; 1958, c. 344; 1973, c. 440.)[3]

The important amendment to this statute is found in (3) which reads as amended:

> Immediately upon a child being placed in detention other than by order of the court, or as soon thereafter as is reasonably practical, but not later than twenty-four hours from the time of taking custody, the officer taking the child into custody or another officer at his direction shall notify the judge of the juvenile and domestic relations district court, or its clerk or probation officer, of such detention, and shall request that the judge issue a proper process and order of commitment thereof; the officer shall thereafter notify or cause to be notified, as soon as practical, a parent, guardian, or other person having custody of the child of said detention.

According to the Code of Virginia, the 1973 amendment of this statute authorized:

> the officer to deliver the child to a probation officer, welfare worker or police officer assigned to juvenile cases, and deleted the former next-to-last paragraph of the section, authorizing the officer to take the child to a special place of detention or to a separate cell of the jail in certain circumstances...

The 1974 amendment inserted "but not later than twenty-four hours from the time of taking custody" which explained in a publication of the Department of Welfare and Institutions:

> Should the police take a juvenile into custody when the juvenile court intake service is not operating, the officer, if he deems it to be in the best interests of the child or the public, may obtain a warrant and place the child in detention. However, Code of Virginia Sec. 16.1-197, which governs this practice, was amended in 1974 to require the police to notify the juvenile court of the detention within 24 hours. The juvenile court will then conduct a detention hearing.[4]

In addition, regulations have been established so that all Virginia courts shall provide intake services on a twenty-four hour basis.

> Intake service shall be provided as needed. There shall be available a person designated to authorize the detention of juveniles on a continuance basis twenty-four hours a day, every day of the year. The implementation of intake services is a responsibility of the district director according to the unique situation existing in each area.[5]

An evaluation was begun in October of 1974 to assess to the degree to which localities are in compliance with this standard, but a report had not been developed by the writing of this report.[6]

A juvenile's right to remain silent is found in the Uniform Rules of Court for Virginia Regional Juvenile and Domestic Relations Courts. Rule 38 reads:

> A child who is the subject of a court proceeding because of the child's violation of law or of a required standard of behavior, or interrogation for the purpose of deciding whether to commence such a court proceeding, may remain silent as of right through any or all questions posed during such proceedings or interrogations, and shall if so advised.[7]

Rule 39 in this document provides for a juvenile's right to counsel:

> The parties may be represented by counsel retained by them in all proceedings. The court shall appoint counsel for the parties if it finds that they are indigent, in accord with Code 16.1-173, unless representation is competently and intelligently waived. Waiver by a child may be made only in the presence of his parents, guardian, or custodian. Upon request or on its own motion, the court may appoint separate counsel to represent any indigent party other than the child if the interests of the child and those of the party appear to conflict. The court shall appoint counsel for the child if, in its opinion, the interests of the child and those of his parents conflict or if counsel is necessary to meet the requirements of a fair hearing. Where the court appoints counsel under the provisions of this rule, it may, where appropriate, assess against the parents, guardian, or custodian, the costs of providing such counsel. Orders assessing costs of counsel may be enforced through contempt proceedings.
>
> Whenever notice of a right to counsel is given under these rules or by statute, it shall recite rights as stated in this rule.[8]

The notification of the parents of an apprehended youth is not addressed in the Virginia Code except when dealing with a detained child found in Section 16.1-197. The text of this

statute has been previously quoted. It requires that the officer notify the parent, guardian, or other person having custody of the child of the detention as soon as is practical.[9]

The use of extrajudicial statements made by a juvenile not in the presence of his parents or counsel is admissable in Virginia's Juvenile and Domestic Relations District Courts provided he has been apprised of and understands his rights under the Miranda decision.[10] This is essentially the same practice as occurs in the adult intake system. The age and mental condition of the juvenile are further considerations that are taken into account in permitting the use of extra-judicial statements made in the absence of parents or counsel.[11]

The fingerprinting and photographing of juveniles is regulated by Rule 41 of the Uniform Rules of Court for Virginia Regional Juvenile and Domestic Relations Courts. It states:

> A child may not be fingerprinted or photographed unless he has been taken into custody for a violation of law and the court has determined that there is probable cause to believe that the fingerprints or photographs must be taken for the purpose of establishing the court's jurisdiction over him. The court shall designate the official who shall take the fingerprints or photographs.
>
> Unless otherwise ordered by the court, originals and all copies of such fingerprints or photographs shall be destroyed after a disposition of the case has been made and shall not be filed in the court or with any other governmental unit or agency.[12]

Statute 16.1-163 provides for the maintaining of juvenile records physically separate from adult records. This statute contains the following:

> The police departments of the cities of the State, and the police departments or sheriffs of the counties, as

> the case may be, shall keep separate records as to violations of law committed by juveniles, and the Division of Motor Vehicles shall keep separate records as to violations of the motor vehicle law committed by juveniles, and such records shall be withheld from public inspection and shall be exhibited only to persons having a legal interest therein and with the express approval of the judge; provided, however, that records of violations of the motor vehicle laws with reference to the operation of such motor vehicles by juveniles shall be open to public inspection.[13]

Alternative Standards

The President's Commission on Law Enforcement and Administration of Justice's Task Force Report: Juvenile Delinquency makes the following recommendations dealing with the role of the police in intake and detention:

To improve our system of planned nonjudicial handling for delinquents:

a. First is the further limitation of referrals into the juvenile court system and the ability of that system to accept such referrals.

b. Second is the creation and strengthening of alternative agencies and organizations to deal with delinquents.

c. Third is the development of an improved capacity on the part of the police and juvenile court system to make appropriate dispositions and refer delinquents to alternative agencies and organizations.

Furthermore:

1. Formal guidelines need to be drawn for use by police in the exercise of their discretion. These guidelines would encourage police to make greater use of non-judicial means off-handling, and where appropriate to avoid the call for any intervention at all.

2. Use of external hearing practices.

3. Training should be instituted to provide police with an insight into the problems and needs of young people.

4. Alternatives to detention should be explored.[14]

The Commission on Law Enforcement and the Administration of Justice in Maryland in its Comprehensive Plan for 1973 states that the Maryland legislature have established a new system for juvenile intake:

> An intake consultant or other person authorized by the court is required to make a preliminary inquiry in cases of a child alleged to be delinquent, in need of supervision, neglected..., before a petition is filed in order to approve or disapprove the filing of the petition.[15]

Footnotes

[1]Kitty Parks, Juvenile Probation and Detention, Supervisor, Division of Youth Services, Interview August 2, 1974.

[2]"Police Juvenile Handbook," (Norfolk: Department of Police, 1974), contents and p. 1. For further discussion of this subject, see the treatment of standards 4.3, 14.2, and 14.5 in the companion volume in this series titled Law Enforcement.

[3]Code of Virginia, Section 16.1-197 (3).

[4]Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Court, Richmond State Board of Welfare and Institutions, June 1973, p. A-4.

[5]Ibid.

[6]Kitty Parks, Juvenile Probation and Detention, Supervisor, Division of Youth Services, Interview August 2, 1974.

[7]Uniform Rules of Conduct for Virginia Regional Juvenile and Domestic Relations Court, (Richmond: Department of Welfare and Institutions, 1970), Rule 38.

[8]Ibid., Rule 39.

[9]Code of Virginia, Section 16.1-197.

[10]Sidney G. Morton, Intake Supervisor, Richmond Juvenile and Domestic Relations District Court, Interview August 14, 1974.

[11]Ibid.

[12]Uniform Rules, op. cit. Rule 41.

[13]Code of Virginia, Section 16.1-163.

[14]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (Washington, D.C.: Government Printing Office, 1967), p. 428.

[15]Comprehensive Plan 1973 (Cockeysville, MD: Governor's Commission on Law Enforcement and the Administration of Justice, 1972), p. 330.

Standard 8.2

Juvenile Intake Services

Each juvenile court jurisdiction immediately should take action, including the pursuit of enabling legislation where necessary, to establish within the court organized intake services operating as a part of or in conjunction with the detention center. Intake services should be geared to the provision of screening and referral intended to divert as many youngsters as possible from the juvenile justice system and to reduce the detention of youngsters to an absolute minimum.

1. Intake personnel should have authority and responsibility to:

a. Dismiss the complaint when the matter does not fall within the delinquency jurisdiction of the court or is so minor or the circumstances such that no intervention is required.

b. Dismiss complaints which seem arbitrary, vindictive, or against the best interests of the child.

c. Divert as many youngsters as possible to another appropriate section of the court or to alternative programs such as mental health and family services, public welfare agencies, youth service bureaus, and similar public and private agencies.

2. Intake personnel should seek informal service dispositions for as many cases as possible, provided the safety of the child and of the community is not endangered. Informal service denotes any provision for continuing efforts on the part of the court at disposition without the filing of a petition, including:

a. Informal adjustments.

b. Informal probation.

c. Consent decrees.

3. Informal service dispositions should have the following characteristics:

a. The juvenile and his parents should be advised of their right to counsel.

b. Participation by all concerned should be voluntary.

c. The major facts of the case should be undisputed.

d. Participants should be advised of their right to formal adjudication.

e. Any statements made during the informal process should be excluded from any subsequent formal proceeding on the original complaint.

f. A reasonable time limit (1 to 2 months) should be adhered to between date of complaint and date of agreement.

g. Restraints placed on the freedom of juveniles in connection with informal dispositions should be minimal.

h. When the juvenile and his parents

agree to informal proceedings, they should be informed that they can terminate such dispositions at any time and request formal adjudication.

4. Informal probation is the informal supervision of a youngster by a probation officer who wishes to reserve judgment on the need for filing a petition until after he has had the opportunity to determine whether informal treatment is sufficient to meet the needs of the case.

5. A consent decree denotes a more formalized order for casework supervision and is neither a formal determination of jurisdictional fact nor a formal disposition. In addition to the characteristics listed in paragraph 3, consent decrees should be governed by the following considerations:

a. Compliance with the decree should bar further proceedings based on the events out of which the proceedings arose.

b. Consummation of the decree should not result in subsequent removal of the child from his family.

c. The decree should not be in force more than 3 to 6 months.

d. The decree should state that it does not constitute a formal adjudication.

e. No consent decree should be issued without a hearing at which sufficient evidence appears to provide a proper foundation for the decree. A record of such hearing should be kept, and the court in issuing the decree should state in writing the reasons for the decree and the factual information on which it is based.

6. Cases requiring judicial action should be referred to the court.

a. Court action is indicated when:

(1) Either the juvenile or his parents request a formal hearing.

(2) There are substantial discrepancies about the allegations, or denial, of a serious offense.

(3) Protection of the community is an issue.

(4) Needs of the juvenile or the gravity of the offense makes court attention appropriate.

b. In all other instances, court action should not be indicated and the juvenile should be diverted from the court process. Under no circumstances should children be referred to court for behavior that would not bring them before the law if they were adults.

Under the supervision of the court, review and monitoring procedures should evaluate the effectiveness of intake services in accomplishing the diversion of children from the juvenile justice system and reducing the use of detention, as well as appropriateness and results of informal dispositions.

7. Predetention screening of children and youths referred for court action should place into their parental home, a shelter, or nonsecure residential care as many youngsters as may be consistent with their needs and the safety of the community. Detention prior to adjudication of delinquency should be based on these criteria:

a. Detention should be considered a last resort where no other reasonable alternative is available.

b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings.

c. Detention decisions should be made only by court or intake personnel, not by police officers.

d. Prior to first judicial hearing, the juvenile ordinarily should not be detained longer than overnight.

e. Juveniles should not be detained in jails, lockups, or other facilities used for adults.

Analysis

The National Advisory Commission calls for an emphasis on diversion during the intake process. This concern is addressed in the following court services standards that are applicable in Virginia:

> The intake service component receives, reviews, and processes all complaints that come to the attention of the juvenile district court, compatible with the established procedure of the court and the provisions of the Code of Virginia... A major function of the intake service component is diversion. Intake subsequently refers and uses to the fullest possible extent all other helping agencies in the community.
>
> The diverting of cases from the judicial process by the intake service component shall, in addition to other cases, be specifically directed toward those cases referred to in Code 16.1-158, (1) a, b, c, d, e, and j.[1]

The NAC standard also calls for establishing "within the court organized intake services operating as a part of or in conjunction with the detention center." This situation does not exist in Virginia as intake services are the responsibility of the court system (Code of Virginia, Section 16.1-198).

The Virginia juvenile justice system has standards for intake services provided in the Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Court. This document states that:

> The intake officer shall determine the court's venue and jurisdiction in the case, pursuant to Section 16.1-158 and 160, Code of Virginia as amended.[2]

In addition, Statute 16.1-158 presents the following as the jurisdictional guidelines:

1. The custody, support, control, or disposition of a child:
    a. Whose parent or other person legally responsible for the care and support of such child is unable, or

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neglects or refuses when able so to do, to provide proper or necessary support, education as required by law, or medical, surgical or other care necessary for his well-being:

b. Who is without proper parental care, custody or guardianship;

c. Who is abandoned by his parent or other custodian;

d. Whose parent or parents or custodian for good cause desire to be relieved of his care and custody;

e. Whose custody or support is a subject of controversy; provided, however, that in such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in 16.1-161 therefor;

f. Whose occupation, behavior, environment, condition, association, habits or practices are injurious to his welfare;

g. Who deserts or is a fugitive from his home, or who is habitually disobedient or beyond the control of his parents or other custodian, or is incorrigible;

h. Who being required by law or his parents or custodian to attend school is a willful and habitual truant therefrom;

i. Who violates any State or federal law, or any municipal or county ordinance; provided, however, that in violations of federal law jurisdiction in such cases shall be concurrent and shall be assumed only if waived by the federal court;

j. Whose condition or situation is alleged to be such that his welfare demands adjudication as to his disposition, control, and custody, provided that jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction, as provided in 16.1-161 hereof;

k. Who violates within the county or municipality for which it is established any ordinance of a service district, within which such county or municipality is situated.

2. The commitment of a mentally defective or mentally disordered child who is within the purview of this law. Such commitment shall be in accordance with the provisions of chapters 3 (§37-61 et seq.),

6 (§37-154 et seq.) and 7 (§37-176 et seq.) of Title 37 of the Code.

3. Judicial consent to the marriage of a child or minor, or for his enlistment in the armed forces, or for surgical or medical treatment for a child, who has been separated from his parents or guardian and is in the custody of the court when such consent is required by law.

   a. Judicial consent for surgical or medical treatment for a child or minor when the consent of his parent or guardian is unobtainable because such parent or guardian is not a resident of this State or his whereabouts is unknown or he cannot be consulted with promptness, reasonable under the circumstances.

4. A minor who is charged with having violated, prior to the time he became eighteen years of age, any State or federal law, municipal or county ordinance, provided that jurisdiction in federal offenses shall be concurrent with federal courts and shall be assumed only if waived by the federal court. Such minor shall be dealt with under the provisions of this law relating to juveniles.

5. Any person seventeen years of age or over charged with deserting, abandoning or failing to provide support for any person in violation of law.

6. The enforcement of any law, regulation, or ordinance for the education, protection or care of children; provided, that in any case where a child over whom the court has jurisdiction is not qualified to obtain a work permit under other provisions of law, the court may, whenever the judge thereof in his sound judicial discretion deems it for the best interest of such child, grant a special work permit to such child, which permit shall be on forms furnished by the Department of Labor and Industry, but any special work permit granted pursuant to this authority shall be valid only for the employment for which it is issued, and may be restricted in any other manner, or cancelled at any time, by the court which granted the permit; and such permit shall conform, except as to the age of the child, to the provisions of chapter 5 (§40-96 et seq.) of Title 40 of this Code.

   The court shall forthwith transmit a copy of such permit to the Department of Labor and Industry, and shall likewise notify said Department of any subsequent restriction or cancellation of such permit.

7. The prosecution and punishment of persons charged with ill-treatment, abuse, abondonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against a child except murder and manslaughter; provided, that in prosecution for other felonies over which the court shall have jurisdiction, such jurisdiction shall be limited to the examining magistrate.

8. All offenses committed by one member of the family against another member of the family, except murder or manslaughter, when the person accused of such murder or manslaughter is eighteen years of age or over and the trial of all criminal warrants in which one member of the family is complainant against another member of the family; provided, that in prosecution of other felonies over which the court shall have jurisdiction, said jurisdiction shall be limited to that of examining magistrate. The word "family" as herein used shall be construed to include husband and wife, parent and child, brothers and sisters, grandparent and grandchild; and

9. Any violation of law the effect or tendency of which is to cause or contribute in any way to the disruption of marital relations or a home.[3]

Virginia's informal adjustment procedures as related to the juvenile justice system are in accord with a majority of NAC recommendations for informal service dispositions. Informal service as defined by the NAC denotes "any provisions for continuing efforts of the court to provide informal adjustment without the filing of a petition." An informal adjustment refers to the power vested in the intake staff to "dismiss complaints that seem arbitrary, vindictive, out of proportion, or against the best interests of the child." Rule 4 in the Uniform Rules of Court contains these procedures. They are as follows:

> If the intake officer decides to continue the intake process and to attempt the informal adjustment of the complaint, he shall explain to the parties that he intends to discuss various plans for continuing contact with the child by the probation department without the filing of a petition and wants to question the parties in regard to the child's general behavior, his

> school and home environment, and other similar factors bearing upon the proposed informal adjustment. The parties shall be informed that information obtained from them by the probation department during the intake period will not be admissible in evidence at the adjudicatory hearing, if one is had, that they may withdraw from the adjustment process at any time, and that the effort at informal adjustment shall not prevent the filing of a petition at a future date. The intake officer shall further inform the parties that informal adjustment shall not constitute an adjudication of jurisdiction and that if they controvert the allegations and wish the facts to be determined by the court at a hearing, no effort will be made to arrive at informal adjustment.[4]

In Virginia probation is a legal status, so in that sense there is no provision for informal probation in the Virginia juvenile system. There can exist a form of informal supervision if both parties are in mutual agreement. However, this method of informal service disposition is handled by court services.[5]

A consent decree is defined by the NAC as a "more formalized order for casework supervision and is neither a formal determination of jurisdictional fact nor a formal disposition."[6] Virginia does not have such a formalized consent decree. If both parties arrive at a mutual agreement for informal provision, then an informal decree can be established. The court decides whether or not the parties must sign the decree; the practice has been not to require the signing of such a document.

Those cases requiring judicial action are found in statute 16.1-158 which appears earlier in the text of this standard. As can be seen from this statute, there are many instances where juveniles have been referred to court for behavior that would not have brought them before the law if they were adults. The data, collected for participating courts, by the Bureau of Management Systems for 1973-1974, show 32.018 juvenile cases

recorded in the Virginia Juvenile Justice Information System (VAJJIS). The data breaks down as follows in terms of predominant offense: criminal, 14,168; status, 6,089, and custody, 5,121.

The system for reviewing and evaluating the effectiveness of intake services in Virginia is called the Standards Certification Process and is supervised by the Division of Youth Services. Under this process each jurisdiction is sent a data sheet which requests various types of information such as the total number of intake cases, the number of cases processed through the courts, the number placed in detention, the number of commitments, diversion rate, and intake disposition. This approach is a new method of evaluation which was approved in late October 1974.

Detention screening is the responsibility of the intake officer within the Virginia juvenile justice system.[7] The criteria for detaining children have been specified by statute:

> No child may be taken into immediate custody except:
>
> 1. With a summons endorsed by the judge of the juvenile court in accordance with the provisions of this law or with a warrant; or
>
> 2. When, in the presence of the officer who makes the arrest, a child has violated a city, town, or county ordinance or a State or federal penal law and the officer believes that such is necessary for the protection of the public interest; and
>
> 3. When the officer finds a child in such surroundings or condition that he considers it necessary that he take the child into immediate custody for the child's welfare; or
>
> 4. When there is good cause to believe that child has committed an offense which if committed by an adult would be a felony; or

5. When a child who has been committed to the State Board or some other agency escapes from the custody of the agency to which he was committed and the officer has knowledge of such fact; in which case no process is needed. (1950, p. 684; 1952, c. 419, c. 555; 1958, c. 344.)[8]

The juvenile detention process as operated in Virginia was handled in Standard 8.1 of this chapter.

Juveniles are detained in jails and lockups and represent 5 percent of the population of these facilities at any one time. Most jails in Virginia separate adults and juveniles as required by statute, but it seems that, for the smaller jails, "it is quite likely that the separation by sight and sound required by statutes is difficult to achieve."[10]

The intake officer has the responsibility of seeing that the child's case is docketed for the next juvenile court date.[11] The period of detention before the first judicial hearing may be longer than 24 hours especially in rural areas where a judge does not sit in the jurisdiction daily.[12]

Alternative Standards

In considering who should be and who should not be detained, the National Council on Crime and Delinquency has said:

> Children apprehended for delinquency should be detained for the juvenile court when, after proper intake interviews, it appears that casework by a probation officer would not enable the parents to maintain custody and control, or would not enable the child to control his own behavior.
>
> Children should not be detained for the juvenile court when after proper intake interviews, it appears that casework by a probation officer would be likely to help parents maintain custody and control or would enable the child to control his own behavior. Such children and others who should not be detained fall into the following groups:

a. Children who are not almost certain to run away or commit other offenses before court disposition or between disposition and transfer to an institution or another jurisdiction.

b. Neglected, and nondelinquent emotionally distrurbed children, and delinquent children who do not require secure custody but must be removed from their homes because of physical or moral danger or because the relationship between child and parents is strained to the point of damage to the child.[13]

The Juvenile Court Journal, in a special issue aimed at the new juvenile court judges, says that,

> "one of the most critical experiences a child can have after involvement in the juvenile court 'process' is detention or shelter care." The report goes on to say: "The placement of a child in detention or shelter is drastic action. A child must be detained only when a failure to do so would place the child or the community in danger."[14]

The message is, again, diversion away from the court system.

Footnotes

[1]Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Court (Richmond: Board of Welfare and Institutions, June 1973), p. A-4.

[2]Ibid., p. A-10.

[3]Code of Virginia, Section 16.1-158 (Supp. 1973).

[4]Uniform Rules of Court for Virginia Regional Juvenile and Domestic Relations Court (Richmond: Department of Welfare and Institutions, 1970), p. 4.

[5]Kitty Parks, Juvenile Probation and Detention Supervisor, Division of Youth Services, Interview August 2, 1974.

[6]National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 267.

[7]Minimum Standards, op. cit., p. A-10.

[8]Code of Virginia, Section 16.1-194, 1960.

[9]Code of Virginia, Section 16.1-197 (2), (1973 Supp.).

[10]Thomas Vocino, Virginia Jails (Richmond: Division of Justice and Crime Prevention, 1973), p. 11.

[11]Minimum Standards, op. cit., p. A-10.

[12]Kitty Parks, Juvenile Probation and Detention Supervisor, Division of Youth Services, Interview August 2, 1974.

[13]U.S. Department of Health, Education, and Welfare, Children's Bureau Publication No. 437-1966, Standards for Juvenile and Family Courts (Washington, D.C.: Government Printing Office, 1966), pp. 53-54.

[14]Handbook for New Juvenile Court Judges, Juvenile Court Journal, Special Issue, Vol. 23, No. 1 (Winter, 1972), p. 21.

Standard 8.3

Juvenile Detention Center Planning

When total system planning conducted as outlined in Standard 9.1 indicates need for renovation of existing detention facilities to accommodate an expanded function involving intake services or shows need for construction of a new juvenile detention facility, each jurisdiction should take the following principles into consideration in planning the indicated renovations or new construction.

1. The detention facility should be located in a residential area in the community and near court and community resources.

2. Population of detention centers should not exceed 30 residents. When population requirements significantly exceed this number, development of separate components under the network system concept outlined in Standard 9.1 should be pursued.

3. Living area capacities within the center should not exceed 10 or 12 youngsters each. Only individual occupancy should be provided, with single rooms and programming regarded as essential. Individual rooms should be pleasant, adequately furnished, and homelike rather than punitive and hostile in atmosphere.

4. Security should not be viewed as an indispensable quality of the physical environment but should be based on a combination of staffing patterns, technological devices, and physical design.

5. Existing residential facilities within the community should be used in preference to new construction.

6. Facility programming should be based on investigation of community resources, with the contemplation of full use of these resources, prior to determination of the facility's in-house program requirements.

7. New construction and renovation of existing facilities should be based on consideration of the functional interrelationships between program activities and program participants.

8. Detention facilities should be coeducational and should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing, and entertainment. Outdoor recreational areas are essential.

9. Citizen advisory boards should be established to pursue development of in-house and community-based programs and alternatives to detention.

10. Planning should comply with pertinent State and Federal regulations and the Environmental Policy Act of 1969.

Analysis

There are thirteen detention facilities located in various localities in Virginia. These facilities include the Norfolk Detention Home, Northern Virginia Regional Detention Home, Roanoke Juvenile Detention Home, Tidewater Detention Home (Chesapeake), Newport News Juvenile Detention Home, Richmond Detention Home, Shenandoah Valley Juvenile Detention Home (Staunton), Lynchburg Detention Home, W.M. Moore Detention Home (Danville), Rappahannock Juvenile Center (Fredericksburg), Highlands Juvenile Detention Home (Bristol), Chesterfield County Juvenile Detention Home and the New River Valley Detention Home (Christiansburg). Construction for a new facility, Crater Detention Home near Petersburg, has been approved and the facility is expected to open in July of 1975. A facility to accommodate Fairfax and Prince William jointly has been proposed along with a facility for Winchester.

There is great variation in the accessibility of these facilities to court services and community resources. One point brought out by a report of the John Howard Association is that "many Virginia communities are more than 50 miles from a juvenile detention facility."[1] This situation exists to a large degree because Section 16.1-201 of the Virginia Code provides for "three or more counties or city or any combination thereof" to make use of a common detention center.

Five of the thirteen detention homes have a capacity of 30 or more residents. They include Norfolk Detention Home (40), Northern Virginia Regional Juvenile Detention Home (40),

Tidewater Detention Home (52), Richmond Detention Home (52), W.M. Moore Detention Home (30). In the Proposed Minimum Standards for Secure Detention Homes, it is stated that no new secure detention facility shall be constructed with less than twenty or more than 30 beds.[2]

Subpoint three of this standard dealing with the capacity of living areas is not applicable to the architectural arrangement of Virginia's juvenile detention centers. The design of Virginia centers usually consists of two corridors, one for males and one for females, with individual rooms along them. The areas that are proposed requirements for secure detention homes in Virginia are: "an administrative section, a central activities section, quiet rooms, academic classrooms, a kitchen-dining-storage area, a mechanical room..."[3]

The security measures are well delineated in the Proposed Minimum Standards for Secure Detention Homes:

1. Security

    a. Outside security - see Section C "Site" 1, 4, 9, 10.

4. Sufficient setback lines shall be maintained so that children in outdoor play areas are not in direct contact with passers-by; exposure at windows is minimized; and passing of contraband is discouraged.

9. A security type fence shall enclose the outdoor playground area.

    a. If necessary to prevent contact with the public, the fence shall be shielded by planting or other screening devices.

    b. The fence shall be of guage galvanized chain link construction with a minimum height of 12 feet. (See specification in Appendix)

    c. All corners should consist of two 45° angles.

d. The upper inside six foot portion of the fence shall be covered with heavy galvanized woven wire with approximately 3/8 inch openings. This woven wire shall be attached with metal stripping and bolted to the inside of the chain link material. Colorbond Non-climable Maximum Security Fence, vinyl or resin clad, in 3/8 inch fabric weave may be substituted for the 2 inch mesh fence with upper 6 ft. covering of 3/8 inch galvanized woven wire.

e. The lower section of the fence shall be attached to a fixed horizontal base pipe; shall follow the terrain.

f. All posts, gate supports and similar items shall project to the outside of the fence.

g. At all points where the fence joins the building, and along the building, additional fencing shall be mounted to bring the overall level up to the minimum twelve foot height.

h. All gutters and similar installations shall be located at points where they may not be used for climbing.

i. A gate shall be located in the fence for entry of service trucks.

10. Landscaping of the site shall include grass, trees, and shrubs. Trees shall be located so as not to interfere with recreation or aid in escape.

b. Dormitories shall be secured through corridor doors.

c. All windows must be provided with flush-mounted heavy duty detention screens.

d. Glass and equal substitutes.

(1) In the security areas and where glass is not protected by screening, all glass shall be heavy, safety or tempered glass.

(2) Glass paneling or substitutes shall be used liberally in the interior of the home so that maximum visual control of children is provided - from the control unit through the corridors, into school rooms, the kitchen and dining areas.

(3) Security glass paneling, or equal substitute, is also required in quiet rooms and other areas where children can be viewed from central locations.

e. Locks and keying devices

(1) Door locks in all security areas shall be of heavy duty deadbolt type with heavy duty cylinder locks.

(2) Doors in the sleeping rooms shall be keyed on the exterior only.

(3) All locks in other sections of the building shall be tamper proof and heavy commercial grade.

(4) All individual sleeping room doors should be keyed identically.

(5) Outside doors shall be keyed under a separate master system.

(6) All other interior locks should be keyed to maximize efficiency and security.

f. Doors

(1) In the security areas, doors shall be heavy duty (16 ga. min) hollow metal mounted with non-removable pin type hinges.

(2) Doors in the administrative wing, kitchen and dining room and similar areas not requiring heavy duty security type can be of solid core wood or other construction meeting such standards.

(3) Paneled or light weight doors of any type shall not be used in the facility.

(4) No door shall be installed with spring latches in secure areas.

(5) All door jambs shall be of metal construction and have rounded edges.

(6) Doors to individual rooms shall be arranged alternately so that they are not directly across the corridor from each other.

(7) All doors shall open inwardly into the bedrooms.

(8) Doors to each of the sleeping rooms shall be constructed with an 8" x 4" viewing panel of tempered glass and undercut approximately one inch to provide ventilation. These doors shall not be equipped with louvered ventilation. Flush mounted finger pulls should be installed on the exterior of these doors.

g. Clothing hooks

All hooks shall be collapsible at twenty pounds downward pressure.

i. Alarms

Specified fire, smoke detection, and emergency alarm systems shall be installed throughout the home in accordance with specifications of State and local authorities.[4]

The Division of Youth Services has made use of an existing facility and converted it into a detention home only once. This was in the case of the Pulaski facility which has now closed as a result of the construction of the Christiansburg detention home.[5]

It is not clear the extent of use of community resources by those operating detention facilities, but substantial use seems to be made in some areas of the state. The "Detention Survey Report - Peninsula Planning District" stresses the need to make full use of community resources:

> Insure the availability of auxilliary community resources. There are a number of services which do not fall within the realm of juvenile corrections, but have a marked impact upon the functioning of the correctional system. These services include psychological and psychiatric services on relatively short notice, foster homes, facilities for youth who use or are addicted to drugs and special placements of emotionally disturbed and retarded children.[6]

The Proposed Minimum Standards for Secure Detention Homes guidelines previously quoted mention similar standards to those above for the construction of new facilities.

All of Virginia's detention homes are coeducational in the sense that boys and girls are both housed at the same facility. The degree to which there is interaction between girls and boys varies according to jurisdiction. The availability

and existence of supportive programs are established in the Proposed Minimum Standards. It calls for activity areas to include: one large room for small games, arts and crafts, and similar activities; two quiet TV areas adjoining the large room; and two or more academic classrooms.[7] The standards for education are:

1. A program of academic instruction shall be provided for every child detained beyond 72 hours excluding holidays.

2. The services of this program shall be in compliance with State and local laws pertaining to compulsory school attendance.

3. Such academic programs shall be administered by local school administration in consultation with the Home's Superintendent. The educational programs in secure detention shall be designed so as to develop interest, provide motivation, and demonstrate attainability of goals.

4. Employment, evaluation, and termination of all teachers shall be in consultation with and consensus of school administration and the Home's Superintendent.

5. Teachers provided by the local school systems to the Home's academic programs shall hold a valid Virginia Teacher's Certificate as required by the State Board of Education and shall be eligible for employment and all benefits of the public school system.

6. Academic instruction shall be conducted on a twelve month basis.[8]

This document further recommends that each site for a detention home include a playground no smaller than 200' x 200' for recreational activities. The guidelines for the playground are as follows:

a. The playground shall have a blacktop area large enough for shuffle board, basketball, volley ball, and similar sports.

b. The playground shall include a layout for a soft ball diamond.

c. Drinking fountains and restrooms shall be directly accessible to the playground.[9]

The guidelines for the recreational programs are:

1. The recreational program for detained children shall be interesting and attainable, recognizing children have varied levels of achievement and interest.

2. Group and individual participation shall be encouraged in indoor and outdoor programs with staff direction, supervision, and support being an active part of the program.

3. A reasonable period of time shall be provided each day for children to engage in recreational activities.

4. All Homes shall provide for an outdoor recreational area where security and visual supervision can easily be maintained, and unless restricted for health or security reasons, all children shall be allowed to engage in supervised out/indoor recreation on a daily basis.

5. Arts and crafts supplies, books, current magazines, games, and other indoor recreational materials shall be provided.[10]

The localities receive one hundred percent reimbursement for these activities which come under the category of "operational costs."

There is no formal system of citizen advisory councils as described in the NAC standard. However, several of the detention homes have citizens serving on committees to assist in overseeing the operation of the center. Those homes having such groups include Northern Virginia, Fredericksburg, Tidewater, Shenandoah Valley, Bristol, and Christiansburg. There is a provision in the Code of Virginia for the director of the Department of Corrections to establish an advisory council, but this council must not consist exclusively of citizen members. The statute reads:

> ... The Director may appoint an advisory council composed of judges, probation officers, superintendents of welfare, and others of demonstrated interest in children and youth, to consult and confer with him from time to time relative to the development and extension of the program of the division of supervision of probation and detention.[12]

Alternative Standards

Concerning decisions regarding the construction of new facilities, the National Council on Crime and Delinquency prefers, if a need is demonstrated, that regional centers be constructed which are planned and operated on a statewide basis rather than by localities.[13]

As to the feasibility of using existing residential facilities for detention centers, the NCCD is apprehensive of utilization of older buildings for detention centers:

> The disadvantage of utilizing old buildings for detention purposes is demonstrated in the many makeshift facilities in use today. The cost of maintenance and repair and the many unsatisfactory comprises in design are constant proof of the need for specially designed and constructed detention homes.[14]

Footnotes

[1]Comprehensive Long Range Master Plan for Juvenile and Youthful Offender Justice Systems in the Commonwealth of Virginia, (Chicago: John Howard Association, February 1974), p. 50.

[2]Proposed Minimum Standards for Secure Detention Homes Affiliated with Division of Youth Services - Department of Corrections, Sixth Draft, September 17, 1974, p. 11.

[3]Ibid., p. 38.

[4]Ibid., pp. 41-42. The regulations do not contain subcategory "h".

[5]Kitty Parks, Juvenile Probation and Detention Supervisor, Division of Youth Services, Interview October 9, 1974.

[6]"Detention Survey Report - Peninsula Planning District," (Richmond: Bureau of Juvenile Probation and Retention, Virginia Department of Welfare and Institutions, 1971), pp. 18-19.

[7]Proposed Minimum Standards for Secure Detention Homes Affiliated with Division of Youth Services - Department of Corrections, Sixth Draft, September 17, 1974, p. 40.

[8]Ibid., p. 30.

[9]Ibid., p. 39.

[10]Ibid., pp. 30-31.

[11]Ray Pardue, Coordinator of Group Homes, Division of Youth Services, Interview October 8, 1974.

[12]Code of Virginia, Section 16.1-203 (1960 Replacement Volume).

[13]Standards and Guides for the Detention of Children and Youth (New York, N.Y.: National Council on Crime and Delinquency, 1961), p. 107.

[14]Ibid.

Standard 8.4

Juvenile Intake and Detention Personnel Planning

Each jurisdiction immediately should reexamine its personnel policies and procedures for juvenile intake and detention personnel and make such adjustments as may be indicated to insure that they are compatible with and contribute toward the goal of reintegrating juvenile offenders into the community without unnecessary involvement with the juvenile justice system.

Personnel policies and procedures should reflect the following considerations.

1. While intake services and detention may have separate directors, they should be under a single administrative head to assure coordination and the pursuit of common goals.

2. There should be no discriminatory employment practice on the basis of race or sex.

3. All personnel should be removed from political influence and promoted on the basis of a merit system.

4. Job specifications should call for experienced, specialized professionals, who should receive salaries commensurate with their education, training, and experience and comparable to the salaries of administrative and governmental positions requiring similar qualifications.

5. Job functions and spheres of competency and authority should be clearly outlined, with stress on teamwork.

6. Staffing patterns should provide for the use of professional personnel, administrative staff, indigenous community workers, and counselors.

7. Particular care should be taken in the selection of line personnel, whose primary function is the delivery of programs and services. Personnel should be selected on the basis of their capacity to relate to youth and to other agencies and their willingness to cooperate with them.

8. The employment of rehabilitated ex-offenders, new careerists, paraprofessionals, and volunteers should be pursued actively.

9. Staff development and training programs should be regularly scheduled.

10. The standards set forth in Chapter 14, Manpower, should be observed.

Analysis

In Virginia, the intake and detention services of the juvenile justice system have separate directors. However, the standards are developed by a single administrator, that being the director of the Division of Youth Services.[1] Professional personnel in the Division operate under a merit system as recommended by the NAC.

Job descriptions have been written for the various positions in the juvenile justice system. These are found in the Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Courts and the Minimum Personnel Standards for Juvenile Detention Homes. Items that are included in the job descriptions are: "Distinguishing Features of the Work," Examples of Duties Characteristic of Positions in this Class," "Qualification Standards - Education and Experience, Knowledge and Skills". An example of such is as follows:

> CHILDREN'S SUPERVISOR II -- Distinguishing Features of the Work
>
> Provides custody and general care and supervises closely the activities of children detained in the detention home.
>
> Workers in this Class are immediately responsible for the primary custody, control and activities of children while in the program of the detention home. A Children's Supervisor's job usually involves shift work, and such positions are under the direct supervision of the Assistant Superintendents or other designated supervisory personnel.

Examples of duties characteristic of positions in this Class:

1. Stimulates children's interest and supervises their participation in a comprehensive activities program including basic arts and crafts, indoor and outdoor sports and table games; instructs and participates directly in various phases of the program.

2. Assigns and supervises children in daily light housekeeping tasks, such as making beds, dusting furniture, mopping floors, and assisting in the set-up and clean-up of meals.

3. As per assignment, eats with children at each meal and supervises seating and serving, as well as table manners and general behavior.

4. Assists in intake and release procedures, as established by the detention home policy.

5. Maintains basic discipline and control of children; observes children constantly to detect potentially dangerous or deceptive acts.

6. Through personal contacts, helps to relieve children's anxieties and tensions employing counseling procedures, but usually limited to current situations within the home.

7. Administers first-aid as required; administers medication as may be permitted by detention home policy.

8. Assists in maintaining a daily log of intake and release statistics, medication required and administered, unusual behavior, arrival and departure of visitors and other pertinent items of information as required by detention home policy.

9. As required, may serve as a shift supervisor and be assigned responsibilities normally assumed by the Children's Supervisor III (Unit Leader).

10. Performs other related work as required.

QUALIFICATION STANDARDS -- Education and Experience

A Bachelor's Degree from an accredited college or university with courses in the behavioral sciences.

Two years of work experience with children or teenage groups may be substituted for two years of academic credit towards a Bachelor's Degree. In no instance shall substitution be made for two years of Bachelor's credit; or

Completion of a two-year certificate or associate degree program in behavioral sciences from a community college or other college and two (2) years of full-time work experience with children or teenage groups, one of which must have been with delinquent youth, preferably in an institutional or group home setting.

Knowledge and Skills - Considerable knowledge of behavioral science principles and of current social and economic conditions; general knowledge of psychological and emotional problems involved in social maladjustment; ability to work positively and effectively with severly maladjusted children in situations involving considerable stress; knowledge of basic first-aid and physical hygiene; ability to organize and participate with children in a variety of recreational work and creative pursuits; ability to write and speak effectively.[2]

The recommended pay scale for the staff of Virginia's Juvenile Detention Homes is as follows:

Recommended Staff Salary Ranges and Personnel Practices

CLASS TITLE	SALARY RANGES
Superintendent III	13,728 - 25,600
Superintendent II	12,528 - 23,400
Superintendent I	11,472 - 21,460
Assistant Superintendent II	10,992 - 20,500
Assistant Superintendent I	10,512 - 19,600
Children's Supervisor III	10,032 - 18,700
Children's Supervisor II	8,400 - 15,675
Children's Supervisor I	7,032 - 13,128
Registered Nurse	7,680 - 14,328
Office Manager	8,400 - 15,675
Clerk-Accountant	6,720 - 12,528
House Manager	7,680 - 14,328
Custodian-Maintenance	5,640 - 10,512

CLASS TITLE	SALARY RANGES
Janitor	5,160 - 9,600
Cook	5,400 - 10,032
Cook's Helper	4,704 - 8,784
Laundress	4,704 - 8,784
Physician - Part-time	Contacted locally
School Teachers	Contacted locally

> The scales established for the above Detention Home employees, while shown in a fifteen (15) step range, will consist of six (6) step scales. These scales are adjustable so that they may be administered according to the needs of the locality or localities served. Salary scales shall start at the minimum step of the six step range adopted by the locality. The minimum step should be no lower than that which is paid comparable or like positions by the locality, but in no event shall the minimum base salary be higher than that paid to such positions. Comparable positions may be considered those of the local Court Service Units, requiring similar educational and work experience in their respective fields; and the local law enforcement personnel, for the Children's Supervisor position, not requiring a degree.[3]

These personnel standards are established by the Division and sent to the State Board of Personnel for approval.

Three probation officers working for the juvenile justice system are ex-offenders. These individuals attended college while imprisoned in the Virginia correctional system. In addition, some employees have themselves been on probation as juveniles. The Virginia Division of Youth Services is now looking into the prospects of hiring paraprofessionals. As of now, there are no activities to facilitate the employment of such persons.[4]

The use of volunteers is greater within the Division of Youth Services than it is within the Division of Adult Services. A full-time volunteer coordinator is available

to provide community resources for the juvenile justice system. Various uses of volunteers include: recreation activity aides, administrative assistants, juvenile probation volunteers, professional volunteer diagnostic staff, and citizenship training. In addition, the court services department utilizes volunteers for counseling and transportation purposes.

Staff training and development standards are outlined in the following:

> STAFF TRAINING STANDARDS -- The primary purpose of staff training and development is to provide competent services to the children brought before the court:
>
> (a) Orientation and Training
>
> Orientation for new employees, ongoing in-service training, and opportunities for other formal education shall be available to all persons within the system... Orientation and training shall be available at two levels.
>
> 1. A uniform State training and orientation system shall be available for new employees working in the courts, detention homes, probation houses, etc. and shall include the following areas for which manuals shall be prepared and kept up to date;
>
> The Virginia Juvenile Code
> District Court Structure (Policies and Procedures)
> Individual Constitutional Rights
> Basic Criminal Law
> Social History Preparation
> Resources on the Federal, State, and Local Levels
> Role of other agencies
> Other area as need is demonstrated
>
> 2. Local orientation and training should be designed to fulfill local needs. It should include local aspects of the above areas

plus the philosophy of the local judge or judges and personal acquaintance with staff in all relevant local agencies.

(b) In-Service Training

1. In-service training should focus on the areas of skills and attitudes.

2. Each professional employee should spend a minimum of 40 hours per year in state, regional, or local staff development. This should involve time over and above administrators meetings and professional association meetings.

3. Each court service unit shall have a professional library. This shall include a comprehensive periodical library, available on the job, for current reading in the field.

The information above does not constitute final training standards. This area is undergoing further study. Results of the study will be presented to the State Board at a later date.[5]

Alternative Standards

The most extensive treatment of the policies of this standard is by the National Council on Crime and Delinquency. The following are relevant comments from their Standards and Guides for the Detention of Children and Youth.

Under no circumstances should political influence be exerted in the selection retention, or dismissal of personnel.

Staff should be selected on a merit basis with a six months' probationary period for all child-care and professional staff and a three months' probationary period for all other personnel.

Carefully selected volunteers, working under close staff supervision, should be recruited to demonstrate the need for an enriched program, not to substitute for essential operating staff.

Salaries of all staff in direct contact with children in detention should be considerably higher than

> salaries for comparable positions in other children's institutions. A salary schedule should be established to provide for periodic increases as an incentive to performance and in recognition of skill gained by experience.
>
> All personnel in direct contact with children, regardless of the nature of their jobs, should be carefully selected with regard to their emotional maturity, personal qualifications suitable for working with disturbed children and youth, and special training and skills required for the position.
>
> Provision should be made in the budget to enable administrative, social work, and group worker staff to participate in institutes and conferences away from the detention home. Leave of absence for special study should be arranged where appropriate.

The Children's Bureau of the Department of Health, Education, and Welfare has stated that "the intake worker should have access to legal advice."[7] This recommendation may require, in larger cities or districts, a lawyer, or possibly a law student, on duty or on immediate call around the clock.

As to a possible division of roles between custodial and treatment personnel, the Law Enforcement Assistance Administration has made the following statement:

> Where possible, there should be no separation of custodial and treatment roles. The offender has to learn how to internalize conflicts concerning prohibiting and helping figures. Such learning is hindered when there is a split role. Such a division is likely to breed bad relations which affect the offender directly or indirectly and encourage him to maintain and externalize his own tendencies to split.[8]

Footnotes

[1]Kitty Parks, Juvenile Probation and Detention Supervisor, Division of Youth Services, Interview August 2, 1974.

[2]Minimum Personnel Standards for Juvenile Detention Homes, (Richmond: Department of Welfare and Institutions, 1973).

[3]Ibid.

[4]Kitty Parks, Juvenile Probation and Detention Supervisor, Division of Youth Services, Interview August 2, 1974.

[5]Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Courts (Richmond: Board of Welfare and Institutions, June 1973), p. B-3.

[6]Standards and Guides for the Detention of Children and Youth, (New York, N.Y.: National Council on Crime and Delinquency, 1961), pp. 41-57.

[7]U. S. Department of Health, Education and Welfare, Children's Bureau Publication No. 437-1966, Standards for Juvenile and Family Courts, (Washington, D.C.: Government Printing Office, 1966), p. 54.

[8]U. S. Department of Justice, Law Enforcement Assistance Administration, Planning and Designing for Juvenile Justice, (Washington, D.C.: Government Printing Office, 1972), pp. 35-36.

CHAPTER NINE

Local Adult Correctional Facilities

The thrust of the National Advisory Commission's recommendations regarding local adult facilities is that they be significantly upgraded. The members of the Task Force on Corrections are of the opinion that this upgrading should occur within the context of total system planning and that local facilities should be made an integral part of the state correctional system. Short of total system planning and state control and operation, the Task Force recommends minimum standards for local facilities enforced through a system of state inspection, speedy and humane processing of offenders, and significant upgrading of staff and program capabilities.

The situation in Virginia is one of mixed compliance. Total system planning does not yet exist, and it is not likely that local facilities will soon become part of the state correctional system. However, there is substantial compliance with the recommendations regarding state inspection, processing of offenders, and internal administrative procedures. In addition, the upgrading of staff and program capabilities is progressing, especially in the larger local facilities in the state.

Regarding the methodology employed in this chapter, information was obtained largely through the use of a mailed

questionnaire to all local jails in Virginia. At the time of data processing for this chapter, the survey showed a return of 76 questionnaires out of a total of 98 mailed, for a response rate of 77 percent. In addition, the survey data was supplemented by data obtained from four states and Virginia local officials with considerable expertise in the area of local jails.

Standard 9.1

Total System Planning

State and local corrections systems and planning agencies should immediately undertake, on a cooperative basis, planning for community corrections based on a total system concept that encompasses the full range of offenders' needs and the overall goal of crime reduction. Total system planning for a particular area should include the following concepts.

1. While the actual methodology may vary, total system planning should include these phases:

a. A problem definition phase, including initial demarcation of the specific service area, as determined by the scope of the problem to be addressed. Its identification results in a preliminary statement of the correctional problem.

b. Data survey and analysis designed to obtain comprehensive information on population trends and demography, judicial practices, offender profiles, service area resources, geographic and physical characteristics, and political and governmental composition. Such information is needed to assess service area needs and capability and to determine priorities.

c. A program linkage phase involving examination of various ways to meet the problems identified. The linkages should emphasize service area resources that can be used to provide community-based correctional programs as alternatives to incarceration. Identification and development of diversion programs by program linkage will have significant implications for a service area's detention capacity and program requirements.

d. A definition and description of the correctional delivery system for the service area developed on the basis of results of the previous phases. Facility and nonfacility program requirements should be included.

e. Program and facility design, which proceed from delivery system definition. The resulting overall community correctional system design will vary with specific service area characteristics, but it should follow either a regional or a network approach.

(1) A network service delivery system should be developed for urban service areas with large offender populations. This system should have dispersed components (programs and facilities) that are integrated operationally and administratively. The network should include all components necessary to meet the needs of clientele and the community. Court intake, social investigation, and pretrial release and detention programs should be located near the courts. Other residential and non-

residential components should be located in the clients' communities or neighborhoods and should use existing community resources.

(2) A regionalized service delivery system should be developed for service areas that are sparsely populated and include a number of cities, towns, or villages. Such a system may be city-county or multicounty in composition and scope. Major facility and program components should be consolidated in a central area or municipality. Components should include intake and social investigations services, pretrial release services, pretrial and posttrial residential facilities, special programs, and resource coordination. Extended components, such as prerelease, work/education release, alcoholic and narcotic addict treatment, and related program coordination units, should be located in smaller population centers with provision for operational and administrative coordination with the centralized components. The centralized system component should be located in close proximity to court services and be accessible to private and public transportation.

2. All correctional planning should include consideration of the physical, social, and aesthetic impact imposed by any facility or network. Such consideration should be based on the National Environmental Policy Act of 1969.

3. All planning efforts should be made in the context of the master plan of the statewide correctional planning body.

4. Individual program needs, such as detention centers, should not be considered apart from the overall correctional service plan or the relevant aspects of social service systems (health, education, public assistance, etc.) that have potential for sharing facilities, resources, and experience.

5. All community correctional planning should give highest priority to diversion from the criminal justice system and utilization of existing community resources.

Analysis

While efforts have been made to envision the future direction of the correctional system in Virginia, none of these efforts are as comprehensive as recommended in Standard 9.1.[1] While the resources allocated to past planning efforts have been substantial, existing planning documents do not approach the scope and detail, for example, of the four volume master plan developed in Alabama.[2]

However, our research indicates that the in-house research and planning capability in the Department of Corrections is geared to short-term, compartmentalized planning. The research and planning staffs in the Department of Corrections have been increased with the creation of a unified correctional agency; however, it appears that the manpower capability for comprehensive and continual long-range planning does not yet exist.[3]

Alternative Standards

The National Jail Association (NJA) agrees with the idea of total system planning, but feels that such a concept should only be implemented when all elements in the political system are desirous of cooperation. The NJA committee put their objections in these terms:

> Basically the Committee of the National Jail Association agrees with the concept. However, it should be emphasized that in order to have total system planning, our constitutional concept regarding the separation of powers Judicial, Executive and Legislative, must be considered. Total system planning does not necessarily depend upon a statewide coordination of all the social

disciplines within the Criminal Justice System and would have to circumvent the existing constitutional limitations. Advance legislative planning must be initiated to bring about overall cooperative planning system.[4]

Footnotes

[1]See Blueprint for Action in Virginia Corrections (Richmond: Department of Welfare and Institutions, January 1974); Comprehensive Long Range Master Plan for the Adult Criminal Justice System in the Commonwealth of Virginia (Chicago: John Howard Association, April 1974); and Program Planning Committee, Looking Ahead (Richmond: Department of Welfare and Institutions, 1971).

[2]Corrections in Alabama: A Master Plan (Montgomery: Alabama Law Enforcement Planning Agency, 1974).

[3]For a detailed discussion of research and planning capabilities, see Chapter Fifteen.

[4]"Report of the National Jail Association on the Recommendations of the National Advisory Commission on Criminal Justice," Draft (Summer 1974), p. 6.

Standard 9.2

State Operation and Control of Local Institutions

All local detention and correctional functions, both pre- and postconviction, should be incorporated within the appropriate State system by 1982.

1. Community-based resources should be developed initially through subsidy contract programs, subject to State standards, which reimburse the local unit of government for accepting State commitments.

2. Coordinated planning for community-based correctional services should be implemented immediately on a State and regional basis. This planning should take place under jurisdiction of the State correctional system.

3. Special training and other programs operated by the State should be available immediately to offenders in the community by utilizing mobile service delivery or specialized regional centers.

4. Program personnel should be recruited from the immediate community or service area to the maximum extent possible. Employees' ties with the local community and identification with the offender population should be considered essential to community involvement in the correctional program. At the same time, professional services should not be sacrificed, and State training programs should be provided to upgrade employee skills.

Analysis

The likelihood of Virginia jails being incorporated within the state correctional system in the foreseeable future seems remote. The year 1982, recommended in this standard as the time by which state operation and control of local institutions should take place, is eight years in the future; however, state officials do not foresee a change from the current state role of setting minimum standards and assisting local governments financially in the provision of jail services. There are currently no instances where the state, directly or by means of a state authority, is providing community jail services. State operation of a proposed community facility to serve the rural communities of the Southeastern Planning District Commission was recommended in 1972, but the administrative arrangements for the facility have yet to be finalized.[1]

Although the likelihood of state operation and control of local facilities is minimal, the state nevertheless, as indicated above, performs an important role in the area of local adult corrections. State government provides limited funds for the construction of local jails ($25,000 or $100,000 per jurisdiction depending on the statutes involved), and plays a significant role in the areas of operational funding and performance auditing. State government has traditionally borne a large share of the cost of housing offenders. Reimbursement ranges from two-thirds to nine-tenths of operational costs.[2] Performance auditing is discussed in Standard 9.3 dealing with state inspection.

While state control of local jails is not anticipated in the near future, some change is taking place in the administrative arrangements under which jails are governed. In the past, there were many instances where two or more localities cooperated in the construction of a local jail. After construction, however, the jail would be operated by the sheriff of a single jurisdiction. A good example of such "consolidated" jails is the City of Fredericksburg facility, which serves Fredericksburg and King George and Spotsylvania Counties.

In September 1974, the new Albemarle-Charlottesville jail created a new kind of governing structure. Instead of a single official having responsibility for the facility, it is governed by a board of public officials and private citizens from two jurisdictions. The Albermarle precedent, which is authorized by statute,[3] may indicate a new approach to the governance of newly constructed local facilities serving more than one jurisdiction. A regional governing board was recommended as the most desirable administrative structure for a proposed facility for sentenced misdemeanants in the Peninsula area (Hampton-Newport News).[4]

Alternative Standards

With local governmental officials composing the majority of the membership, the National Jail Association is understandably unenthusiastic about State operation and control of local jails. The NJA prefers grant programs for localities to help them upgrade local criminal justice services.

An NJA Committee comments:

> Again if all the other aspects of these advisory recommendations were implemented, there would be no need for a State Central Operation with the exception of those persons who were a threat to the community and needed special treatment. All persons that could be utilized or programmed in the community based programs could be incorporated in local planning. If funds and capabilities are available to the local communities, the only thing that the State should be responsible for are those cases that could not participate in local programs. Since the states collectively have not provided programs, other than tokenism, it is not conceivable that they could have the resources and finances to provide adequate programs on a local basis. Subsidy programs for local Administrators and programs such as Pre-Trial Release, Diversionary Programs and programs that would prevent incarceration should be financed and instituted locally.[5]

Footnotes

[1] Southeastern Virginia Regional Correctional Facility (McLean, Virginia: Systems Science Development Corporation, September 1972), Chapter Six.

[2] Code of Virginia, Sections 53-179 and 53-180.

[3] Code of Virginia, Section 53-147.

[4] Design of An Adult Correctional System (New York: Gruzen and Partners, August 1974), pp. e-14 through e-28.

[5] "Report of the National Jail Association on the Recommendations of the National Advisory Commission on Criminal Justice," Draft, (summer 1974), p. 5.

Standard 9.3

State Inspection of Local Facilities

Pending implementation of Standard 9.2, State legislatures should immediately authorize the formulation of State standards for correctional facilities and operational procedures and State inspection to insure compliance, including such features as:

1. Access of inspectors to a facility and the persons therein.
2. Inspection of:
   a. Administrative area, including record-keeping procedures.
   b. Health and medical services.
   c. Offenders' leisure activities.
   d. Offenders' employment.
   e. Offenders' education and work programs.
   f. Offenders' housing.
   g. Offenders' recreation programs.
   h. Food service.
   i. Observation of rights of offenders.
3. Every detention facility for adults or juveniles should have provisions for an outside, objective evaluation at least once a year. Contractual arrangements can be made with competent evaluators.
4. If the evaluation finds the facility's programs do not meet prescribed standards, State authorities should be informed in writing of the existing conditions and deficiencies. The State authorities should be empowered to make an inspection to ascertain the facts about the existing condition of the facility.
5. The State agency should have authority to require those in charge of the facility to take necessary measures to bring the facility up to standards.
6. In the event that the facility's staff fails to implement the necessary changes within a reasonable time, the State agency should have authority to condemn the facility.
7. Once a facility is condemned, it should be unlawful to commit or confine any persons to it. Prisoners should be relocated to facilities that meet established standards until a new or renovated facility is available. Provisions should be made for distribution of offenders and payment of expenses for relocated prisoners by the detaining jurisdiction.

Analysis

Virginia has been a leader in the auditing of local jail operations. This role was assumed when the General Assembly in 1942 passed laws requiring the inspection of local jails by state officials. Since that time, the Department of Corrections, through its Office of Jail Superintendent, has inspected each jail in the state at least twice a year. Information is obtained on a wide range of jail operations, such as administration and record keeping, security and discipline, and other matters. The reports submitted by inspectors who make unannounced visits are used to insure a minimum standard of jail operation in the Commonwealth.[1] Of the items that Standard 9.3 recommends should be a part of any state inspection program, the only element that does not come under State review is the area of the employment of the jail inmate.

It appears that the Office of Jail Superintendent in the Bureau of Institutional Services is evolving into a technical assistance unit while retaining its traditional inspection responsibilities. In this regard, three of the members of the Jail Superintendent's office are responsible for the training of local jailers. In addition, the Office is now in the process of developing job descriptions for records clerks and classification specialists who might be hired by local jails.

On the advice of the Office of Jail Superintendent, the State Board of Corrections can close jails that do not meet

state standards. However, most deficiencies in jail facilities and operations are corrected by the localities long before serious consideration is given to the drastic alternative of closing a facility. The State Department of Corrections as a matter of policy seeks to correct deficiencies by working with local officials in a cooperative rather than authoritative fashion.

Alternative Standards

The National Jail Association is of the opinion that state as well as local facilities should be inspected, and that the inspection/audit responsibility should be placed organizationally in the Office of the Governor or the State's highest court. The NJA comments as follows:

> This committee unanimously agrees with the basic principles of State inspection of local facilities. However, we would like to make the following recommendations. In most states, inspections of local facilities normally take place under the Division of Corrections. There should be an enlargement of State inspection capabilities not only to include inspection of the local facilities, but should include inspection of the State facilities as well. This authority should be placed in a position of high priority either under supervision of the Governor's Office of the highest court of the State. The fact that inspectors operate under the umbrella of the Division of Corrections or a minor Correctional Agency dilutes the true effect of the Inspection Service.[2]

The Commission on Correctional Facilities and Services of the American Bar Association has recently published a lengthy operational profile handbook of jail inspection systems in Illinois and South Carolina which vary to a degree from Virginia's system.[3]

Footnotes

[1]Rules for Local Jails, Revised Draft Copy (Richmond: Department of Corrections, July 1974).

[2]"Report of the National Jail Association on the Recommendations of the National Advisory Commission on Criminal Justice," Draft (Summer 1974), pp. 5-6.

[3]Statewide Jail Standards and Inspection Project, Jail Inspection and Standards Systems in Illinois and South Carolina (Washington, D.C.: American Bar Association, April 1974). See also Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities (Washington, D.C.: American Bar Association, August 1974).

Standard 9.4

Adult Intake Services

Each judicial jurisdiction should immediately take action, including the pursuit of enabling legislation where necessary, to establish centrally coordinated and directed adult intake services to:

1. Perform investigative services for pretrial intake screening. Such services should be conducted within 3 days and provide data for decisions regarding appropriateness of summons release, release on recognizance, community bail, conditional pretrial release, or other forms of pretrial release. Persons should not be placed in detention solely for the purpose of facilitating such services.

2. Emphasize diversion of alleged offenders from the criminal justice system and referral to alternative community-based programs (halfway houses, drug treatment programs, and other residential and nonresidential adult programs). The principal task is identifying the need and matching community services to it.

3. Offer initial and ongoing assessment, evaluation, and classification services to other agencies as requested.

4. Provide assessment, evaluation, and classification services that assist program planning for sentenced offenders.

5. Arrange secure residential detention for pretrial detainees at an existing community or regional correctional center or jail, or at a separate facility for pretrial detainees where feasible. Most alleged offenders awaiting trial should be diverted to release programs, and the remaining population should be only those who represent a serious threat to the safety of others.

The following principles should be followed in establishing, planning, and operating intake services for adults:

1. Intake services should be administratively part of the judiciary.

2. Ideally, intake services should operate in conjunction with a community correctional facility.

3. Initiation of intake services should in no way imply that the client or recipient of its services is guilty. Protection of the rights of the accused must be maintained at every phase of the process.

4. Confidentiality should be maintained at all times.

5. Social inventory and offender classification should be a significant component of intake services.

6. Specialized services should be purchased in the community on a contractual basis.

7. The following persons should be available to intake service programs, either as staff members or by contract:

   a. Psychiatrists.
   b. Clinical psychologists.
   c. Social workers.
   d. Interviewers.
   e. Education specialists.

Analysis[1]

The detainee in Virginia is processed from the police lock-up and the local jail where lock-up facilities do not exist. Offenders are generally arraigned the first court day after arrest when magistrates set bond. Most misdemeanants are sentenced at the preliminary hearing, and little, if any, pre-trial investigative services are performed on misdemeanants.

As mentioned in the discussion of Standard 3.1 (Use of Diversion), it appears that at the present only limited use is made of diversionary processing alternatives. In the past, Virginia law allowed little discretion to police concerning issuance of citations or summons in lieu of arrest warrants. However, a recent change in the statutes by the Virginia General Assembly now authorizes the use of summons in all minor misdemeanor cases when authorized by the courts.[2] Discussion with the Research and Planning Section of the Richmond Police Bureau indicates that summons release has not resulted in a significant decline in arrests for the categories of crime covered.[3]

Although chronic alcoholics comprise a large portion of the recidivists committed to local jails and lock-ups (as the discussion of Standard 3.1 indicated), there is little diversion of these offenders from the criminal justice system. Usually, alcohol and drug offenders are processed into the jails and provided treatment while institutionalized -- where the local facility has paid or volunteer program staff.

Additionally, in some localities program agencies (such as Rubicon in Richmond) serve probationers who are primarily first offenders.

The jails of Virginia that have extensive records and formal classification programs provide, upon request, information to other criminal justice and social service agencies. As the number of jails with record clerks and classification officers is limited, however assessment, evaluation, and classification services to other agencies are limited for the state as a whole.[4] As mentioned elsewhere in this report, individuals on pre-trial status have more rights than those sentenced so that the participation in institutional programs is voluntary. The theory in this instance is that a person who has not been tried only loses the right to come and go as he pleases.

In Virginia, adult intake services involve police, courts, and local jails; thus intake services are not wholly a part of the judiciary. As classification programs of local jails are in direct and constant touch with relevant elements of the police and court systems, Virginia is at least partially in compliance with the recommendations that "intake services should operate in conjunction with a community correctional facility."[5] The charge against an individual and the amount of his bond are a matter of public record, but personal information gathered by classification specialists in local jails is kept confidential except when provided to other criminal justice and social service agencies.

Local inventory and classification are limited to a few facilities in the larger jurisdictions.

Except in the area of medicine, very few facilities purchase specialized services in the community.

Again, except in the larger jurisdictions, few jails provide the services of psychiatrists, clinical psychologists, social workers, interviewers, and educational specialists. For a discussion of the staffs of local jails in Virginia, the reader is referred to the analysis of Standard 9.6.

Alternative Standards

The Division of Corrections of the State of Florida is of the opinion that adult intake services should not be a part of the judicial system. Their comments are as follows:

> The Florida Division of Corrections is in general agreement with the principles that should be followed in establishing, planning and operating intake services for adults. However, we disagree with the first principle as we do not believe intake services should be an administrative part of the judiciary, but rather the responsibility of the detention component of the criminal justice system.[6]

Footnotes

[1]This section benefited from an interview with Mr. Ronald Jordan, Director of Classification, Richmond City Jail.

[2]Code of Virginia, Section 19.1-92.1 (Supp. 1973).

[3]Telephone inquiry with the Research and Planning Section, Bureau of Police, City of Richmond, September 11, 1974.

[4]Thomas Vocino, Virginia Jails: An Analysis and Compilation of Basic Statistics (Richmond: Virginia Division of Justice and Crime Prevention, 1973), p. 13.

[5]See the discussion of Standard 9.8 -- "Local Correctional Facility Programming."

[6]Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Florida Department of Health and Rehabilitative Services, February 1974), p. 118.

Standard 9.5

Pretrial Detention Admission Process

County, city, or regional jails or community correctional centers should immediately reorganize their admission processing for residential care as follows:

1. In addition to providing appropriate safeguards for the community, admission processing for pretrial detention should establish conditions and qualities conducive to overall correctional goals.

2. Detention center admission staffing should be sufficient to avoid use of holding rooms for periods longer than 2 hours. Emphasis should be given to prompt processing that allows the individual to be aware of his circumstances and avoid undue anxiety.

3. The admission process should be conducted within the security perimeter, with adequate physical separation from other portions of the facility and from the discharge process.

4. Intake processing should include a hot water shower with soap, the option of clothing issue, and proper checking and storage of personal effects.

5. All personal property and clothing taken from the individual upon admission should be recorded and stored, and a receipt issued to him. The detaining facility is responsible for the effects until they are returned to their owner.

6. Proper record keeping in the admission process is necessary in the interest of the individual as well as the criminal justice system. Such records should include: name and vital statistics; a brief personal, social, and occupational history; usual identity data; results of the initial medical examination; and results of the initial intake interview. Emphasis should be directed to individualizing the record-taking operation, since it is an imposition on the innocent and represents a component of the correctional process for the guilty.

7. Each person should be interviewed by a counselor, social worker, or other program staff member as soon as possible after reception. Interviews should be conducted in private, and the interviewing area furnished with reasonable comfort.

8. A thorough medical examination of each person should be made by a physician. It should be mandatory that the physician's orders be followed.

Analysis

A survey of Virginia sheriffs indicates that a majority of the jails in the state are in compliance with the NAC recommendation that offenders not be kept in holding rooms for periods of longer than two hours (tabular data not reported). However, it must be pointed out that several sheriffs reported detainees being kept in holding rooms up to 48 hours. Table 9.5-1 indicates that most aspects of the admission process for three-fifths of the local jails in Virginia are in substantial compliance with NAC recommendations. Sheriffs reported that prisoner admission is conducted within a security perimeter physically separate from other portions of the jail facility.

The responses of sheriffs also indicate that the jails of the state are in substantial compliance with NAC recommendations concerning the intake process. All respondents to our questionnaire noted that they had a policy of storing and checking personal effects of offenders. In addition, nine out of ten jails indicated that they have a system for the issuing of clothing during the admission process. A lesser but substantial percentage (83%) of the sheriffs indicated that the admission process included a hot water shower with soap.

As mentioned in the discussion of Standard 9.2, State government, like the Task Force on Corrections, considers proper record keeping important. Since July 1, 1974, the

State of Virginia has been paying two-thirds of the salaries of record clerks in local jails. Record-keeping systems in local jails are in mixed compliance with the NAC standards. Nearly every jail is keeping records regarding name and vital statistics and the usual identifying data. In addition, approximately fifty percent of the sheriffs reported that they keep a record of personal facts and social and occupational histories of inmates. The percentage of jails that keep such social background information is likely to increase as more Virginia jails hire classification specialists and record clerks. The number of jails that keep the results of initial intake interviews will probably increase even more dramatically as a result of the increase of classification and record specialists.

Finally, approximately 25 percent of the jails report keeping records on the initial medical examination given upon admission. The percentage of jails in compliance with this recommendation of the NAC is also likely to increase as more jail facilities hire paramedics and some smaller jails are replaced by larger facilities that would justify paramedic personnel. Twelve percent of the jails in Virginia reported that each person admitted receives a thorough medical examination by a physician.

Since jails in the Commonwealth are generally small operations with no or limited program capability, few localities can justify professional counselors or social workers on the jail staff. Thus, less than twenty-five percent of the

jails have counselors, social workers, or other program staff members to interview inmates soon after reception. Only one-third of the responding sheriffs stated that interviews were conducted in private interview areas set aside for that purpose. This lack of space points up the problem of limited physical facilities available to local jailers.

Alternative Standards

None

TABLE 9.5 - 1

Physical Separtion of Admission Area From Other Portions of the Jail Facility

	Yes	No	No Response
Is the admission process conducted within the security perimeter, with adequate physical separation from other portions of the facility and from the discharge process?	45(59.2%)	24(31.6%)	7(9.2%)

TABLE 9.5 - 2

Elements in the Jail Intake Process

Elements	Yes	No or No Response
a. A hot water shower with soap	63(82.9%)	13(17.1%)
b. Clothing issue	69(90.8%)	7(9.2%)
c. Storage and checking personal effects	76(100%)	0(0.0%)
d. Other	6(7.9%)	70(92.1%)

TABLE 9.5 - 3

Nature of Jail Record Keeping System

Elements of Record System	Yes	No or No Response
a. Name and vital statistics	71(93.4%)	5(6.6%)
b. Usual identity data	71(93.4%)	5(6.6%)
c. A brief personal, social and occupational history	36(47.4%)	40(52.6%)
d. Results of the initial medical examination	20(26.3%)	56(73.7%)
e. Results of initial intake interviews	19(25.0%)	57(75.0%)

TABLE 9.5 - 4

Whether a Medical Examination Made Upon Admission

	Yes	No	No Response
Is a thorough medical examination by a physician made of each person admitted?	9(11.8%)	65(85.5%)	2(2.6%)

TABLE 9.5 - 5

Interview at Intake

	Yes	No	No Response
Is each person received by a counselor, social worker, or other program staff member as soon as possible after reception?	18(23.7%)	26(34.2%)	32(42.1%)

TABLE 9.5 - 6

Facilities for Intake Interviews

	Yes	No	No Response
Are interviews conducted in a private interview area set aside for that purpose?	26(34.2%)	24(31.6%)	26(34.2%)

Standard 9.6

Staffing Patterns

Every jurisdiction operating locally based correctional institutions and programs should immediately establish these criteria for staff:

1. All personnel should be placed on a merit or civil service status, with all employees except as noted below assigned to the facility on a full-time basis.

2. Correctional personnel should receive salaries equal to those of persons with comparable qualifications and seniority in the jurisdiction's police and fire departments.

3. Law enforcement personnel should not be assigned to the staffs of local correctional centers.

4. Qualifications for correctional staff members should be set at the State level and include requirement of a high school diploma.

5. A program of preservice and inservice training and staff development should be given all personnel. Provision of such a program should be a responsibility of the State government. New correctional workers should receive preservice training in the fundamentals of facility operation, correctional programming, and their role in the correctional process. With all workers, responsibilities and salaries should increase with training and experience.

6. Correctional personnel should be responsible for maintenance and security operations as well as for the bulk of the facility's in-house correctional programming for residents.

7. In all instances where correctional personnel engage in counseling and other forms of correctional programming, professionals should serve in a supervisory and advisory capacity. The same professionals should oversee the activities of volunteer workers within the institution. In addition, they themselves should engage in counseling and other activities as needs indicate.

8. Wherever feasible, professional services should be purchased on a contract basis from practitioners in the community or from other governmental agencies. Relevant State agencies should be provided space in the institution to offer services. Similarly, other criminal justice employees should be encouraged to utilize the facility, particularly parole and probation officers.

9. Correctional personnel should be involved in screening and classification of inmates.

10. Every correctional worker should be assigned to a specific aspect of the facility's programming, such as the educational program, recreation activities, or supervision of maintenance tasks.

11. At least one correctional worker should be on the staff for every six inmates in the average daily population, with the specific number on duty adjusted to fit the relative requirements for three shifts.

Analysis

Merit or civil service status is something generally unknown to jail personnel in Virginia. Of the sheriffs responding to our questionnaire, only one indicated that correctional officers in his jurisdiction had been placed in a merit system. Only two sheriffs noted that clerical and maintenance personnel were under civil service, while another facility mentioned that paramedics had civil service status. Thus, except for the elected sheriff, the overwhelmingly predominant mode of filling positions in local jails is by appointment, with appointed employees not having the job security status provided by a civil service system.

The National Advisory Commission recommends that local correctional personnel receive comparable salaries to the jurisdiction's police and fire personnel. A majority of Virginia's jurisdictions are apparently in compliance with this provision (Table 9.6-1). Responses to our questionnaire indicate that the salaries of local correctional personnel average 90 to 95 percent of police and fire salaries.

At this time there is widespread use of law enforcement personnel in local adult correctional facilities. In 80 percent of the jails in the State, all correctional officers are sworn police officers. Only in 12 percent of the facilities did the sheriff indicate that none of the correctional officers are also sworn police officers. Yet, while correctional officers are sworn law enforcement officers

as well, nearly 90 percent of the reporting jails indicated that the correctional officers of their facility have duties exclusively related to the jail facility (Table 9.6-2).

Qualifications for correctional staff members as recommended by the NAC are not set at the state level and do not include the requirement of a high school diploma. Some sheriffs indicated that they require a high school diploma as a prerequisite for service as a local correctional officer, and even greater numbers report that all or nearly all of their correctional officers have a high school diploma; however, a substantial minority of jails report that they have custodial officers without the high school diploma. The larger jails in urban areas are those which are generally in compliance with the NAC recommendation that local jailers have a high school diploma.

The Commonwealth of Virginia is partially in compliance with the NAC recommendation that state government be responsible for training and staff development of local correctional personnel. The Virginia Criminal Justice Officers Training and Standards Commission has promulgated a set of compulsory minimum training standards for full-time local correctional officers.[1] However, training for local jailers is not the sole responsibility of state government as recommended by the NAC; "provision of such a program should be the responsibility of State Government." While training standards are prescribed by the Criminal Justice Officers Training and Standards Commission, the training may or may not be conducted

by trainers from the Department of Corrections. Any locality may request authority from the Commission to set up a course. To date, only about half of the training is conducted by State trainers, while the other half is conducted by local agencies.

Custodial officers are required to have a total of 124 hours of training. Of this total, eighty-four hours are classroom training, and forty hours are on-the-job training under the supervision of an experienced correctional officer. Following is an outline of a standard training course for local jailers:

Classroom Training

I. Administration	Hours
A. Orientation	10
1. Welcome 2. School Rules and Regulations 3. Attitude 4. Attendance 5. Correctional History 6. Role of Correctional Officer 7. Notebook Construction	
B. Examinations	
1. Testing 2. Review 3. Critique	
C. Evaluations	
1. Subject Matter 2. Presentations 3. Accommodations	
D. Optional	5

		Hours
II.	Skills	37
	A. Tear Gas and Mace	1
	B. Courtroom Demeanor and Appearance	2
	C. Firearms	16
	D. Mechanics of Self Defense	4
	E. Standard First Aid	14
III.	Legal Matters	11
	A. Court System and Crimes and Offenses and Role of Defense Counsel	3
	B. Legal Problems in Jail Administration	2
	C. Investigation and Report Writing (Preservation and Handling of Evidence)	3
	D. Escape Statutes and Escapes	1
	E. Juvenile Offender	2
IV.	Jail Operation	12
	A. Inmate Behavior, Jail Climate, Discipline and Disciplinary Reports	4
	B. Shakedown of Individual Cells	1
	C. Food Service	1
	D. Key Control and Headcount	1
	E. Transportation and Movement of Prisoners (To and From Cell Block, Court, Searches, etc.)	3
	F. Rules and Regulations of the Department of Corrections and Inspection Services in Virginia	2
V.	Jail Security Procedures	10
	A. Receiving Prisoners into the Jail and Personal Search	4
	B. Security, Custody and Control	1
	C. Recognition of Unusual Prisoners (Drunks, Diabetics, Drug Addicts and Identification of Drugs, Mentally Ill, etc.)	5
VI.	Community Relations	4
	A. Public Responsibilities and Relationship of Correctional Officers to the Public	2
	B. Functions, Duties, etc. of Probation Officers	1
	C. Work Release (What It Is, How It Works, etc.)	1

	Hours
On-the-Job Training	40

I. On the job training will be forty hours of training with experienced jailors or custodial officers. Agencies and departments will follow the general format as set forth in Section A.

A. Training

1. Departmental Policies; Rules and Regulations of Correctional Facility
2. Departmental Procedures
   (a) Reports and Communications
   (b) Operations of Department
3. Liaison with Sheriffs, Chiefs of Police, Commonwealth's Attorney, Judge, United States Marshals and Neighboring Departments
4. Local Ordinances
5. Operation of Sheriff's Department Vehicles
6. Operations of Communications System (FCC Rules and Regulations)
7. Familiarization with Territory and Facilities
8. Duties and Responsibilities of Magistrates and Courts
9. Administrative Operation of Correctional Facility
10. Handling of Juveniles
11. Structure of Local Government
12. Relevant Law Enforcement Offices
    (a) Detention Facilities
    (b) Civil Processes[2]

Once training is received, it seems that commensurate responsibilities and salaries result. Over seventy percent of the responding sheriffs indicated that "always" and "often" increased salaries resulted from increased training. However, seventeen percent of the sheriffs indicated that seldom or very seldom was training received related to increased responsibilities and salaries.

The State of Virginia's local jails are in substantial compliance with the NAC recommendation that correctional personnel be responsible for maintenance and security operations as well as the bulk of the facility's in-house correctional program for residents. This situation is the case generally because jails in Virginia are small operations and do not require specialized staff. Only 10 percent of the responding sheriffs indicated that correctional officers were not responsible for both maintenance and security operations and program activities.

Without on-site visits it is extremely difficult to assess the supervision of volunteers in local jails; but it seems that where volunteers are at work, the sheriff and his employees review the activities of volunteers. As has been mentioned many times before, the factor of size limits the jails from hiring highly educated and trained professionals. Volunteer workers are therefore not generally supervised by professional social workers.

Our questionnaire survey and interviews with State government officials indicate that there is little purchasing on a contract basis of professional services from practitioners in the community or from other governmental agencies. Beyond the purchase of medical and hospital services, few services are bought that directly affect the incarcerated.

The role correctional personnel play in the facility's programming will be discussed in section 9.7.

The National Advisory Commission recommends that "at least one correctional worker be on the staff for every six inmates in the average daily population, with the specific number on duty adjusted to fit the relative requirements for the three shifts." Data gathered from sheriffs indicate that Virginia jails are generally not in compliance with this standard. As Table 9.6-7 indicates, the ratio of staff to inmates is nearly 11 inmates for every staff member on the first shift. As expected, the ratio for the second and third shifts increases because less staff is required for security when inmates are in their cells.

Alternative Standards

None

Footnotes

[1]"Rules Relating to Compulsory Minimum Training Standards." (Richmond: Virginia Criminal Justice Officers Training and Standards Commission, July 1973).

[2]Ibid., pp. 2-4.

TABLE 9.6 - 1

Whether Correctional Personnel Have Salaries Comparable to Jurisdiction's Police and Fire Personnel

	Comparability	Non-Comparability	No Response	Average Percentage of Police	Average Percentage of Fire
Number of jurisdictions	40 (52.6%)	34 (44.7%)	2 (2.6%)	(95.6%)	(91.0%)

TABLE 9.6 - 2

Utilization of Law Enforcement Personnel in Local Correctional Facilities

# of correctional officers who are sworn police officers	Percentage of jails	Nature of work performed by corrections officers:	
		Jail Duties Only	Part-time
a. all	61 (80.3%)		
b. some	9 (11.8%)	66 (86.8%)	4 (5.3%)
c. none	6 (7.9%)		

TABLE 9.6 - 3

Whether Training Received Related to Responsibilities and Increased Salaries

	Always	Often	Seldom	Very Seldom	No Response
Sheriff's judgment	30(39.5%)	24(31.6%)	9(11.8%)	4(5.3%)	11 (14.4%)

TABLE 9.6 - 4

Whether Correctional Personnel Are Responsible for Maintenance and Security Operations of Local Jails

	Yes	No	No Response
Are correctional personnel responsible for maintenance and security operations as well as for the bulk of the facility's in-house correctional programming for residents?	65(85.5%)	7(9.2%)	4(5.3%)

TABLE 9.6 - 5

Oversight of Volunteers in Local Jails

	Yes	No	No Response
Do professionals oversee the work of volunteer workers within your institution?	38(50%)	18(23.7%)	20(26.3%)

TABLE 9.6 - 6

Ratio of Staff to Inmates

	1st shift 8:00-4:00	2nd shift 4:00-12:00	3rd shift 12:00-8:00
Ratio	1 : 10.93	1 : 16.52	1 : 17.50

Standard 9.7

Internal Policies

Every jurisdiction operating locally based correctional institutions and programs for adults should immediately adopt these internal policies:

1. A system of classification should be used to provide the basis for residential assignment and program planning for individuals. Segregation of diverse categories of incarcerated persons, as well as identification of special supervision and treatment requirements, should be observed.

a. The mentally ill should not be housed in a detention facility.

b. Since local correctional facilities are not equipped to treat addicts, they should be diverted to narcotic treatment centers. When drug users are admitted to the facility because of criminal charges not related to their drug use, immediate medical attention and treatment should be administered by a physician.

c. Since local correctional facilities are not proper locations for treatment of alcoholics, all such offenders should be diverted to detoxification centers and given a medical examination. Alcoholics with delirium tremens should be transferred immediately to a hospital for proper treatment.

d. Prisoners who suffer from various disabilities should have separate housing and close supervision to prevent mistreatment by other inmates. Any potential suicide risk should be under careful supervision. Epileptics, diabetics, and persons with other special problems should be treated as recommended by the staff physician.

e. Beyond segregating these groups, serious and multiple offenders should be kept separate from those whose charge or conviction is for a first or minor offense. In particular, persons charged with noncriminal offenses (for example, traffic cases) should not be detained before trial. The State government should insist on the separation of pretrial and posttrial inmates, except where it can be demonstrated conclusively that separation is not possible and every alternative is being used to reduce pretrial detention.

2. Detention rules and regulations should be provided each new admission and posted in each separate area of the facility. These regulations should cover items discussed in Chapter 2, Rights of Offenders.

3. Every inmate has the right to visits from family and friends. Each facility should have at least 14 regular visiting hours weekly, with at least five between 7 and 10 p.m. Visiting hours should be expanded beyond this minimum to the extent possible. The environment in which visits take place should be designed and operated under conditions as normal as possible. Maximum security arrangements should be reserved for the few cases in which they are necessary.

4. The institution's medical program should obtain assistance from external medical and health

resources (State agencies, medical societies, professional groups, hospitals, and clinics). Specifically:

a. Each inmate should be examined by a physician within 24 hours after admission to determine his physical and mental condition. If the physician is not immediately available, a preliminary medical inspection should be administered by the receiving officer to detect any injury or illness requiring immediate medical attention and possible segregation from other inmates until the physician can see him.

b. Every facility should have a formal sick call procedure that gives inmates the opportunity to present their request directly to a member of the staff and obtain medical attention from the physician.

c. Every facility should be able to provide the services of a qualified dentist. Eyeglass fitting and other special services such as provision of prosthetic devices should be made available.

d. Personal medical records should be kept for each inmate, containing condition on admission, previous medical history, illness or injury during confinement and treatment provided, and condition at time of release.

e. All personnel should be trained to administer first aid.

5. Three meals daily should be provided at regular and reasonable hours. Meals should be of sufficient quantity, well prepared, served in an attractive manner, and nutritionally balanced. Service should be prompt, so that hot food remains hot and cold food remains cold. Each facility should also have a commissary service.

6. The inmates' lives and health are the responsibility of the facility. Hence the facility should implement sanitation and safety procedures that help protect the inmate from disease, injury, and personal danger.

7. Each detention facility should have written provisions that deal with its management and administration. Proper legal authority, legal custody and charge of the facility, commitment and confinement rules, transfer and transportation of inmates, and emergency procedures are among the topics that should be covered.

8. The use of an inmate trusty system should be prohibited.

Analysis

Internal policies of local jails in very large measure deal with the rights of the offender. As offender rights were analyzed in considerable detail in Chapter Two, at several points in the discussion of this standard the reader will be referred to specific sections of that chapter.

Although only five jails have formal classification programs, most local jailers attempt to segregate categories of incarcerated persons. However, other than distinguishing between adults and juveniles and the sex of the offender, most jails are not large enough to segregate other types of offenders. Where applicable, all sheriffs indicated that they house juvenile offenders separately from adult offenders whenever possible. Only four responding sheriffs (5.3 percent) indicated that they did not separate mental patients from other incarcerated persons in their facility. The sheriffs reported segregating other categories of inmates, according to the number of available cell blocks. Other than the categories already mentioned, sheriffs indicated that they were most likely to separate minor traffic offenders from other inmates and separate pre-trial detainees from sentenced misdemeanants.

The concept and practice of diversion from the criminal justice system is analyzed in Chapter 3.

Detention rules and regulations are discussed in the analysis of Standard 2.11.

The visitation policies of local jails are discussed in the analysis of Standard 2.17.

The medical program in local jails is discussed in the analysis of Standard 2.6.

As previously outlined, the training program for local jailers includes first aid training. Only nine percent of the sheriffs questioned indicated that less than fifty percent of their staffs did not have first aid training. Fully three-fifths of the responding sheriffs indicated that 100 percent of their personnel were trained to administer first aid.

All jails in Virginia provide three meals per day in compliance with the NAC recommendation. Control of the quantity and quality of the food served in local jails is the responsibility of the inspectors of the Office of Jail Superintendent in the State Department of Corrections. If the food served in local jails does not meet the qualitative and quantitative standards of the jail inspection office, then the Department of Corrections can, with the approval of the State Board of Corrections, withhold food per diem payments to local jurisdictions. In addition to the food service, which is almost always housed within the facility, fifty percent of the sheriffs report that a commissary is available to jail inmates.

As is the case with food services in local jails, the Office of Jail Superintendent is also responsible for maintaining minimum standards that protect the jail inmates

from disease, injury, and personal danger. If deficiencies in the jail operation are found by the inspectors and not corrected by the local government jurisdiction, then the State Board of Corrections has the authority to close a facility or to not make reimbursements to the local jurisdiction of the State share of the cost of incarcerating individuals in that facility.

The procedures of local jails in Virginia are discussed in the analysis of Standard 2.11.

The use of inmate trusty systems is an area where local jails in Virginia are in substantial non-compliance with the recommendations of the National Advisory Commission. The members of the NAC Task Force on Corrections felt that if an individual is capable of substantial responsibility in a jail facility, then that individual belongs in a release program. The opinion of the Task Force is that trusty systems are "outmoded". As Table 9.7-5 indicates, trusty systems in Virginia jails are well-established. Only two sheriffs (2.6 percent) note that no type of trusty arrangement exists in their facility. In fact, sixty percent of the responding sheriffs report both "inside and outside systems." Of those sheriffs that report only an inside trusty system, it is likely that the reason they only have an inside system is that their jail is in a central city location.

Alternative Standards

The National Jail Association disagrees with the subpoint in this standard recommending abolition of trusty systems in local jails. The NJA summarizes its contrary position with these words:

> Referral to the use of Trusties is very general and a matter of semantics. The word Trusty itself is bad terminology. In order for a person to participate in Community Based Programs either Pre-Trial or Sentenced, they have to be of a minimum security status. In addition to that, there are positions in the local detention unit that can prepare the individual for integration back into the community by utilizing them in necessary maintenance and skill development programs that would be beneficial to the individual. This would also reduce the need of hiring professional personnel in these positions.[1]

The Florida Division of Corrections disagrees sharply with subpoint three with the following reason:

> We disagree with sub-Standard 3, in that "every inmate has the right to visits from family and friends". We consider visiting to be a privilege which may be revoked by due cause. We presently permit only approved visitors to visit inmates and we feel we should continue this screening process, both for the welfare of the inmate and for institutional control. However, we disagree on the requirement for at least 14 regular visiting hours weekly. We feel that this is an arbitrary one, and that visiting should be scheduled to provide the family the opportunity to visit without creating undue inconveniences. We also recommend that, in local detention facilities, some arrangement for contact visits should be made rather than from speak-throughs.[2]

Footnotes

[1] "Report of the National Jail Association on the Recommendations of the National Advisory Commission on Criminal Justice," Draft (Summer 1974), p. 7.

[2]Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Florida Department of Health and Rehabilitative Services, February 1974), p. 125.

TABLE 9.7 - 1

Whether Local Jails Have Classification Specialists

	Yes	No
Classification Specialist	5(6.6%)	71(93.4%)

TABLE 9.7 - 2

Segregation of Diverse Categories of Jail Inmates When Space Available

Categories of jail inmates	Yes	No	Not Applicable
a. Sentenced/Misdemeanants	38(50.0%)	30(39.5%)	7(9.2%)
b. Traffic Off./Other	48(63.2%)	22(28.9%)	6(7.9%)
c. Work release/Other	22(28.9%)	12(15.8%)	41(53.9%)
d. Mental patients/Others	67(88.2%)	4(5.3%)	7(9.2%)
e. First offenders/Others	31(40.8%)	40(52.6%)	5(6.6%)
f. Juveniles/Others	68(89.5%)	0(0.0%)	6(7.9%)

TABLE 9.7 - 3

Personnel Trained to Administer First Aid in Local Jails

	100% of staff	75 - 99% of staff	50 - 74% of staff	Less than 50% of staff
Jails	45(59.2%)	11(14.5%)	8(10.5%)	7(9.2%)

TABLE 9.7 - 4

Meals and Commissary Service in Local Jails

	Meals		Commissary	
	Three	Less than three	Yes	No
Jails	76(100%)	0(0%)	38(50%)	38(50%)

TABLE 9.7 - 5

Inmate Trusty Systems in Local Jails

	Only Inside	Only Outside	Inside and Outside	None
Jails	30(39.5%)	0(0)	45(59.2%)	2(2.6%)

Standard 9.8

Local Correctional Facility Programing

Every jurisdiction operating locally based correctional facilities and programs for adults should immediately adopt the following programming practices:

1. A decisionmaking body should be established to follow and direct the inmate's progress through the local correctional system, either as a part of or in conjunction with the community classification team concept set forth in Standard 6.3. Members should include a parole and probation supervisor, the administrator of the correctional facility or his immediate subordinates, professionals whose services are purchased by the institution, representatives of community organizations running programs in the institution or with its residents, and inmates. This body should serve as a central information-gathering point. It should discuss with an individual inmate all major decisions pertaining to him.

2. Educational programs should be available to all residents in cooperation with the local school district. Particular emphasis should be given to self-pacing learning programs, packaged instructional materials, and utilization of volunteers and paraprofessionals as instructors.

3. Vocational programs should be provided by the appropriate State agency. It is desirable that overall direction be provided on the State level to allow variety and to permit inmates to transfer among institutions in order to take advantage of training opportunities.

4. A job placement program should be operated at all community correctional centers as part of the vocational training program. Such programs should be operated by State employment agencies and local groups representing employers and local unions.

5. Each local institution should provide counseling services. Individuals showing acute problems will require professional services. Other individuals may require, on a day-to-day basis, situational counseling that can be provided by correctional workers supervised by professionals.

6. Volunteers should be recruited and trained to serve as counselors, instructors, teachers, and recreational therapists.

7. A range of activities to provide physical exercise should be available both in the facility and through the use of local recreational resources. Other leisure activities should be supported by access to library materials, television, writing materials, playing cards, and games.

8. In general, internal programs should be aimed only at that part of the institutional population unable to take advantage of ongoing programs in the community.

9. Meetings with the administrator or appropriate staff of the institution should be available to all individuals and groups.

Analysis

Community classification teams as outlined in this standard are not yet a reality in Virginia. Two jail facilities reported that they use professionals in addition to classification specialists to monitor the progress of inmates and to make decisions pertaining to the inmates, but no system was reported that had all the elements recommended in subpoint one.

Educational programs whether they are operated by the jail staff or from outside the institution are not common among the services provided by Virginia jails. The absence of these programs is due to the average stay in a Virginia jail being from a few days to a few weeks. Of the sheriffs responding the our questionnaire, thirteen percent reported that the vocational potential of inmates is regularly assessed.

Eighteen percent of the responding sheriffs indicated that remedial education programs including GED are available to those incarcerated in their facility, while nearly ten percent reported the existence of some type of vocational training for their inmates. In addition, fifteen percent of the responding sheriffs indicated that their facility provides pre-vocational training. Finally, seventeen percent of the sheriffs indicated that job development and placement is a service available in their facility, probably through the facility counseling activities.

Only three of seventy-six responding sheriffs indicated that full-time volunteer assistants work in their jails. However, a majority of the sheriffs noted that part-time volunteers work in their facility on a regular basis. The volunteer found in Virginia jails is generally a member of OAR (Offender Aid and Restoration) which provides a variety of counseling services to those incarcerated. Of the specialized volunteers, not a part of OAR, twenty-one percent and ten percent were identified as drug and alcohol counselors, respectively. Only five percent of the sheriffs indicated that recreation specialists work as volunteers in their facilities.

Of the types of equipment or facilities listed in Table 9.8-3, only radio (eighty percent) and television (forty-nine percent) are prevelant in large numbers in Virginia jails. A smattering of jails provide record players, exercise yards, sports equipment and other materials; however, recreation programs and facilities are not widely available in Virginia jails.

Sheriffs indicated that they or other jail administrators are available to inmates if problem situations arise. Only four percent of the responding sheriffs indicated that they are not necessarily available to inmates (Table 9.8-4).

Alternative Standards

The National Jail Association is of the opinion that new institutions should be built around programs. Their

qualified agreement with this standard is stated in this manner:

> Although the commentary specifies sentenced persons, Pre-trial offenders activities and programs also should be designed to meet individual needs. The recommendations are primarily oriented toward the sentenced offender. It is suggested that in the planning of local facilities that programs for both pre-trial and sentenced people be set up and, if new institutions are necessary that the institutions be built around the programs. The Logistical and Administrative Services could be designed to accommodate both without duplication and meet the majority of the recommendations made in the standard. We agree that sentenced and pre-trial inmates must necessarily be separately housed.[1]

Footnotes

[1] "Report of the National Jail Association on the Recommendation of the National Advisory Commission on Criminal Justice," Draft (summer 1974), pp. 7-8.

TABLE 9.8 - 1

Education and Education-Related Activities

Type of Program	Operated by Institution	Operated from Outside Institution	Not Applicable	No Response
Assessment of vocational potential through testing, etc.	7(9.2%)	3(3.9%)	39(5.13%)	27(35.5%)
Remedial education (including GED)	7(9.2%)	7(9.2%)	37(48.9%)	25(32.9%)
Vocational training	2(2.6%)	5(6.6%)	50(65.8%)	19(25%)
Pre-vocational training (work habits, how to get along with others, etc.)	5(6.6%)	6(7.9%)	52(68.4%)	13(17.1%)
Job development and placement	9(11.8%)	4(5.3%)	47(61.8%)	16(21%)

TABLE 9.8 - 2

Number of Jails Having Full- and Part-Time Volunteers on a Regular Basis*

Type of Volunteer	Yes	No
OAR (Offender Aid & Restoration)	56 (73.7%)	20 (26.3%)
Drug Counselor	16 (21%)	50 (65.8%)
Alcohol Counselor	8 (10.5%)	68 (89.5%)
Chaplain	7 (9.2%)	69 (90.8%)
Recreation Specialist	4 (5.3%)	72 (94.7%)
Other (not always specified)	24 (31.6%)	52 (68.4%)

* Only three of 76 responding jails indicated full-time volunteer assistance.

TABLE 9.8 - 3

Recreation and Entertainment Facilities
Available to Virginia Jails

Equipment of facility available	Number of Jails Yes	No
Radios	61(80.2%)	15(19.7%)
TV's	37(48.9%)	39(51.3%)
Record Players	7(9.2%)	69(90.8%)
Sports facilities such as football field or basketball court	5(6.6%)	71(93.4%)
Motion Pictures	7(9.2%)	69(90.8%)
Exercise Yard	6(7.9%)	70(92.1%)
Sports Equipment	4(5.3%)	72(94.7%)
Competitive of Intramural Sports	2(2.6%)	74(97.4%)
Other	15(19.7%)	51(67.1%)
None of the above provided	9(11.8%)	65(85.5%)

TABLE 9.8 - 4

Availability of Jail Administrators to the Inmates (Percentage)

	Yes	No	No Response
Are individuals and groups allowed to meet with the administrator or appropriate staff if problem situations arise?	7. (93.4%)	3 (3.9%)	2 (2.6%)

Standard 9.9

Jail Release Programs

Every jurisdiction operating locally based correctional facilities and programs for convicted adults immediately should develop release programs drawing community leadership, social agencies, and business interest into action with the criminal justice system.

1. Since release programs rely heavily on the participant's self-discipline and personal responsibility, the offender should be involved as a member of the program planning team.

2. Release programs have special potential for utilizing specialized community services to meet offenders' special needs. This capability avoids the necessity of service duplication within corrections.

3. Weekend visits and home furloughs should be planned regularly, so that eligible individuals can maintain ties with family and friends.

4. Work release should be made available to persons in all offense categories who do not present a serious threat to others.

5. The offender in a work-release program should be paid at prevailing wages. The individual and the work-release agency may agree to allocation of earnings to cover subsistence, transportation cost, compensation to victims, family support payments, and spending money. The work-release agency should maintain strict accounting procedures open to inspection by the client and others.

6. Program location should give high priority to the proximity of job opportunities. Various modes of transportation may need to be utilized.

7. Work release may be operated initially from an existing jail facility, but this is not a long-term solution. Rented and converted buildings (such as YMCA's, YWCA's, motels, hotels) should be considered to separate the transitional program from the image of incarceration that accompanies the traditional jail.

8. When the release program is combined with a local correctional facility, there should be separate access to the work-release residence and activity areas.

9. Educational or study release should be available to all inmates (pretrial and convicted) who do not present a serious threat to others. Arrangements with the local school district and nearby colleges should allow participation at any level required (literacy training, adult basic education, high school or general educational development equivalency, and college level).

10. Arrangements should be made to encourage offender participation in local civic and social groups. Particular emphasis should be given to involving the offender in public education and the community in corrections efforts.

Analysis

Jail release programs in Virginia have been in existence for almost a decade. The oldest program of this nature known to the researchers is the work release program established by the Arlington County jail in 1965. Although at the time of the survey a few jails with work release programs reported no one in the program, fifty percent of the jails in Virginia did in fact indicate a work release program. Of the sheriffs responding to the question of whether offenders in a work release program are paid the prevailing rate, nearly all responded in the affirmative. There was no indication that the work release program operated anywhere other than from the jail facility.

Virginia is substantially in non-compliance with the NAC recommendationn that jails have a program of weekend visits and home furloughs. Of the responding sheriffs, only four percent indicated that a program for weekend visits and home furloughs for sentenced misdemeanants was a policy of their facility. Many jails in Virginia have weekend sentence programs for misdemeanants required to serve time in their facility. In jails where there is a weekend sentence program, eligible individuals can work and maintain ties with family and friends while serving their sentences. Thus, the spirit of the NAC recommendation is achieved by a slightly different approach.

As jail inmates in Virginia generally serve short terms of a few days or at most a few weeks, educational or study release programs are generally not available. Table 9.9-4 denotes that only fifteen percent of the responding sheriffs answered in the affirmative when the question was asked: "Are study-release programs available to inmates?"

Offenders in local jails seldom participate in any local civic and social activities. Specifying only "civic groups" and Alcoholics Anonymous (AA), only five percent of the sheriffs responding to our questionnaire indicated that there was any activity by inmates in community civic and social groups (Table 9.9-5).

Alternative Standards

The Florida Division of Corrections voices a minor disagreement with this standard:

> We have some disagreement with sub-Standard 9. If a pre-trial offender is still in detention, it would mean that he is not responsible enough to be placed upon release, even on his own recognizance, and therefore, we are of the opinion that he would not necessarily be a good study-release candidate.[1]

Footnotes

[1]Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Florida Department of Health and Rehabilitative Services, February 1974), p. 129.

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TABLE 9.9 - 1

Work Release Programs in the Jails

	Percentage
Jails with work release	37.7%
Jails without work release	60.7%
Jails - no response	1.3%

Average number of inmates on work release: 4.2/institution with work release program

TABLE 9.9 - 2

Whether Work Release Participants Are Paid Prevailing Wage

	Yes	No	Not Applicable	No Response
Are offenders in a work-release program paid at the prevailing wage level?	19(25.0%)	3(3.9%)	42(55.3%)	12(15.8%)

TABLE 9.9 - 3

Whether Jails Have Weekend Visits and Home Furloughs

	Yes	No	No Response
Does your facility have a policy of weekend visits and home furloughs for sentenced misdemeanants?	3(3.9%)	63(82.9%)	10(13.2%)

TABLE 9.9 - 4

Study Release Programs in Virginia Jails

	Yes	No	No Response
Are study release programs available to the inmates?	11(14.5%)	49(64.5%)	16(21.1%)

TABLE 9.9 - 5

Offenders Participating in Local Civic and Social Groups

	Yes	No	No Response
Do offenders participate in any local, civic and social groups?	4(5.3%)	70(92.1%)	2(2.6%)

Standard 9.10

Local Facility Evaluation and Planning

Jurisdictions evaluating the physical plants of existing local facilities for adults or planning new facilities should be guided by the following considerations:

1. A comprehensive survey and analysis should be made of criminal justice needs and projections in a particular service area.

   a. Evaluation of population levels and projections should assume maximum use of pretrial release programs and postadjudication alternatives to incarceration.

   b. Diversion of sociomedical problem cases (alcoholics, narcotic addicts, mentally ill, and vagrants) should be provided for.

2. Facility planning, location, and construction should:

   a. Develop, maintain, and strengthen offenders' ties with the community. Therefore, convenient access to work, school, family, recreation, professional services, and community activities should be maximized.

   b. Increase the likelihood of community acceptance, the availability of contracted programs and purchased professional services, and attractiveness to volunteers, paraprofessionals, and professional staff.

   c. Afford easy access to the courts and legal services to facilitate intake screening, presentence investigations, postsentence programming, and pretrial detention.

3. A spatial "activity design" should be developed.

   a. Planning of sleeping, dining, counseling, visiting, movement, programs, and other functions should be directed at optimizing the conditions of each.

   b. Unnecessary distance between staff and resident territories should be eliminated.

   c. Transitional spaces should be provided that can be used by "outside" and inmate participants and give a feeling of openness.

4. Security elements and detention provisions should not dominate facility design.

   a. Appropriate levels of security should be achieved through a range of unobtrusive measures that avoid the ubiquitous "cage" and "closed" environment.

   b. Environmental conditions comparable to normal living should be provided to support development of normal behavior patterns.

   c. All inmates should be accommodated in individual rooms arranged in residential clusters of 8 to 24 rooms to achieve separation of accused and sentenced persons, male and female offenders, and varying security levels and to reduce the depersonalization of institutional living.

Analysis[1]

The NAC recommends a comprehensive survey of local facility needs in various service areas within the state. Thus far, such analyses that have included attention to pre-trial release programs and post adjudication alternatives have been conducted in only three of the state planning areas (Planning District Commission's 5, 20, and 21). As indicated in the analysis of Standard 3.1, programs for socio-medical problems are limited in number and scope in Virginia, and could be characterized as informal rather than formal programs.

The selection of sites for new jails is the responsibility of local governments. A primary consideration in location decisions is that facilities afford easy access to the courts and legal services. Locating a new facility near available professional services and programs, volunteers, and paraprofessionals, varies according to the size and purpose of the facility. In small, rural areas there is less need and availability of such services. In larger, urban areas, these services are of greater importance and are more often available.

Virginia's jails were originally built to provide for short term pre-trial incarceration. The design of facilities emphasized security, with little consideration given to such items as the conditions for sleeping, dining, and visiting. At present, greater consideration is being given to the

above items in planning for new facilities as well as for the provision of treatment programs. However, because of the increased capital and operating expenses associated with treatment activities, localities do not always plan program components for new facilities.

There is little unnecessary space between staff and resident territories; jails in Virginia seem to utilize most available space.

As mentioned before, the majority of Virginia's jails are maximum security facilities. Where they exist, levels of security are tied to the types of crimes committed by prisoners. Here, misdemeanants are kept in less secure dormitory living quarters while felons are kept in cell blocks. This type of classification based on type of crime has been implanted in five jails to allow for classification by trained personnel.

Accommodations in the jails of Virginia range from fifty-man dormitories in Norfolk, to a two-man jail, to individual rooms which are not enclosed by bars in the new Arlington jail.

Applicable health, sanitation, space, safety, construction, environmental, and custody codes and regulations are taken into account in the planning of new facilities.

In constructing new facilities, almost one hundred percent of the expenditures have been for security, as jails have been constructed as maximum security facilities. Once

the construction is completed, a majority of the operating funds are utilized for custodial personnel and food for the prisoners rather than for program activities.

Community resources are used by the various jails, but on a small scale. Offender Aid and Restoration is the largest contributor of volunteer assistance. Other volunteers include chaplains, teachers, and professionals from various other fields.

The use of closed-circuit television and other electronic surveillance is found in the more recently constructed jails in Virginia. Some facilities have complete surveillance and a majority of those having electronic devices have an audio monitoring device. These surveillance devices are used for monitoring corridors, loading docks, and other areas, but not an inmate's cell.

Inmates are prohibited from decorating their cells.

Generally, existing community facilities have not been considered as potential replacements for, or adjuncts to, an existing jail facility.

There are no written regulations prohibiting the construction of jails to house more than 300 persons. The Norfolk and Richmond city jails are the only facilities designed to hold more than 300 inmates.

Alternative Standards

The National Jail Association disagreement with this standard revolves around the area of closed circuit television

and other electronic surveillance equipment. Comments are also made regarding the mixture of large institutions and community-based facilities as follows:

> We basically agree with this, however we feel that it should be emphasized that Closed Circuit Television should be utilized to assist in the supervision of staff. An example being, surveillance of corridors when an officer is making his round in case he is confronted with difficulties. It should not be used as a direct surveillance on an inmate to replace an officer. In the commentary, we basically agree that recent construction alternates are based on outmoded concepts. However, this is dictated by the fact that local subdivisions predicate their planning on the minimum use of staff hence economy plays a big part. Many of the subdivisions do not have money to properly plan and conduct programs, and it all comes back to the same thing we have said before. We have many capable local administrators, they are willing and want to follow through on programming, but they are handicapped by the lack of funds.
>
> If funds were available directly to the local subdivisions there would be no doubt in the minds of this Committee that the big house system could be eliminated within a five (5) year period, and that the Community Based Programs could become a reality. In many cases modification of some existing facilities or the utilization of other existing agencies in the community can be achieved. We must emphasize that there are no two communities exactly alike. Planning and programming for an urban area is different than the planning and programming for a rural area. There can be no panacea for programming and design. It must be designed to fit the need of the particular locale and community as well as the individual.[2]

Footnotes

[1]The analysis of this standard benefited from interview with Mr. Robert P. Mason, Coordinator, Investigative Unit, Division of Staff Services, Department of Corrections, and Mr. Fred DePalma, Assistant Chief, Bureau of Staff Organization and Development, Division of Staff Services, Department of Corrections on October 2, 1974.

[2]"Report of the National Jail Association on the Recommendations of the National Advisory Commission on Criminal Justice," Draft (summer 1974), p. 8.

CHAPTER TEN

"Probation"

The National Advisory Commission Task Force on Corrections views probation as "the highest hope for corrections." For probation to realize its potential according to the Task Force, significant improvement is necessary in two areas: the system used to determine which offenders should receive a sentence of probation, and the provision of support and services offenders need to allow them to live independently in socially acceptable ways. For probation to be successful, it must be adequately structured, financed, and staffed. The Task Force suggests that a major shift of money and manpower to community-based corrections is necessary if probation is to be adopted nationally as the preferred disposition. In addition, the NAC report strongly recommends the use of volunteers, women, and ex-offenders in state probation systems.

In this chapter, topics considered include the organizational placement of probation, services available for probationers, and the development of manpower and training programs to recruit, screen, utilize, train, and educate probation personnel.

The research methodology for this chapter, as for previous chapters, consisted of researching the Virginia Code documents and of interviewing representative members of the Probation and Parole Board and key personnel of the Division of Probation and Parole Services.

Standard 10.1

Organization of Probation

Each State with locally or judicially administered probation should take action, in implementing Standard 16.4, Unifying Correctional Programs, to place probation organizationally in the executive branch of State government. The State correctional agency should be given responsibility for:

1. Establishing statewide goals, policies, and priorities that can be translated into measurable objectives by those delivering services.
2. Program planning and development of innovative service strategies.
3. Staff development and training.
4. Planning for manpower needs and recruitment.
5. Collecting statistics, monitoring services, and conducting research and evaluation.
6. Offering consultation to courts, legislative bodies, and local executives.
7. Coordinating the activities of separate systems for delivery of services to the courts and to probationers until separate staffs to perform services to the courts are established within the courts system.

During the period when probation is being placed under direct State operation, the State correctional agency should be given authority to supervise local probation and to operate regional units in rural areas where population does not justify creation or continuation of local probation. In addition to the responsibilities previously listed, the State correctional agency should be given responsibility for:

1. Establishing standards relating to personnel, services to courts, services to probationers, and records to be maintained, including format of reports to courts, statistics, and fiscal controls.
2. Consultation to local probation agencies, including evaluation of services with recommendations for improvement; assisting local systems to develop uniform record and statistical reporting procedures conforming to State standards; and aiding in local staff development efforts.
3. Assistance in evaluating the number and types of staff needed in each jurisdiction.
4. Financial assistance through reimbursement or subsidy to those probation agencies meeting standards set forth in this chapter.

Analysis

The National Advisory Commission recommends in this standard that all states move towards a state-administered probation system located within the executive branch of state government. In the commentary accompanying the standard, the Commission points out that the debate as to the most appropriate placement of probation "centers on two main issues: Whether probation should be a part of the judicial or executive branch of government and whether it should be administered by State or local units."[1] The Commission contends that placement in the executive branch offers increased potential for planning, manpower utilization, and improved services to offenders. Similarly, the Commission argues that state administration is prerequisite to a total systems planning approach to probation.

In respect to adult probation, Virginia is in near full compliance with this standard, as all adult probation services are under the supervision of the Division of Probation and Parole Services of the State Department of Corrections, an executive branch agency. The Division is headed by a director who is responsible for establishing statewide policies, goals, and program planning. There are 21 Probation and Parole Districts throughout the State. Probation and parole officers are appointed by the circuit court judges after they have been certified by the Division. They serve both as officers of the court and as field agents for the Division. Their salaries are paid by the State but may be supplemented by the localities.

Virginia has both state and locally operated juvenile probation systems. Recent legislation authorized the Division

of Youth Services of the Department of Corrections to develop and operate probation and related service units for all juvenile and domestic relations district courts not providing such services as of July 1, 1973, and for any other cities and counties requesting such state-operated services. In addition, the Division was authorized to insure that minimum standards established by the State Board of Corrections are adhered to by counties and cities operating their own juvenile probation and related court services programs. Juvenile probation officers are appointed by the juvenile and domestic relations district courts from a list of eligibles certified by the Director of the Department of Corrections (in the case of a state-operated system) or by the governing body or bodies of the district (in the case of a locally-operated system). The Department of Corrections reimburses localities operating their own systems and complying with minimum state standards set by the State Board for fifty percent of the salaries of probation officers and other court service staff members.

Alternative Standards

The American Bar Association minimum standards relating to probation state:

> It is appropriate for probation services to be administered at either the state or local level, but in no event should control be vested in an agency having prosecutorial functions.[2]

The Association of State Correctional Administrators found this standard conditionally acceptable:

> Acceptable with the following reservations: Consider field service as a vital role in classification which begins at the earliest point of contact and extends through the pre-release and post-confinement period.

Include interchange of personnel between institution and field. Utilize diversion and minimize the use of confinement. The role of the executive administrator of the field service Probation and Parole should be changed to provide cross-over knowledge between the institution and the field service. Include volunteers, explore non-institution resources, viewing confinement as a resource when all else fails.[3]

Footnotes

[1]National Advisory Commission on Criminal Justice Standards and Goals, Corrections, pp. 331-2.

[2]Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards for Criminal Justice of the American Bar Association, p. 502.

[3]"Rationale and Reasoning Behind the Ratings of the Standards and Goals Study," Committee of the Association of State Correctional Administrators, Draft, February 1974, p. 12.

Standard 10.2

Services to Probationers

Each probation system should develop by 1975 a goal-oriented service delivery system that seeks to remove or reduce barriers confronting probationers. The needs of probationers should be identified, priorities established, and resources allocated based on established goals of the probation system. (See Standards 5.14 and 5.15 and the narrative of Chapter 16 for probation's services to the courts.)

1. Services provided directly should be limited to activities defined as belonging distinctly to probation. Other needed services should be procured from other agencies that have primary responsibility for them. It is essential that funds be provided for purchase of services.

2. The staff delivering services to probationers in urban areas should be separate and distinct from the staff delivering services to the courts, although they may be part of the same agency. The staff delivering services to probationers should be located in the communities where probationers live and in service centers with access to programs of allied human services.

3. The probation system should be organized to deliver to probationers a range of services by a range of staff. Various modules should be used for organizing staff and probationers into workloads or task groups, not caseloads. The modules should include staff teams related to groups of probationers and differentiated programs based on offender typologies.

4. The primary function of the probation officer should be that of community resource manager for probationers.

Analysis

The manual for probation and parole officers defines the duties and services for which the officers are responsible. These guidelines state that probation and parole services are not to duplicate services that can be procured from other agencies having primary responsibility for them.[1] There are no funds available for these community services, although parole and probation officers assist in arranging for such services through funds provided from other agencies. In Virginia, probation and parole officers also provide services to the court.

The probation and parole system is divided into twenty-one districts each with a district office. There are also three satellite offices in Virginia Beach, Martinsville, and Fredericksburg, with one planned for South Richmond. The district offices are located in the more densely populated areas, close to the communities where probationers live. Because of their location in populated areas, the probation and parole offices usually have access to available programs of other social service agencies.

A caseload approach is the prevelant form of organizing staff work in Virginia. In dealing with drug problems, a team approach has been initiated in Richmond, Arlington, and Roanoke. With sponsorship by the Virginia Department of Health, there are also plans to introduce a team approach for the treatment of alcoholics.

A Virginia probation and parole officer functions as a "community resource manager for probationers," as recommended

by the NAC, as well as maintaining surveillance, restriction, and control.[2]

Alternative Standards

The American Bar Association's standards stress the importance of a low caseload for probation officers, who should work from branch offices established in communities where the offenders live. The use of community services is stressed as a means to provide vital aid to the probation office.[3]

A symposium sponsored by the Law Enforcement Assistance Administration discussed three problems which universally affect probationers. These include: the disabling character of institutional life and that of offender status; the complexity of modern life; and the biases of the established community.[4] The symposium developed the "rule of community" as a principle of reintegration of the offender in society stressing the need for links to other community agencies and for community involvement.[5]

Footnotes

[1]N.W. Perdue, Member, Virginia Probation and Parole Board, interview August 5, 1974.

[2]Ibid.

[3]Advisory Committee on Sentencing and Review, Standards Relating to Probation (Chicago: American Bar Association, 1970), p. 18-19.

[4]Law Enforcement Assistance Administration and the National Institute of Law Enforcement and Criminal Justice, Criminal Justice Monograph: Reintegration of the Offender into the Community (Washington, D.C.: Government Printing Office, 1972), pp. 1-3.

[5]Ibid., pp. 5, 6.

Standard 10.3

Misdemeanant Probation

Each State should develop additional probation manpower and resources to assure that the courts may use probation for persons convicted of misdemeanors in all cases for which this disposition may be appropriate. All standards of this report that apply to probation are intended to cover both misdemeanant and felony probation. Other than the possible length of probation terms, there should be no distinction between misdemeanant and felony probation as to organization, manpower, or services.

Analysis

In Virginia, misdemeanant and felony probation efforts do not differ in their organization, manpower or service delivery. There are often no personnel available to provide for misdemeanant probation services, especially at the district court level.[1]

Alternative Standards

Discussing misdemeanor probation, the Task Force Report: Corrections notes:

> As the study of misdemeanant sentencing in eight jurisdictions shows, formal probation is used relatively infrequently in most jurisdictions. This appears to be true even in jurisdictions with strong and well administered probation services, such as New York City, where probation is used in less than two percent of misdemeanant cases. Apparently, judges in such jurisdictions choose to concentrate probation resources on a small proportion of offenders where they are most needed, using fines or suspended sentences in other cases.
>
> In eleven states there are no probation services for misdemeanants in any county... None of these States encompasses a very large metropolitan area, and most are not highly urbanized. Only two of these eleven jurisdictions were above the median per capita income in 1964, and six were in the bottom quarter...
>
> Over the country, then, probation services to misdemeanants are sparse and spotty.[2]

The lack of programs for misdemeanants was also commented upon the larger study group in The Challenge of Crime in a Free Society, in which the President's Commission made the following recommendation:

> Parole and probation services should be available in all jurisdictions for felons, juveniles, and those adult misdemeanants who need or can profit from community treatment.

Footnotes

[1]N.W. Perdue, Member, Virginia Probation and Parole Board, interview August 5, 1974.

[2]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C.: Government Printing Office, 1967), p. 29.

[3]President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: Government Printing Office, 1967), pp. 168, 169.

Standard 10.4

Probation Manpower

Each State immediately should develop a comprehensive manpower development and training program to recruit, screen, utilize, train, educate, and evaluate a full range of probation personnel, including volunteers, women, and ex-offenders. The program should range from entry level to top level positions and should include the following:

1. Provision should be made for effective utilization of a range of manpower on a full- or part-time basis by using a systems approach to identify service objectives and by specifying job tasks and range of personnel necessary to meet the objectives. Jobs should be reexamined periodically to insure that organizational objectives are being met.
2. In addition to probation officers, there should be new career lines in probation, all built into career ladders.
3. Advancement (salary and status) should be along two tracks: service delivery and administration.
4. Educational qualification for probation officers should be graduation from an accredited 4-year college.

Analysis

There are eighteen female probation and parole officers in Virginia. The use of volunteers is minimal, with the exception of some Jaycees who work within the probation system and Offender Aid and Restoration, which provides volunteers to probationers on an informal and unofficial basis. A volunteer, if available, might upon request, assist a probationer or a probation and parole officer with a heavy caseload.

All probation system employees begin as probation officers or trainees. Movement within the system consists of moving up within the system rather than lateral entry to administrative positions. Advances in status and salary for those desiring to remain in service delivery positions are very limited.[1]

The educational qualification for a Virginia probation and parole officer is a bachelor's degree from an accredited four-year college or university.

Alternative Standards

Among those recognizing the need for effective and competent personnel is the American Bar Association. In fact, in its 1970 Standards Relating to Probation, the ABA recommended:

a. The educational and occupational requirements for probation officers should be possession of a bachelor's degree supplemented by:

   1. a year of graduate study in social work, corrections, counseling, law, criminology, psychology, sociology, or related fields; or

   2. a year of full-time casework, counseling, community or group work experience.

b. A significant number of probation officers in a department should have graduate degrees in one of the subjects enumerated in this section.

c. While the core of any probation department should be professionally educated and trained personnel, it is desirable that the staff include individuals who may lack such professional qualifications but have backgrounds similar to those of the probationers themselves. In addition, in appropriate cases citizen volunteers should be used to assist probation officers.[2]

Footnotes

[1]N.W. Perdue, Member, Virginia Probation and Parole Board, interview August 5, 1974.

[2]American Bar Association, Compendium of Model Correctional Legislation and Standards (New York: American Bar Association, 1972), p. 111.

Standard 10.5

Probation in Release on Recognizance Programs

Each probation office serving a community or metropolitan area of more than 100,000 persons that does not already have an effective release on recognizance program should immediately develop, in cooperation with the court, additional staff and procedures to investigate arrested adult defendants for possible release on recognizance (ROR) while awaiting trial, to avoid unnecessary use of detention in jail.

1. The staff used in the ROR investigations should not be probation officers but persons trained in interviewing, investigation techniques, and report preparation.

2. The staff should collect information relating to defendant's residence, past and present; employment status; financial condition; prior record if any; and family, relatives, or others, particularly those living in the immediate area who may assist him in attending court at the proper time.

3. Where appropriate, staff making the investigation should recommend to the court any conditions that should be imposed on the defendant if released on recognizance.

4. The probation agency should provide pretrial intervention services to persons released on recognizance.

Analysis

The National Advisory Commission standard is not applicable to Virginia's probation system as no probation offices have additional staff to investigate arrested adult defendants for possible release on recognizance. The procedures and statutes under which the Virginia release on recognizance program functions are discussed in Standards 4.4 and 4.5 of this study.

However, there is a related program in effect in the Norfolk probation and parole district. With the assistance of a grant from the Virginia Division of Justice and Crime Prevention, Norfolk has been able to hire a "Duty Officer" whose job is to provide the courts with a recommendation regarding the release on bond of persons awaiting a presentence report.

Alternative Standards

The American Bar Association recommends a short-form presentence investigation report:

> which in format would be quite similar to the report prepared in a pretrial release program.[1] No reports would be made prior to an adjudication of guilt under the ABA standards unless the defendant were to consent and the information were kept from the court.[2] This would seem to indicate a bias against the pretrial use of such information. However, in describing collateral services to be performed by the probation officer, the ABA specifically approves involvement in pretrial release programs. The seeming contradiction is best explained as reflecting a desire to avoid prejudicing the court by providing detailed background of a type not directly relevant to his innocence or guilt, balanced against a desire to avoid unnecessary pretrial detention. A trade-off is made in favor of the latter, to a limited extent. The reports involved in the pretrial release program would not have the detail of a presentence investigation and would be limited solely to information relevant to the likelihood of success if the accused were released prior to trial.[3]

The Division of Probation of the Administrative Office of the U. S. Courts explains that, as in the ABA standard, any time information on an accused is provided prior to an adjudication of guilt, the information must be controlled with great care to avoid prejudice to his rights. In any case, the permission of the accused should be obtained prior to any such investigation.[4]

Footnotes

[1]Advisory Committee on Sentencing and Review, Standards Relating to Probation (Chicago: American Bar Association, 1970), pp. 34-39.

[2]Ibid., p. 39.

[3]Ibid., p. 88-90.

[4]Division of Probation, The Presentence Investigation Report, Pub. No. 103 (Washington, D.C.: Administrative Office of the U. S. Courts, 1965), p. 4.

CHAPTER ELEVEN

Major Institutions

The National Advisory Commission uses the term "major institutions" to distinguish state-operated penal and correctional institutions for juveniles and adults from detention centers, jails, work farms, and other types of facilities.

The scope of this chapter is very broad. It encompasses the planning of new correctional institutions; understanding of the social environment; education and vocational training; treatment programs for special offender types such as drug addicts, recalcitrant offenders, and emotionally disturbed offenders; policies dealing with the female inmate; religious, recreational, and counseling programs; and prison labor and industries. These standards have been individually researched and analyzed to determine how Virginia's major institutions compare with the recommendations proposed in the NAC report.

Generally speaking, Virginia is in mixed compliance with the various standards of this chapter. As the standards analyzed in this chapter relate to many areas where Virginia policy is under reconsideration, it is not possible to make a definitive judgment concerning the degree of compliance with all the standards under analysis in this chapter as has been the case for other standards in this volume. It seems that there are still plans for the establishment of a reception and classification center for the Virginia correctional system,

and the Director of the Department of Corrections suggested in September 1974 that construction of three 500 mass-medium-security institutions was being considered; however, the major standards in this chapter, 11.1 and 11.2, remain unanalyzed since Virginia policies are now under consideration.

Research for this chapter was accomplished through examination of the Division of Adult Services' guidelines and policy statements, the Code of Virginia, and through the conduct of interviews with Corrections personnel.

Standard 11.1

Planning New Correctional Institutions

Each correctional agency administering State institutions for juvenile or adult offenders should adopt immediately a policy of not building new major institutions for juveniles under any circumstances, and not building new institutions for adults unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible. In the latter instance, the analysis should conform generally to the "total system planning" discussed in Chapter 9. If this effort proves conclusively that a new institution for adults is essential, these factors should characterize the planning and design process:

1. A collaborative planning effort should identify the purpose of the physical plant.

2. The size of the inmate population of the projected institution should be small enough to allow security without excessive regimentation, surveillance equipment, or repressive hardware.

3. The location of the institution should be selected on the basis of its proximity to:

   a. The communities from which the inmates come.

   b. Areas capable of providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population, and capable of supporting staff lifestyles and community service requirements.

   c. Areas that have community services and activities to support the correctional goal, including social services, schools, hospitals, universities, and employment opportunities.

   d. The courts and auxiliary correctional agencies.

   e. Public transportation.

4. The physical environment of a new institution should be designed with consideration to:

   a. Provision of privacy and personal space.

   b. Minimization of noise.

   c. Reduction of sensory deprivation.

   d. Encouragement of constructive inmate-staff relationships.

   e. Provision of adequate utility services.

5. Provision also should be made for:

   a. Dignified facilities for inmate visiting.

   b. Individual and group counseling.

   c. Education, vocational training, and workshops designed to accommodate small numbers of inmates and to facilitate supervision.

   d. Recreation yards for each housing unit as well as larger recreational facilities accessible to the entire inmate population.

   e. Medical and hospital facilities.

Analysis

State policy to regulate the planning of new correctional institutions is now under consideration.

Alternative Standards

The American Wardens' Association has rejected this standard:

> Reject. This is probably the most unrealistic standard in the book. Many states have old institutions that must be replaced at both the juvenile and adult level. Institutions are a needed element of a total system just as community corrections is a needed element. Neither can replace the other.[1]

Further comment on this standard comes from the Association of State Correctional Administrators:

> While there can be no argument that new prisons should not be built unless all alternatives have been explored, this standard is deficient in refusing to note that some states and many counties have no facilities whatsoever which meet the basic standards of decency as outlined in Chapter 2. These facilities must be replaced. The Association should be very clear on this point since this standard can have an impact on state legislatures, giving them an excuse for not funding needed building replacements and improvements.[2]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, pp. 6-7.

[2]"Rationale and Reasoning Behind the Ratings on Standards and Goals," Association of State Correctional Administrators, February 1974, p. 11.

Standard 11.2

Modification of Existing Institutions

Each correctional agency administering State institutions for juvenile or adult offenders should undertake immediately a 5-year program of reexamining existing institutions to minimize their use, and, for those who must be incarcerated, modifying the institutions to minimize the deleterious effects of excessive regimentation and harmful physical environments imposed by physical plants.

1. A collaborative planning effort should be made to determine the legitimate role of each institution in the correctional system.

2. If the average population of an institution is too large to facilitate the purposes stated in paragraph 2 of Standard 11.1, it should be reduced.

3. Consideration should be given to the abandonment of adult institutions that do not fit the location criteria of paragraph 3 of Standard 11.1.

4. All major institutions for juveniles should be phased out over the 5-year period.

5. The physical environments of the adult institutions to be retained should be modified to achieve the objectives stated in paragraph 4 of Standard 11.1 as to:

a. Provision of privacy and personal space.

b. Minimization of noise.

c. Reduction of sensory deprivation.

d. Reduction in size of inmate activity spaces to facilitate constructive inmate-staff relationships.

e. Provision of adequate utility services.

6. Plant modification of retained institutions should also be undertaken to provide larger, more dignified, and more informal visiting facilities; spaces for formal and informal individual and group counseling, education and vocational training, workshops, recreational facilities, and medical and hospital facilities; and such additional program spaces as may fit the identified purposes of the institution.

7. A reexamination of the purposes and physical facilities of each existing institution should be undertaken at least every 5 years, in connection with continuing long-range planning for the entire corrections system.

Analysis

State policy to regulate the modification of existing correctional institutions is now under consideration.

Alternative Standards

Regarding the modification of existing institutions, the Association of State Correctional Administrators made the following statement:

> This standard is not acceptable. These standards are intertwined with false premises and conclusions. The author used simplified solutions. They appear to be unaware of geographical, cultural, practical, and fiscal limitations.[1]

The American Wardens' Association reports:

> Reject. Completely unrealistic. Institutions shouldn't be used unless clearly needed but we will do away with institutions only after we first do away with murder, rape and robbery.[2]

Footnotes

[1]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 11.

[2]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 7.

Standard 11.3

Social Environment of Institutions

Each correctional agency operating juvenile or adult institutions, and each institution, should undertake immediately to reexamine and revise its policies, procedures, and practices to bring about an institutional social setting that will stimulate offenders to change their behavior and to participate on their own initiative in programs intended to assist them in reintegrating into the community.

1. The institution's organizational structure should permit open communication and provide for maximum input in the decisionmaking process.

a. Inmate advisory committees should be developed.

b. A policy of participative management should be adopted.

c. An ombudsman independent of institutional administration should receive and process inmate and staff complaints.

d. Inmate newspapers and magazines should be supported.

2. The correctional agency and the institution should make explicit their correctional goals and program thrust.

a. Staff recruitment and training should emphasize attitudes that support these goals.

b. Performance standards should be developed for programs and staff to measure program effectiveness.

c. An intensive public relations campaign should make extensive use of media to inform the public of the agency's goals.

d. The institution administration should be continuously concerned with relevance and change.

3. The institution should adopt policies and practices that will preserve the individual identity of the inmate and normalize institutional settings.

a. Each offender should be involved in program decisions affecting him.

b. Offenders should be identified by name and social security number rather than prison number.

c. Rules governing hair length and the wearing of mustaches and beards should be liberalized to reflect respect for individuality and cultural and subcultural trends.

d. Where possible, uniforms should be eliminated and replaced with civilian dress, with reasonable opportunity for individual choice of colors, styles, etc.

e. Institutional visitation should be held in an environment conducive to healthy relationships between offenders and their families and friends.

f. Home furlough should be allowed to

custodially qualified offenders to maintain emotional involvement with families.

g. Telephone privileges, including reasonable provisions for long-distance calls, should be extended to all inmates.

h. No limitation should be imposed upon the amount of mail offenders may send or receive.

4. Each institution should make provision for the unique problems faced by minority offenders and take these problems into consideration in practices and procedures.

a. Subcultural groups should be formally recognized and encouraged.

b. Ethnic studies courses should be provided.

c. Staff members representative of minority groups in the institution should be hired and trained.

d. Minority residents of the community should be involved actively in institution programs.

5. The institution should actively develop the maximum possible interaction between community and institution, including involvement of community members in planning and in intramural and extramural activities.

a. Institutionally based work-release and study-release programs with an emphasis on community involvement should be adopted or expanded.

b. Ex-offenders and indigenous paraprofessionals should be used in institutional programs and activities.

c. Joint programming between the institution and the community should be developed, including such activities as drug counseling sessions, Alcoholics Anonymous meetings, recreation programs, theatre groups, and so on.

d. Offenders should be able to participate in educational programs in the community, and community members should be able to participate in educational programs in the institution.

e. Police officers should become involved, acquainting offenders with pertinent sections of the law and in general playing a supportive role.

f. Offenders should have opportunities to travel to and to participate in worship services of local churches, and representatives of the churches should participate in institutional services.

g. The institution should cultivate active participation of civic groups, and encourage the groups to invite offenders to become members.

h. The institution should arrange for representatives of government agencies to render services to offenders by traveling to the institution or by enabling offenders to appear at agency offices.

i. The institution should obtain the participation of business and labor in intramural and extramural programs and activities.

j. The institution should seek the participation of volunteers in institutional programs and activities.

6. The institution should apply only the minimum amount of security measures, both physical and procedural, that are necessary for the protection of the public, the staff, and inmates, and its disciplinary measures should emphasize rewards for good behavior rather than the threat of punishment for misbehavior.

a. Committed offenders initially should be assigned the least restrictive custodial level possible, as determined by the classification process.

b. Only those mechanical devices absolutely necessary for security purposes should be utilized.

c. Institutional regulations affecting inmate movements and activities should not be so restrictive and burdensome as to discourage participation in program activities and to give offenders a sense of oppression.

d. Standard 2.12 concerning Disciplinary Procedures should be adopted, including the promulgation of reasonable rules of conduct and disciplinary hearings and decisions respecting the rights of offenders.

e. An incentive system should be developed to reward positive behavior and to reinforce desired behavioral objectives.

f. Security and disciplinary policies and methods should be geared to support the objective of social reintegration of the offender rather than simply to maintain order and serve administrative convenience.

Analysis

The National Advisory Commission's Task Force on Corrections advises the development of inmate advisory committees to allow open communication between inmates and correctional staffs. Virginia's correctional institutions have such committees which consist of five, seven and nine members depending on the inmate population of a particular institution. The functions of these committees are outlined below:

> Functions - The "Advisory Committee" shall represent the entire population of the institution. The "Advisory Committee" shall ascertain the opinions, and suggestions of the inmates of the general population pertaining to inmate general welfare. Such opinions and suggestions shall be faithfully and accurately conveyed to the Superintendent and/or his representative. It will then be the Superintendent's job to evaluate such information, and act upon it as he deems to be in the best interest of all concerned. (At this point it must be clearly understood that Committee members cannot be held responsible for administrative decisions since their duty is advisory only.)
>
> It is to be recognized that the "Advisory Committee" will receive for its consideration matters pertaining to such general areas as treatment, counseling, education, recreation, religion, security, work situations, and general administration. In so doing, the Committee will limit its attention to matters of general concern rather than matters of individual concern except as such an individual matter may point up a problem of broad implication.
>
> The above shall not limit the Committee in bringing to the Superintendent any matter of general concern whether it be in the area of programs, and services or in the area of policy, and regulation.
>
> The Committee will work with the Administration in the general cleanliness of the Institution. The Committee shall, with the cooperation of the administration maintain this state of cleanliness.[1]

The process through which inmates express their complaints consists of filling out a grievance form. A detailed description of the grievance procedure can be found in the analysis of Standard 2.15 of this document. There is no ombudsman independent of the institutional administration to receive and process staff and inmate complaints.

Minimum Operational Standards contains the following guidelines concerning institutional publications:

> Inmate newspapers and magazines should be encouraged and supported. Such publications give an opportunity for self expression, and for presenting institutional news to the population, and for giving outsiders a better understanding of the institution.[2]

The Division of Adult Services is to be organized "around the Management by Objectives concept."[3] "A mutually understood statement regarding the organization's direction shall be developed."[4] Once the goals of the agency are established, the effort will be made to "recruit qualified personnel and provide for their development and improvement."[5] Another objective of this agency is to "develop maximum program efficiency and effectiveness possible with the personnel available."[6]

The Virginia Department of Corrections has an active Bureau of Information and Communication which is responsible for making the agency's goals and programs known to the public. This Bureau makes information concerning the correctional system available primarily to the news media, which in turn disseminates the information to the public. As further means of informing others of the agency's activities, a series of public meetings were held in the autumn of 1974.

Mr. Jack F. Davis, Director of the Department of Corrections, has conducted meetings with local officials and interested citizens.

The new concept of the team treatment approach which is soon to be implemented in the Virginia correctional system will include the inmate as a participant in development of the treatment plan. This approach will allow the inmate to have direct input into his treatment program.[7]

The use of a prison number to identify incarcerated offenders still exists, although there is a greater emphasis on referring to an inmate by his name.[8]

Uniforms are issued and worn by the majority of Virginia's inmates. Civilian clothes are not provided, and must be sent to the inmate by someone on the "outside." Civilian dress is permitted if the inmate is going into the community.[9]

Home furloughs are allowed to qualified offenders within Virginia's system:

1. Eligibility is limited to inmates on trusty assignments ("A" custody) and those considered by their Institutional Classification Committees to be eligible for trusty assignments.

2. In all cases, the inmate must have been in "A" custody status a minimum of three months before his application for furlough will be considered.

3. Inmates serving numerical terms (those expressed in years) must be within one year of parole eligibility.

4. Inmates serving life terms must be within three years of parole eligibility.

5. The inmate must have been under the jurisdiction of the Division of Corrections for a period of not less than six months, which period begins when the inmate enters one of our Receiving Units.[10]

The regulations concerning telephone privileges are found in the Minimum Operational Standards under the heading of "Five Minute Furloughs." This standard reads:

> Each institution shall provide the opportunity for inmates, except those in M custody, to speak with anyone on their visiting list by telephone.
>
> 3408.1 - Such calls shall be limited to five minutes.
>
> 3408.2 - They shall be permitted at least once each month for inmates who have not been convicted of a disciplinary violation.
>
> 3408.3 - Convictions for disciplinary violations shall cause the practice to be suspended for 60 days from the occurrence for the violator.
>
> 3408.4 - All telephone calls of this nature shall be made either collect or paid for out of the inmate's spend account.
>
> 3408.5 - A log will be kept of these calls recording the following information: name and number of caller; name, number, and location of person called; and date, time, and monitor of call.[11]

For Virginia's practices as related to rules governing hair length and the wearing of mustaches and beards, institutional visitation, and mail regulations, please refer to the analysis of Standard 2.15, "Free Expression and Association," in this document.

Subcultural groups within Virginia's institutions are recognized to the extent that many are allowed to have specialized programs. Ethnic study caucuses are not included in the academic program of the Department of Corrections, although minority residents of the community are welcomed as participants in various institutional programs.[12]

Institutionally based work-release and study-release programs are available to qualified inmates:

> Every inmate of the Division of Corrections shall be given the opportunity to participate in a treatment program which utilizes community resources prior to his or her termination of sentence, e.g. work-release, study-release, in-house Pre-release, community Pre-release, or any other continuous and intensive treatment program involves community resources.[13]

As mentioned in other standards, ex-offenders and para-professionals are used in various capacities in the correctional system.

Provisions for community involvement are found in the "Community Resources" section of the Minimum Operational Standards:

> Every institution shall have an ongoing program of community resource involvement the extent of which shall be determined by its custody level of classification.[14]

This section also provides for a citizen participation program whose "purpose shall be service to the correctional program or agency, as one of the community's institutions."[15]

The study-release program of the Virginia correctional system is designed to make use of community educational resources:

> Educational and vocational training opportunities in the community far exceed those available within institutions and shall be utilized to the fullest extent reasonable for those persons in T custody status to prepare them for social reintegration.[16]

Representatives of local churches are given the opportunity to participate and direct religious programs for institutional residents. These programs include church services, prayer meetings, singing, and Bible studies. The policy of permitting offenders involved in pre-release and work-release programs to participate in worship services outside of the institution has been temporarily suspended. There has been a limited practice

of allowing inmates to attend outside church services when proper application forms were submitted and where the inmate was eligible.[17]

Within the institutional system, the organization of optional interest groups is permitted to develop the inmates' initiative and responsibility:

> The administration of each institution shall be open to the utilization of and the cooperation with optional interest group (e.g., Gravel Clubs, Open Forum, Narcotic Anonymous, Dale Carnegie, Alcoholics Anonymous) which can provide meaningful rehabilitative outlets for inmates and which will not seriously threaten the security of the institution.[18]

There are many government agencies that provide their services to persons incarcerated in Virginia correctional institutions. The Department of Welfare supplies services to the needy families of inmates, the Department of Vocational Rehabilitation and the Virginia Employment Commission provide testing and job placement. Mental health services are available through the Department of Mental Health and Mental Retardation. The Division of State Planning and Community Affairs assists in recreational programs development while the Commission of Arts and Humanities is now working on a program that will provide instructors and materials in the areas of writing, drama, music, arts and crafts for inmates. Finally, several libraries are working to provide adequate institutional libraries.[19] The Minimum Operational Standards states that:

> Every institution shall have an ongoing program of community resources involvement the extent of which shall be determined by its custody level of classification.[20]

A behavioral modification program is now in operation for the Maximum Custody group at the State Penitentiary and

State Farm and is called the "Contingency Management Program." This is a totally voluntary program in which inmates may participate on a day-to-day basis. When an inmate enters this program, a counselor gives him an orientation as to what behavior is desirable and will be rewarded. The counseling relationship is on a one-to-one basis. The rewards given for desired behavior include verbal encouragement, release from M custody, and privileges gained by "spending" points received. The incentive pay plan as described in Standard 11.10 "Prison Labor and Industries" acts as a further reward for positive behavior.[21]

The objectives of the custody and security system of the Division of Adult Services are stated as the following:

1. To create an atmosphere where control is constant, so that reintegration progress can be effectively operated.

2. To provide protection to the citizens, employees and inmates.

3. To provide a sound basis for effective supervision and control of inmates.[22]

Alternative Standards

The Florida Division of Corrections agrees in part with this standard dealing with the social environment in institutions:

> The Florida Division of Corrections enthusiastically endorses the opening paragraph of this Standard which provides that "Each correctional agency operating juvenile or adult institutions, and each institution, should undertake immediately to reexamine and revise its policies, procedures, and practices to bring about an institutional social setting that will stimulate offenders to change their behavior and to participate, on their own initiative, in programs intended to assist them in reintegrating into the community." We are of the opinion that we have extensive implementation of this portion of the Standard and are continually reappraising our efforts in order to bring about meaningful changes

in our operations. In regard to the remainder of the Standard, we would make the following comments:

1. We are in agreement with the opening paragraph which provides that "the institutional structure should permit open communications and provide for maximum input in the decision-making process."

   a. We disagree that inmate advisory committees should be developed. The justification for our disagreement is reflected in our statement on Standard 14.7, Participatory Management, which stated that "the Division does not feel that the creation of an offender counsel lends itself to effective participatory management, but rather precipitates a polarization of management, administration, and client groups."

   b. We are in complete agreement that a policy on participative management should be adopted. We feel that we are in partial compliance with this Standard in that offenders have been assigned to various ad-hoc committees within the institutions. They have been involved in many institutions as participants in a self-evaluation of the institution according to the American Correctional Association Guidelines for Self-Evaluation. In addition, offenders serve with staff on advisory committees in matters pertaining to recreation, religious activities, and offender welfare fund expenditures.

   c. We have no objection to the ombudsman concept; however, we feel that the ombudsman should communicate with the institution administration all such complaints for resolution at the institution level if at all possible. Further explanation of our position on this sub-standard is reflected in our response to Standard 2.14, Grievance Procedure, in which we expressed our opinion that an independent authority is not necessary or advisable to investigate day-to-day" grievances nor should a written report be required in petty cases. In serious cases, other investigative authority and written reports may be necessary and desirable.

   d. We are in agreement with this sub-Standard and are fully complying.

2. The Division of Corrections strongly endorses this sub-Standard. Our 1974-75 legislative budget request reflects our desire to comply with this Standard and increase our effectiveness. In this budget document, we are requesting a section in the Bureau of Planning, Research and Evaluation which will develop performance standards for programs and staff in order to provide

the basis for ongoing evaluation. We are also requesting a public information section at the Central Office level to provide an extensive public relations program to inform the public of the agency's goals.

3. The Division is in agreement with the opening paragraph of this sub-Standard which states that "the institution should adopt policies and practices that will preserve the individual identity of the inmate and normalize institutional settings." However, we voice the following disagreements with items in this sub-Standard:

   b. Although the Division has no objections to the use of Social Security numbers for commonality of identification, we are not in favor of utilizing the Social Security number in lieu of existing Division number, which provides many benefits for identification purposes which the Social Security number could not do. In addition, many offenders are received without Social Security numbers, and in order for this number to be utilized, some authority would be needed to assign Social Security numbers to those offenders who do not have a Social Security card.

   c. We disagree with liberalization of rules governing hair length and the wearing of mustaches and beards. We do not feel that these rules should be liberalized to the extent that facial hair confuses identity.

   d. We disagree with the provision of this sub-Standard to provide civilian dress for offenders; however, the Division is presently considering alternative courses of action for the improvement of offender clothing.

   g. Although we generally agree with this sub-Standard, we do not feel that this privilege should be automatically extended to all offenders, regardless of status. During the last two years, the Division has liberalized the long-distance telephone use privileges and in some institutions has installed payphones for use of offenders on institutional property.

   h. We are in agreement with this sub-Standard and our position is reflected in our Division directive on Offender Correspondence.

4. We are in agreement with the provisions of this sub-Standard and we have made every effort to comply with the provisions of this sub-Standard.

5. We are in agreement with the opening paragraph of this sub-Standard and, at present, we are complying with the provisions of this sub-Standard in an extensive manner.

   a. Although we agree with this sub-Standard of providing work-release and study-release programs with an emphasis on community involvement, we are of the opinion that as we expand our community correctional center program there will be a minimization of the use of work- and study-release programs in the major institutions.

   b. We are in complete agreement with this sub-Standard of employing and using ex-offenders and indigenous paraprofessionals in institutional programs and activities. We have been complying with this Standard for several years and, at the present time, we have 27 staff members who are ex-offenders.

   c. We are in agreement with this provision of joint programming between the institution and the community and our efforts in this regard are being constantly expanded.

   d. We generally agree with this sub-Standard; however, we are of the opinion that the involvement of community members in institutional education programs should be permitted only under properly supervised situations and with adequate screening of the participants. Further, we are of the opinion that this type of program could only operate efficiently in minimum custody institutions.

   e. We are in agreement with the provision that police officers should become involved in institutional programs, and in some institutions, police officers have attended community college programs as students with offenders, which has been very beneficial to both parties.

   f. We are in agreement that offenders should have opportunities to travel to, and participate in, worship services of local churches, especially for those offenders already approved for furloughs. Other offenders who have not been approved for furloughs should be carefully screened before granting this permission.

6. The Division of Corrections is in agreement that the institutions should apply only the minimal amount of security measures, both physical and procedural, that are necessary for the protection of the public, staff, and offenders, and its disciplinary measures should emphasize rewards for good behavior rather

than the threat of punishment for misbehavior. We are in agreement with the various items of this sub-Standard with the following exception:

d. This item provides that Standard 2.12, concerning Disciplinary Procedures, should be adopted. Our opinion on this Standard is reflected in our response to Standard 2.12.[23]

The American Correctional Association Committee on Standards Review finds this standard conditionally acceptable. Their comment deals with item 3(c): "Rules governing hair... subcultural trends." This committee feels that "this is true; however, hair lengths must also be compatible with institutional health standards.[24]

This standard is rejected by the American Wardens' Association:

Reject. Inmates should be allowed input but the decisions with regard to the operation of the institution must stay with the people that have been charged with the responsibility of running the institutions. When the inmates reach the point where they can effectively run the institution they belong on the street and not in prison.[25]

This standard is also rejected by the Association of State Correctional Administrators for the following reasons:

Regarding the first paragraph, a sound theory is carried to the extreme. There is a prevailing assumption that offenders possess maturity, motivation, and normal patterns of behavior.

Not acceptable. General agreement expressed, but specifics are not accepted. Rewording needed to retain the central theme. Specifics should not become standards applicable to all types of institutions. Reference Paragraph 1, Subparagraph a. Inmate advisory committees should be developed. Argument raised on the advisability of inmate advisory committees. Paragraph 1, Subparagraph c. An ombudsman independent of institutional administration ...This should not become a standard carrying weight.

Footnotes

[1]Department of Corrections, Division Guide Lines No. 818, issued February 28, 1974.

[2]Minimum Operational Standards, (Richmond: Division of Adult Services, Department of Corrections, 1974), #3406.

[3]Ibid., #2002

[4]Ibid., #2002.1.

[5]Ibid., #2000.2.

[6]Ibid., #2000.1.

[7]Hunter Jackson, Assistant Director, Division of Adult Services, interview August, 20, 1974.

[8]Joseph Lewis, Assistant Director, Division of Adult Services, interview August 12, 1974.

[9]Ibid.

[10]Department of Corrections, Division Guidelines No. 813, (Revised), February 4, 1974, p. 2.

[11]Minimum Operational Standards, op. cit., #3408.

[12]Joseph Lewis, interview August 12, 1974.

[13]Minimum Operational Standards, op. cit., #3501.6.

[14]Ibid., #3410.1.

[15]Ibid., #3410.4B.

[16]Ibid., #3502.

[17]Joseph Lewis, interview August 12, 1974.

[18]Minimum Operational Standards, op. cit., #3409.1.

[19]Joseph Lewis, interview August 27, 1974.

[20]Minimum Operational Standards, op. cit., #3410.1.

[21]Hunter Jackson, Assistant Director, Division of Adult Services, interview August 20, 1974.

[22]Minimum Operational Standards, op. cit., #2300.

[23]Florida Division of Corrections, "Response to National Standards and Goals for Corrections," (Tallahassee: Department of Health and Rehabilitation, February 1974), pp. 147-149.

[24]American Correctional Association Committee on Standards Review, December 10, 1973.

[25]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 7.

[26]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 12.

Standard 11.4

Education and Vocational Training

Each institution for juveniles or adults should re-examine immediately its educational and vocational training programs to insure that they meet standards that will individualize education and training. These programs should be geared directly to the reintegration of the offender into the community. It is recognized that techniques and practices for juveniles may be somewhat different from those required for adults, but the principles are similar. Usually the programs for juveniles and youths are more adequately equipped and staffed, but this distinction should not continue. It is assumed that intensive efforts will be made to upgrade adult institutions and that juvenile institutions will be phased out in favor of community programs and facilities.

1. Each institution should have a comprehensive, continuous educational program for inmates.

a. The educational department of the institution should establish a system of accountability to include:

(1) An annual internal evaluation of achievement data to measure the effectiveness of the instruction program against stated performance objectives.

(2) An appraisal comparable to an accreditation process, employing community representatives, educational department staff, and inmate students to evaluate the system against specific objectives. This appraisal should be repeated at least every 3 years.

b. The educational curriculum should be developed with inmate involvement. Individualized and personalized programming should be provided.

c. The educational department should have at least one learning laboratory for basic skill instruction. Occupational education should be correlated with basic academic subjects.

d. In addition to meeting State certification requirements, teachers should have additional course work in social education, reading instruction, and abnormal psychology. Teachers in juvenile institutions also should be certified to teach exceptional children, have experience teaching inner city children, and have expertise in educational technology.

e. Each educational department should make arrangements for education programs at local colleges where possible, using educational opportunities programs, work-study programs for continuing education, and work-furlough programs.

f. Each educational department should have a guidance counselor (preferably a certificated school psychologist) and a student personnel worker. School records of juveniles

should be available to these persons at the time of commitment.

g. Social and coping skills should be part of the educational curriculum, particularly consumer and family life education.

2. Each institution should have prevocational and vocational training programs to enhance the offender's marketable skills.

a. The vocational training program should be part of a reintegrative continuum, which includes determination of needs, establishment of program objectives, vocational training, and assimilation into the labor market.

b. The vocational training curriculum should be designed in short, intensive training modules.

c. Individual prescriptions for vocational training programs should include integration of academic work, remedial reading and math, high school graduation, and strong emphasis on the socialization of the individual as well as development of trade skills and knowledge.

d. Vocational programs for offenders should be intended to meet their individual needs and not the needs of the instructor or the institution. Individual programs should be developed in cooperation with each inmate.

e. An incentive pay scale should be a part of all on-the-job training programs for inmates.

f. Vocational programs should be selected on the basis of the following factors related to increasing offenders' marketable skills:

(1) Vocational needs analysis of the inmate population.

(2) Job market analysis of existing or emerging occupations.

(3) Job performance or specification analysis, including skills and knowledge needed to acquire the occupation.

g. Vocational education and training programs should be made relevant to the employment world.

(1) Programs of study about the work world and job readiness should be included in prevocational or orientation courses.

(2) Work sampling and tool technology programs should be completed before assignment to a training program.

(3) Use of vocational skill clusters, which provide the student with the opportunity to obtain basic skills and knowledge for job entry into several related occupations, should be incorporated into vocational training programs.

h. All vocational training programs should have a set of measurable behavioral objectives appropriate to the program. These objectives should comprise a portion of the instructor's performance evaluation.

i. Vocational instructors should be licensed or credentialed under rules and regulations for public education in the State or jurisdiction.

j. Active inservice instructor training programs should provide vocational staff with information on the latest trends, methods, and innovations in their fields.

k. Class size should be based on a ratio of 12 students to 1 teacher.

l. Equipment should require the same range and level of skills to operate as that used by private industry.

m. Trades advisory councils should involve labor and management to assist and advise in the ongoing growth and development of the vocational program.

n. Private industry should be encouraged to establish training programs within the residential facility and to commit certain numbers of jobs to graduates from these training programs.

o. The institution should seek active cooperative programs and community resources in vocational fields with community colleges, federally funded projects such as Job Corps, Neighborhood Youth Corps, and Manpower Development Training Act programs, and private community action groups.

p. On-the-job training and work release or work furloughs should be used to the fullest extent possible.

q. An active job placement program should be established to help residents find employment related to skills training received.

3. Features applicable both to educational and vocational training programs should include the following:

a. Emphasis should be placed on programmed instruction, which allows maximum flexibility in scheduling, enables students to proceed at their own pace, gives immediate feedback, and permits individualized instruction.

b. A variety of instructional materials—including audio tapes, teaching machines, books, computers, and television—should be used to stimulate individual motivation and interest.

c. Selected offenders should participate in instructional roles.

d. Community resources should be fully utilized.

e. Correspondence courses should be incorporated into educational and vocational training programs to make available to inmates specialized instruction that cannot be obtained in the institution or the community.

f. Credit should be awarded for educational and vocational programs equivalent to or the same as that associated with these programs in the free world.

Analysis

The educational system in Virginia's penal institutions has recently changed. In the past, each correctional unit operated autonomous educational programs. The 1974 session of the General Assembly established the Rehabilitative School Authority, creating a unified approach to institutional educational programs. The provisions of this act follow:

> 22-41.1 - There is hereby created the Rehabilitative School Authority which shall be composed of all the educational facilities of all institutions operated by the Department of Corrections. The words "School Authority" as used in this chapter shall mean the Rehabilitative School Authority.
>
> 22-41.2 - The supervision of the School Authority shall be vested in the board. The board shall be composed of seven members as follows: The Chairman of the Probation and Parole Board, the Head of the Division of Adult Services, the Head of the Division of Youth Services, the Director of Vocational Education in the Department of Education, and three members appointed by the Governor. The three members appointed by the Governor shall be appointed for terms of four years each. The words "the board" as used in this chapter shall mean the board of the Rehabilitative School Authority.
>
> 22-41.3 - The board shall establish and maintain a general system of schools for persons committed to the institutions composing the Rehabilitative School Authority. Such system shall include elementary, secondary, post-secondary, vocational, technical, adult and special educational schools.
>
> 22-41.4 - The School Authority, through the board, shall operate all the schools for elementary, secondary, post-secondary, vocational, technical, adult and special education offered at such institutions.
>
> 22-41.5 - The board shall have the following power and duties:
>
> a. To adopt and enforce all necessary rules and regulations for the management and operation of the schools in the Authority except that the rules and regulations adopted hereunder shall not conflict with rules and regulations relating to security adopted by the institutions to which the pupils are committed;

b. To visit and inspect the schools at reasonably frequent intervals;

c. To appoint a superintendent for the School Authority who meets the minimum standards set by the State Board of Education for superintendents of school divisions and to set his compensation;

d. To adopt rules and regulations governing the timing and methods of payment of compensation of teachers and other personnel under term or annual contracts;

e. To establish schools of the appropriate grades, levels and types in the institutions comprising the School Authority and to adopt regulations for the admission of pupils thereto;

f. To enter into such agreements with private entities, school districts or divisions, community colleges and public and private junior colleges, colleges and universities as it may deem to be appropriate for the purpose of carrying out its duties and responsibilities under this chapter;

g. To name the various individual schools but said names need not be associated or identified with the institution or facility within which they are located;

h. To employ teachers on recommendation of the School Authority superintendent and place them in appropriate schools;

i. To prepare a budget for the Rehabilitative School Authority and submit it to the General Assembly of Virginia; and

j. To receive and disburse funds from any source for the purposes of providing education in such School Authority.

22-41.6 - The powers and duties of the School Authority superintendent shall be fixed by the Board of Education in accordance with law.

22-41.7 - The board shall comply with and require all school facilities within the School Authority to comply with applicable rules, regulations and statutes, both State and federal.[1]

The major state-operated institutions do have continuous educational programs for inmates. A list of the academic

programs that are offered at the various facilities follow:

DIVISION OF CORRECTIONS

ACADEMIC PROGRAM

BLAND CORRECTIONAL FARM
(Total pop. 259/total enrollment 133)

Reading
English
Math
Psychology
General Business
Special Vocational Courses at Wytheville Community College in Drafting, Environmental Science and Food Service

STATE FARM
(Total Pop. 854/ total enrollment 175)

Math
General Science
Reading
Language
History
English Composition

PENITENTIARY
(Total pop. 779/ total enrollment 199)

Math
Reading
Language
Social St dies
American History
Creative Writing
Psychology
Sociology
Principles of Accounting

WOMEN'S FARM
(Total pop. 171/ total enrollment 76)

Math
English
Social Studies
Science
Special Education
Creative Writing

SOUTHAMPTON CORRECTION FARM
(Total pop. 611/total enrollment 244)

Math
Social Studies
Literature
Language Arts
English
Reading
Social Education
Science
Paul Camp Community College Courses in English and Math[2]

The research and evaluation procedures with regard to the education program are found in the Minimum Operational Standards:

> Research to determine the characteristics of a well-rounded educational program for M, C, B, A, and T level institution. Research to determine whether academic, vocational, or social education has more to offer in the total rehabilitative program.[3]

A list of recommendations addressed to the Rehabilitative School Authority (RSA) from C. E. Warden, the Director of Education, includes one recommendation that an intensive survey be conducted of the education programs in both the youth and adult facilities. The committee to conduct this survey will be selected by the RSA and composed of persons experienced in vocational, special, and academic phases of education of youths and adults.[4]

The Minimum Operation Standards call for "the educational curriculum to be developed with inmate involvement," although this provision has not yet been implemented.[5]

Virginia's penal education program does operate a laboratory for the instruction of basic skills.

A bachelor's degree is required of all correctional institution teachers. There are no requirements for specific courses such as those recommended by the National Advisory Commission's report. The teachers in juvenile learning centers are encouraged, but not required, to have experience or certification in teaching exceptional children.

To assure the most effective use of community resources and personnel, guidelines have been included in the Minimum Operational Standards:

> A community adviser committee shall be organized and used to help each institution establish, evaluate, revise, and staff its educational programs. Community resources such as community colleges, universities, technical centers, will be utilized to the fullest extent in the laboratory classroom complexes.[6]

Virginia has guidelines that regulate the use of the study release program. These guidelines include the following:

I. Legal: Section 53-38, Code of Virginia, authorizes the Director to assign selected inmates to courses of study outside the institutions when such courses are not available in the correctional system.

II. Rationale: Educational release is a vehicle for the gradual reintegration of offenders into the free society, with application limited to those persons meeting established requirements of need (as determined by reception center staff or subsequently by a treatment team) and fitness based on intellectual capacity, interest, adjustment and proximity to parole or discharge eligibility. Inmates so assigned are released from the institution to attend classes during prescribed hours and return to the institution after classes.

III. Funding: Institutions will assist individual inmates in the development of funding arrangements, utilizing resources of state and federal agencies including DJCP, DVR, SSA, and VA as well as those of the inmate and his family. As a general rule, the inmate will use his own resources or those of his family, but exception may be made when need and fitness outweigh financial capacity.

IV. Eligibility:

A. Requisite academic achievement standards depend on the kind of course(s) to be taken, but in all cases must meet requirements of the State Department of Education. The GED Certificate or high school diploma is usually required for matriculation in a degree program or enrollment in some technical training courses, while lesser, specified levels are required for some technical courses.

B. Participants will have "T" custody status that can only be assigned by Central Classification Board on recommendation of an Institutional Classification Committee.

C. At the time of assignment to educational release the inmate must be within one year of eligibility for parole consideration and have been in "A" custody status at least three months.

D. To the extent possible, participants will attend evening classes at the institution prior to going on campus. This is viewed as a screening device to assist in determining capability and motivation. While thus engaged, students are not in educational release status, so foregoing standards B and C are not necessarily applicable.

V. Application:

A. At least three months prior to the beginning of a quarter or semester, the inmate will apply in writing to his superintendent, setting forth his reason for wishing assignment to educational release; and the name of the course(s) or curriculum desired; name and location of the school; and funding arrangements, if known.

B. The superintendent will rely on the Institutional Classification Committee and/or the inmate's counselor to verify the inmate's need and fitness and confirm or develop funding arrangements, also to determine that the school will accept him on campus; then he will forward the application with his recommendation and any supporting data to the Central Classification Board.

C. Central Classification Board will assign approved applicants to the program on a full-time student basis (not less than 15 hours) and place them in "T" custody status.

VI. General: Educational releasees will be attired in street clothing when outside the institution; they will earn top regular bonus; and will be provided transportation to and from school. They will have no institutional work assignment during the week but may be assigned weekend chores. Every effort will be made to provide quiet areas for study. Participants will be subject to all rules and regulations of the Division of Corrections and may be removed from the program upon a finding of guilt by an Adjustment Committee or court of law. Inmates already participating in an on-campus college program, who are not eligible under these guidelines from a time standpoint, may continue their studies if suitable funding is available.[7]

At this time there are no guidance counselors assisting the RSA. There are provisions for such a position to be established:

> There will be certified guidance counselor on the education program staff who will be responsible for career guidance of students and act as an advisor for other staff members in counseling with students.[8]

This standard also provides for the following services:

> Orientation sessions to provide information on available education programs shall be conducted for all incoming men by the education supervisor or his designee.[9]

Many of the subpoints dealing with vocational training are covered under the title "Vocational Education" in the Minimum Operational Standards. The following are the standards provided:

> 3103 Vocational Education - Each institution shall have prevocational and vocational courses which will provide the individual with a saleable entry-level skill, or improve their existing skills.
>
> 3101.1 - The selection of offerings will be based on inmate analysis of the job market, and institutional capabilities.
>
> 3103.2 - Measureable objectives and course outlines will be prepared for all courses selected.
>
> 3103.3 - Vocational course entrance requirements will be based on individual needs and the requirements of the occupation.
>
> 3103.4 - Emphasis shall be placed on instructional methods which will allow the open ended concept, let students proceed at their own pace, permit individualized instruction, and utilize a variety of instructional media.
>
> 3103.5 - Teachers, counselors and classification officers shall accept the responsibility of maintaining a minimum enrollment of at least six persons in each formal classroom grouping.
>
> 3103.6 - The vocational education classroom facilities will be designed to adequately house each course of the total program. Equipment will be representative of trade, industry, or service occupations being offered; and it will be in sufficient amounts. Design of the facility and selection of equipment will be approved by the assistant director responsible for educational programs.
>
> 3103.7 - Manipulative (entry-level) skills will be taught by utilizing methods that are relevant to the world of work.
>
> 3103.8 - Vocational education course laboratory facilities and/or equipment will be utilized for instructional purposes only, and an instructor or education supervisor must be present and will be responsible.
>
> 3103.9 - Safety standards from O.S.H.A. (Occupational Safety and Health Act) will apply to all vocational education course laboratories, equipment and personnel.

3103.10 - Apprenticeship programs will be offered where applicable.[10]

The instructors of the various vocational training programs are required to compose course descriptions that have clearly identified objectives. Included here is an example of such a description:

I. Item
   A. Classification of instruments - 12 clock hours
   B. Use and Care of Instruments - 12 clock hours

II. Related Information
   A. How classified
      1. size
         (a) how indicated
      2. structural parts
      3. grinds
   B. Techniques for
      1. holding
      2. adjusting
      3. selecting
         (a) preferred temper
         (b) common sizes
         (c) type (shears, clippers, hones, etc.)
         (d) cause for pulling
         (e) blade size range
         (f) cost
      4. maintenance
         (a) cleaning
         (b) sterilizing
         (c) rust prevention
      5. safety

III. Instructional Aids
   A. Transparencies - used to supplement the actual items
      1. number 1-A-1
      2. number 1-A-2
      3. number 1-A-3
   B. Actual items
      1. shears, clipper, combs, hones, razor, etc.
      2. clippers, shears
      3. shears, clippers, combs, hones, razor
      4. shears, clippers, razors
      Supplements to the above transparencies: number 1-B-1
   C. Instructor demonstrations

IV. Skill Development Activities
   A. Learning the structual parts of shears, clippers, razors and combs.
   B. Adjusting clipper blades
      1. honing razors and testing with cushion tip of thumb
      2. strapping razor and testing with cushion tip of thumb.[11]

The vocational instructors employed by the correctional system of Virginia must be licensed or credentialed under the rules and regulations for public education in Virginia.[12]

Vocational instructors update their teaching methods periodically. Trade magazines are provided for the instructors to keep them informed of the latest trends, methods, and innovations.[13]

The average class size of the vocational courses is eight students to one instructor.[14]

The incentive pay scale is described in detail in Standard 11.10, "Prison Labor and Industries."

Under "Use of Community Resources and Personnel" there is a provision for the utilization of private industry in Virginia's penal facilities:

> Private industry in designated areas shall be encouraged to establish training programs within the residential facility and to commit a certain number of jobs to graduates from these training programs either through release or work release.[15]

There are several programs being conducted for offenders by community colleges. Patrick Henry Community College is funding a carpentry course at the Patrick Henry Correctional Institution # 28. Commercial foods, drafting and environmental science courses are being offered through the assistance of Wytheville Community College for those incarcerated at the Bland Correctional center.[16]

The Department of Corrections has set up guidelines as recommended by the NAC to structure the work release program:

> I. Rationale: The work release program operates under Section 53-38 of the Code of Virginia as a vehicle for

the reintegration of offenders into the free society. Selected inmates are assigned to work in the community during regular hours and return to the institution after work. The program serves several purposes, the most important being the provision of opportunities for the institution, inmate, and community to test the effectiveness of the correctional system's efforts to prepare the inmate for release. An economic consideration, aside from contributing to their own support, is the statutory requirement that work release program participants contribute to the support of their dependents.

II. Purpose: These guidelines are published to set forth minimum standards and factors to be considered in the selection of inmates for participation in the work release program. While these standards are not inclusive, they constitute minimum eligibility standards. The final decision as to participation shall rest with the Central Classification Board for Work Release and the Assistant Director, Division of Corrections designated to review actions of that Board. Factors that will be considered include the development of release funds, extension of institutional training, community reorientation, and entry on release into stable employment.

III. Standards: In order to be considered for participation in the work release program, an inmate must meet the following minimum standards:

A. At the time of assignment he must have been in "A" custody status for at least three months.

B. He must be within one year of eligibility for parole consideration.

C. His record must not indicate conviction for an escape or attempted escape during the past three years.

D. He must not have been assigned to a segregation facility within the past six months.

E. His record must be clear of punishment reports for the past six months.

F. Any previously taken good conduct time must have been restored except for escape.

G. Parole violators and pardon violators must have had a revocation hearing and been reassigned for at least six months before making application. If revocation resulted from a new conviction, application for work release may not be filed for at least one year following the date of revocation or date of new sentence, whichever is the later.

H. An inmate who has been disapproved for the program may not reapply for at least one year.

IV. Administration: The following procedures will be followed in processing applicants for the work release program:

A. The applicant will file a written application when he is within 18 months of parole eligibility with his superintendent, who will forward it to the Institutional Classification Committee (ICC).

B. The ICC will review the application and any available pertinent data from staff and the inmate's record, then forward its recommendation to the superintendent for his recommendation.

C. The application with recommendations will be forwarded to the Work Release Program Supervisor for action of the Central Classification Board for Work Release. If tentatively approved, the applicant will be assigned to Pre-work Release status with "A" custody classification at an institution where the following may be accomplished:

1. He will be assigned to a work activity consistent with his ability and the needs of the institution.

2. The institutional and work release counselors together will monitor his work and conduct record and provide an unstructured pre-lease orientation.

3. After three months, the ICC will evaluate the inmate's performance and attitude and submit a written recommendation to the superintendent for his recommendation.

4. The application with all recommendations will be forwarded to the Central Classification Board for Work Release (CCB/WR) for action.

D. All transportation arrangements must be made in the development of the work plan. Privately-owned vehicles will not be used unless approved by the Director or his designated representative. Institutional vehicles will be used except where public transportation is available.

E. While in the institution during nonwork hours, work release inmates shall be encouraged to participate in activities that will enhance their capacity to function in the community.

F. Field checks will be made regularly to insure that placements are satisfactory and to develop and maintain relationships in which program responsibilities are shared.

G. As a centrally-administered, multi-component program, the utmost staff cooperation is necessary. The traditional role of the superintendent requires that he be responsible for work releasees while they are inside the institution; while outside, the work release program administration has responsibility. It is understood that mutual interest areas may exist both inside and outside that will demand cooperation of institution and work release personnel. It is essential that all staff of the Division of Corrections promote private and public understanding and support for the program where it exists. This is a matter of developing and maintaining communication networks for the purpose of imparting basic information, interpreting the aims of work release and explaining its role in the total correctionsl process.[17]

Job placement is primarily handled by probation and parole officers.

Emphasis is placed on enabling students to proceed at their own pace and implemented by introducing an approach known as "Individualized Program Instruction." The Minimum Operational Standards call for "individualized and personalized programming."[18]

Provisions for the use of a variety of instructional material are also found in the Standards for the Department of Corrections:

> Central Media Center - The divisional education staff shall design, develop, and maintain a modern, central education media center to meet the media needs of each education program. Evaluation of commercially produced media shall be made available by the center personnel.
>
> The Center shall be responsible primarily for the purchase and maintenance of audio-visual materials whose cost precludes procurement by individual facilities.
>
> The Center shall also be equipped to produce media not available on the market.[19]

No offenders have participated in instructional roles since 1968. This practice was found, according to a correctional official, ineffective and problem-producing as it gave certain inmates greater status than their peers. The offenders do assist on a voluntary basis by acting as tutors for other offenders.[20]

The Department of Corrections provides the following as guidelines for "Correspondence Education":

> 3104 - Correspondence Education - Correspondence courses shall be incorporated into educational and vocational training programs to make available specialized instruction which cannot be obtained within the institution or the community.
>
> 3104.1 - The course(s) is approved by the education supervisor in coordination with security personnel.
>
> 3104.2 - The individual must have sufficient funds for the total cost of the course, or the total funding is to be paid by an outside source.
>
> 3104.3 - The courses must be offered by schools licensed by the Virginia Department of Education to do business in Virginia.
>
> 3104.4 - Adequate, compatible space shall be provided at designated hours for the person to study and work on these courses.
>
> 3104.5 - Student progress in such courses will be regularly monitored by an educator locally in order to discuss subject matter with, answer questions from, and stimulate continued interest in the subject by the student.
>
> 3104.6 - Under no circumstances shall inmates be permitted to enroll in a correspondence course which requires them to enter into a contractual agreement for extended payments without the permission of the Superintendent.[21]

Certificates are awarded to all inmates completing the requirements for the various vocational programs. A copy of this certificate is kept in the individual offender's file.[22]

Alternative Standards

In response to this Standard dealing with educational and vocational training in major state-operated institutions, the Association of State Correctional Administrators had the following comment:

> The judgment of the committee again took the middle of the road stating this standard partially acceptable. Needs to be reworked. Exclude those parts which should not become standard at the national level. Specifically, "phase out juvenile institutions." It is the judgment of this committee there always will be a need for a juvenile facility if only over-night truant, runaway, etc.[23]

Footnotes

[1]Code of Virginia, Section 22-41.1 - 22-41.7 (1974 Amendment).

[2]Academic Progress (Richmond: Division of Adult Services, 1974).

[3]Minimum Operational Standards (Richmond: Division of Adult Services, Department of Corrections, 1974), #3112.3.

[4]"Recommendation to Designees of Rehabilitative School Authority," from C. E. Warden, Director of Education, Department of Corrections, July 10, 1974, p. 2.

[5]Minimum Operational Standards, op. cit., #3101.1.

[6]Ibid., #3110.1, 3110.2.

[7]Department of Corrections, Division Guide Lines No. 820, March 26, 1974.

[8]Minimum Operational Standards, op. cit., #3105.

[9]Ibid., #3105.1.

[10]Ibid., #3103 - 3103.10.

[11]"Barber Training," Unit 1, Title "Instrument," p. 1.

[12]C. E. Warden, Director of Education, Department of Corrections, interview July 19, 1974.

[13]W. N. Hahn, Vocational Training Director, Department of Corrections, interview July 22, 1974.

[14]Ibid.

[15]Minimum Operational Standards, op. cit., #3110.4.

[16]W. N. Hahn, Vocational Training Director, interview July 22, 1974.

[17]Department of Corrections, Division Guide Lines 806 (Revised), March 15, 1974, pp. 1-2.

[18]Minimum Operational Standards, op. cit., #3101.2.

[19]Ibid., #3109 - 3109.2.

[20]C. E. Warden, Director of Education, Department of Corrections, interview, July 19, 1974.

[21]Minimum Operational Standards, op. cit., #3104 - 3104.6.

[22]W. N. Hahn, Vocational Training Director, Department of Corrections, interview July 22, 1974.

[23]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 12.

Standard 11.5

Special Offender Types

Each correctional agency operating major institutions, and each institution, should reexamine immediately its policies, procedures, and programs for the handling of special problem offenders—the addict, the recalcitrant offender, the emotionally disturbed, and those associated with organized crime—and implement substantially the following:

1. The commitment of addicts to correctional institutions should be discouraged, and correctional administrators should actively press for the development of alternative methods of dealing with addicts, preferably community-based alternatives. Recognizing, however, that some addicts will commit crimes sufficiently serious to warrant a formal sentence and commitment, each institution must experiment with and work toward the development of institutional programs that can be related eventually to community programs following parole or release and that have more promise in dealing effectively with addiction.

a. Specially trained and qualified staff should be assigned to design and supervise drug offender programs, staff orientation, involvement of offenders in working out their own programs, and coordination of institutional and community drug programs.

b. Former drug offenders should be recruited and trained as change agents to provide program credibility and influence offenders' behavior patterns.

c. In addition to the development of social, medical, and psychological information, the classification process should identify motivations for change and realistic goals for the reintegration of the offender with a drug problem.

d. A variety of approaches should provide flexibility to meet the varying needs of different offenders. These should include individual counseling, family counseling, and group approaches.

e. Programs should emphasize "alternatives" to drugs. These should include opportunities to affiliate with cultural and subcultural groups, social action alliances, and similar groups that provide meaningful group identification and new social roles which decrease the desire to rely on drugs. Methadone and other drug maintenance programs are not appropriate in institutions.

f. The major emphasis in institutional programs for drug users should be the eventual involvement of the users in community drug treatment programs upon their parole or release.

g. Because of the inherent limitations and past failure of institutions to deal effectively

with drug addiction, research and experimentation should be an indispensable element of institutional drug treatment programs. Priorities include:

(1) Development of techniques for the evaluation of correctional therapeutic communities.

(2) Development of methods for surveying inmates to determine the extent of drug abuse and treatment needs.

(3) Evaluation of program effectiveness with different offender types.

2. Each institution should make special provisions other than mere segregation for inmates who are serious behavior problems and an immediate danger to others.

a. The classification process should be used to attempt to obtain an understanding of the recalcitrant offender and to work out performance objectives with him.

b. A variety of staff should be provided to meet the different needs of these offenders.

(1) Staff selections should be made through in-depth interviews. In addition to broad education and experience backgrounds, personal qualities of tolerance and maturity are essential.

(2) Continuous on-the-job staff evaluation and administrative flexibility in removing ineffective staff are needed to meet the stringent demands of these positions.

(3) Training programs designed to implement new knowledge and techniques are mandatory.

c. Recalcitrant offenders who are too dangerous to be kept in the general institutional population should be housed in a unit of not more than 26 individual rooms providing safety and comfort.

(1) Good surveillance and perimeter security should be provided to permit staff time and efforts to be concentrated on the offenders' problems.

(2) No individual should remain in the unit longer than is absolutely necessary for the safety of others.

(3) Wherever possible the inmate of the special unit should participate in regular recreation, school, training, visiting and other institution programs. Individual tutorial or intensive casework services should also be available.

(4) Tranquilizers and other medication should be used only under medical direction and supervision.

d. Procedures should be established to monitor the programs and services for recalcitrant offenders, and evaluation and research should be conducted by both internal staff and outside personnel.

3. Each correctional agency should provide for the psychiatric treatment of emotionally disturbed offenders. Psychotic offenders should be transferred to mental health facilities. Correctional institution treatment of the emotionally disturbed should be under the supervision and direction of psychiatrists.

a. Program policies and procedures should be clearly defined and specified in a plan outlining a continuum of diagnosis, treatment, and aftercare.

b. A diagnostic report including a physical examination, medical history, and tentative diagnosis of the nature of the emotional disturbance should be developed. Diagnosis should be a continuing process.

c. There should be a program plan for each offender based on diagnostic evaluation; assessment of current needs, priorities, and strengths; and the resources available within both the program and the correctional system. The plan should specify use of specific activities; for example, individual, group, and family therapy. Need for medication, educational and occupational approaches, and recreational therapy should be identified. The plan should be evaluated through frequent interaction between diagnostic and treatment staff.

d. All psychiatric programs should have access to a qualified neurologist and essential radiological and laboratory services, by contractual or other agreement.

e. In addition to basic medical services, psychiatric programs should provide for education, occupational therapy, recreation, and psychological and social services.

f. On transfer from diagnostic to treatment status, the diagnostic report, program prescription, and all case material should be reviewed within 2 working days.

g. Within 4 working days of the transfer, case management responsibility should be assigned and a case conference held with all involved, including the offender. At this time, treatment and planning objectives should be developed consistent with the diagnostic program prescription.

h. Cases should be reviewed each month to reassess original treatment goals, evaluate progress, and modify program as needed.

i. All staff responsible for providing service in a living unit should be integrated into a

multidisciplinary team and should be under the direction and supervision of a professionally trained staff member.

j. Each case should have one staff member (counselor, teacher, caseworker, or psychologist), assigned to provide casework services. The psychologist or caseworker should provide intensive services to those offenders whose mental or emotional disabilities are most severe.

k. Reintegration of the offender into the community or program from which he came should be established as the primary objective.

l. When an offender is released from a psychiatric treatment program directly to the community, continued involvement of a trained therapist during the first 6 months of the patient's reintegration should be provided, at least on a pilot basis.

4. Each correctional agency and institution to which convicted offenders associated with organized crime are committed should adopt special policies governing their management during the time they are incarcerated.

a. Because of the particular nature of organized crime and the overriding probability that such offenders cannot be rehabilitated, primary recognition should be given to the incapacitative purpose of incarceration in these cases.

b. Convicted offenders associated with organized crime should not be placed in general institutional populations containing large numbers of younger, more salvageable offenders.

c. Education and vocational training would appear inappropriate for these offenders, and their "program" should involve primarily assignment to prison industries or institutional maintenance, particularly where they are unlikely to have contact with impressionable offenders.

d. They should not be considered eligible for such community-based programs as work- or study-release, furloughs or other privileges taking them into the community.

e. They are entitled to the same rights as other committed offenders. See Chapter 2.

Analysis

The use of community-based alternatives for addicts within Virginia falls within the jurisdiction of the courts. The Code of Virginia does make provision by which the Director of the Department of Corrections can establish community correctional facilities. The statute reads as follows:

> The Director of the Department of Corrections is hereby authorized to establish and maintain such a system of community correctional facilities as he may from time to time purchase, construct or rent for the care, custody, education and rehabilitation of offenders sentenced to the penitentiary and who are deemed by the Department to have the potential for rehabilitation which justifies their confinement therein.
>
> The Director is further authorized to employ necessary staff personnel for such facilities and to promulgate such rules and regulations for the operation of such facilities as may be appropriate.[1]

Community-based programs can be established to respond to the needs of a particular time; however, because these programs are institution-based, they do not meet the NAC Standard.

There are two established drug-abuse treatment programs in Virginia's major state-operated institutions. In addition, a third drug treatment program, funded by Virginia DJCP has just been established at the Women's Center.

Southampton Drug Treatment has been underway since January 1, 1973. Its objectives are:

> I. Objectives - Our goal is to create an atmosphere in which inmates are motivated to further understand themselves and to actively participate in their own personal, social, education, and vocational development.

Supporting Objectives

1. To coordinate all existing therapeutic resources at the institution into a unified, centrally-directed treatment approach. This will be coordinated by the Supervisor of Treatment and employs a design in which all professional and line personnel work together as an integral team, each contributing his own evaluation and expertise to the progress of the clients. Decisions concerning the case management of each client will be made by a Treatment Team consisting of an institutional counselor as chairman, a school advisor, a DVR counselor, and a correctional officer.

2. To achieve the maximum possible number of contact hours between the counselor and the client. It is felt that frequent and intense contact between the client and the counselor will accomplish the desired attitude and behavior change. Treatment begins with orientation when each new admission to Southampton is immediately assigned to one of the institutional counselors who makes contact with the new resident on his first day. From this point on the counselor maintains continuous contact with each resident throughout his length of incarceration. The resident initially begins an intensive six week orientation program of evaluation, diagnosis, observation, and information giving, culminating in the development of his Treatment Plan, which he will be expected to carry out before his release. After this is completed the counselor controls the case management of each resident and moves him through the treatment process toward his rehabilitation.

   For a population of 600 inmates the counseling caseload averages 65 clients per counselor. Currently, all counselors except two conduct weekly ninety-minute group therapy sessions. The total number of residents now in group therapy is approximately 80.

3. To maintain a Behavioral Modication Program designed to enable each resident to progress to higher levels of responsibility and freedom. Contingent upon his behavior and attitude, points are awarded on the basis of his performance in school, at work, and in the building, by the personnel who supervise each resident's daily activities. When a resident obtains the required number of points he may move to the next highest building level with its increased privileges. In general, each building or status level serves a source of primary reinforcement and points are employed as conditioned reinforcers which maintain behavior until the primary reinforcement is gained. Further maintenance is provided by the counselors who supply each resident with feedback about his behavior and how he is progressing.

   This Behavioral Management System was developed at the beginning of the initial grant period by the Supervisor of Treatment and is under the supervision of the Psychologist. The System is now being used as a model by other major institutions.

4. To provide training to all custody and treatment staff in order to de-emphasize punishment and to maximize the therapeutic skills of all employees so they may become effective agents of change. The training is presented in sessions of 40 hours in length and are held with groups of 16 participants each at a location away from the institution. The objectives of training are to sensitize the staff to human problems and to build interpersonal competence. The training presents a basic understanding of human relations and drug behavior as well as the essential principles of Behavior Modification and Transactional Analysis.[2]

The second drug program is in the development stages and is to begin treatment assistance in the fall of 1974. This program will be located at the Northside State Center. The project has the following structure and objectives:

> A residential Therapeutic Community will be established for a maximum of 25 inpatient residents and a maximum of 40 outpatients who have histories of drug abuse. Multiple group modalities will be used within a Transactional Analysis framework. The intent of the program is to reduce recidivism and drug usage of participants to a statistically significant degree with an ideal objective of more than 80 percent of the residents remaining drug-free following participation and recidivating at less than 20 percent. Additionally a core drug treatment team will be established for expansion of the program and training of Adult Services personnel, provided a statistically significant success factor is achieved. The program will be highly structured with contractual treatment for approximately 50 percent of the residents' working day invested in meeting treatment objectives. The program will be located at Northside State Farm as a separate unit with a staff of five treatment personnel. Screening will be performed by both residents and staff with staff functioning as an institutional Classification Committee for assignment to the program. Individual treatment plans will be negotiated with the resident and records will be kept of progress and adjustment within normal Division procedures. Evaluation will include control group comparison, urine screening, and psychological test batteries. The resident population will be clients within 24 months of parole eligibility and participation is estimated to be approximately 12 months of satisfactory involvement before the client is placed in a Work Release Program or granted parole.[3]

Much time and money has been devoted to the training of the staff who conduct these programs. An illustration of the education and training of personnel is found in the grant proposal:

Education and Training of Personnel: The treatment team will be trained in the following courses (or their equivalent):

A. An introduction in Drug Specific Applications of Transactional Analysis and Group Therapy Dynamics. This course will be completed at the Anysis Therapeutic Community, Federal Penitentiary, Terre Haute, Indiana. Course completion requires 4 days of 9 hours training per day.

B. Basic Management and Group Relations Techniques sponsored by the A.K. Rice Institute, Washington-Baltimore Center and Human Interaction, Inc. Course completion requires 2 1/2 days at 12 hours training per day.

C. Basic Introductory Transactional Analysis offered at the South Institute, Chapel Hill, North Carolina. Course requires one day of 12 hours training.

D. Group Counseling Procedures Using Gestalt offered by the Department of Educational Counseling at Virginia Commonwealth University. Course requires 10 days at six hours training per day.

E. Character Disorder Institute offered by the Asklepiean Foundation, Inc. Marion, Illinois. Course completion requires five days at 10 hours training per day.

F. Transactional Analysis Professional Conference offered by the ITAA, San Francisco, California. Course completion requires five days at eight hours training per day.

G. Personal Applications of Transactional Analysis and Gestalt offered by the Southeast Institute. Course completion requires two days at 14 hours training per day.

H. Such additional training in Management, Therapeutic Modalities, and Drug Specifics as is deemed appropriate by the treatment team, Department of Corrections, and DDAC will be arranged to add strength to the treatment team and to give them a broader perspective in drug treatment modalities.[4]

One ex-offender has been trained to act as a counselor in the State Center drug abuse prevention program.[5]

At this point, there is no special classification for drug users who enter the correctional system. The philosophy behind this is to avoid the labeling of inmates.[6] However, inmates are screened and selected to participate in the drug programs. The first screening is done by the counselors who go through their caseloads to select those persons meeting the specified qualifications which, for the State Center program, are a Trusty status and 18-24 months from discharge. Before participation, an interview between the individual inmate and the treatment team is required. A final consideration is the interest of the inmate in becoming involved in the program.

Arrangements have been made to provide individual and group counseling for the State Center drug program. As of now, the mechanics for family counseling have not been finalized.[7]

Methadone and other drug maintenance programs are not included in the drug treatment plans of Virginia's penal facilities.[8]

The institutional drug programs do not stress drug user participation in community drug treatment programs upon their parole or release. It is assumed by corrections officials that released drug users should not be placed in an environment composed exclusively of former and current drug users. However, the Division of Probation and Parole

Services does refer probationers and parolees into drug programs such as Rubicon.[9]

The program established for the recalcitrant offender is known as the "Contingency Management Program" (CMP). The philosophy and objectives of this program are:

> Philosophy - There is a rather simple rule guiding the operations established and followed in CMP to modify behavior. Have an arrangement that insures that a positive reinforcer immediately follows the occurrence of a desirable response. When this rule is consistently realized, the desirable response will occur more frequently.
>
> Objectives:
> 1. to receive inmates who are particularly troublesome to themselves, to other inmates, and, thus, to smooth administration of correctional programs within the state system.
> 2. to modify the actions of such inmates so that they may be returned to the beneficial influence of correctional programs in the general population of another institution until their sentences are fulfilled.[10]

There are four stages of CMP. The first phase is housed in C Building of the State Penitentiary, the second in M Building of the State Farm, and the third and fourth phases at St. Bride's. When the maximum security facility at Mecklenburg is constructed, all four phases will be housed there.[11]

The counselors used for CMP are psychologists who were selected because of their training in the methods employed in the program. There has been some training of the officers used in the various phases of CMP, but this has been limited for lack of a staff member whose job will include training. Recruitment for such a position is now being carried out by

the Division of Adult Services. Evaluation of this program is now conducted on an informal basis by the Virginia Polytechnic Institute professors who devised the program. Formal evaluation will be done when the above mentioned position is filled.[12]

The facilities for housing the recalcitrant population consists of 72 cells in both C and M buildings. These cells are arranged in three tiers of 24 cells each. Once an offender participating in CMP has proved to his counselor that he has acquired more acceptable social behavior, he advances through the four phases of the program and is ultimately returned to the general institutional population. Persons in maximum security are not permitted to take part in the regular activities of the institution. An individual tutorial service is provided to this classification of inmates, and one-to-one counselor-inmate relationship within CMP is also fostered. All tranquilizers and other medications provided to CMP inmates can only be administered under the supervision of medical direction.[13]

In dealing with the particular needs of the emotionally disturbed, the Minimum Operational Standards makes provision for a "Special Mental Health Unit":

> Special Mental Health Unit--The Division of Corrections shall establish a special facility for the treatment of inmates who cannot function properly within the general inmate population.
>
> There shall be set up a separate unit, preferably at Central State Hospital in Petersburg because of its central location in Virginia, for those inmates who are not psychotic or insane in the

> legal sense of the word but have demonstrated by constant adjustment difficulties while confined that they are not amenable to supervision and cannot be motivated to become involved in their individual restraining efforts.
>
> A wing of the criminal division at Central State Hospital shall be staffed and operated under the direct supervision of the Division of Corrections which will be responsible for its security and administration, with the medical as well as psychiatric services contracted from the staff at Central State Hospital. Inmates assigned to this special facility of corrections will remain until termination of their sentence or in the judgment of all concerned are properly motivated enough to be transferred to other areas within the Division of Corrections. Those individuals whose prison sentences are terminated and who are still felt to be in need of treatment should be subsequently committed through civil procedures in the proper mental hospital.
>
> For sending individuals to this special unit, there shall be a special classification committee formed for this purpose. This committee will be composed of a medical officer, a psychiatrist, and a psychologist. A classification officer and a representative of the institution where the inmate under consideration is currently assigned, shall be present where the case is discussed. This special classification committee, after proper study of the individual, will submit to the Assistant Director of Clinical Services their findings and recommendations.
>
> The basic purpose for an institution of this type is first to protect those inmates who desire to constructively help themselves while in prison from influence of those who do not. A second purpose is to protect society from those individuals who, by the demonstration of persistent, aggravated, anti-social, or criminal behavior, evidence a propensity toward continuing such behavior in the future.14

If an inmate is suspected of being psychotic, the penal facility may send him to a mental hospital for observation. If an inmate is determined to be a psychotic, he is committed; if not, he is returned to the institution.[15]

There are insufficient personnel to provide detailed diagnosis, treatment, and aftercare based on plans of treatment drawn up in advance. There are guidelines, however, for mental health services in the Minimum Operational Standards:

> Mental Health Services - Every inmate shall have thorough psychological evaluation and an in-depth interview when he is received into the system.
>
> If an inmate has a mental history, abstracts of this shall be obtained and every effort shall be made to provide a treatment program designed to meet his individual needs.
>
> Should the inmate, upon entrance to the system, show or display any mental or emotional difficulties, he will be immediately referred to a psychiatrist for evaluation and recommended treatment. Copies of this evaluation shall be placed in the inmate's folder which shall accompany him wherever he is assigned in the system.
>
> Every inmate who is eligible for parole shall have up-to-date psychological and psychiatric evaluations if requested by the Parole Board.
>
> A clinic-like atmosphere shall be established in each institution with psychiatric, psychological, and counseling services being combined within the institution. There the inmate with mental or emotional problems can be seen, studied, and evaluated as necessary. Only after this individual's mental health program fails shall the inmate be considered for transfer to the Special Mental Health Facility.
>
> Once the individual inmate, who has necessarily been certified to a mental hospital, returns to the penal system, he shall be assigned to both a penal psychologist and counselor who shall provide after care follow-up services that have been recommended. The services of the full or part-time psychiatrist shall be utilized to enhance this after-care program.
>
> Inmates who, because of mental or emotional problems, have been sent to this special facility and have been returned to the institutions will be given a "furlough" for one year from the special unit. Thus,

> if an inmate refused to take his recommended medicine; resulting in an exacerbation or prior mental problems, he can be forced to take the medicine or he can be returned to the special facility.[16]

The psychiatric services, access to a neurologist, and radiological and laboratory services are available only on a contractual basis. Many of the subpoints concerned with the emotionally disturbed do not apply to Virginia's correctional system, for the system does not profess to be treating this category of offenders.[17]

The subpoints concerning the treatment of convicted offenders associated with organized crime do not apply to Virginia's system as these offenders would be committed to the federal penal system.[18]

Alternative Standards

The Association of State Correctional Administrators deals with this standard as follows:

> Although acceptable to a greater extent than the preceding standard, from the view of the institution needs reworking. Viewed as naive, restrictive, overlapping between medical and corrections, i.e., behavioral concepts. Refer to paragraph 3, second column, subparagraph f, "two working days", too specific. Holidays, weekends?[19]

This standard is found as conditionally acceptable by the American Correctional Association Committee on Standards Review:

> Bold print, item 4(a): "Because of the particular nature...in these cases" Comment: The goal in itself is a desirable one; however, it will be difficult to implement. Segregation of members of organized crime will require the identification of such offenders. This identification is subject

> to inaccuracies. Wrongly segregating an inmate with members of organized crime would make the correctional agency vulnerable to legal action.[20]

The Florida Division of Corrections proposes such changes as the following for this standard:

> The Florida Division of Corrections agrees with the majority of the provisions in this Standard. We agree that the problem of handling the special offender types, such as drug addicts, the emotionally disturbed, and various other offenders with special problems, is an absolute necessity and we have partially implemented the Standard. For example, a drug treatment program for women at the Forest Hills Unit of Florida Correctional Institution is in the process of being implemented. The two new 150-man institutions appropriated by the last session of the legislature will house first offenders with drug problems and a concerted effort will be made to provide the type of treatment program in dealing with this significant social problem; and, in the process of implementation, is a center for the mentally retarded in Gainesville.
>
> We generally disagree with the provision in sub-Standard 2 c, that recalcitrant offenders should be housed in a unit of not more than 26 individual rooms. We are not necessarily opposed to 26 rooms, but we question the validity of this limitation. Although we agree with sub-Standard 2 c(4), we would wish to add to this Standard that the administration of medicine or other services should be fully documented in medical records.
>
> We disagree with the concepts in sub-Standard 4. We do not believe that convicted offenders associated with organized crime should be categorized as a group undeserving of treatment and incapable of being rehabilitated. We do, however, recognize the danger of people in this category being able to negate the influence of staff and other offenders inside the institution. We are of the opinion that their custody grade should be sufficiently high to insure adequate supervision in order to curtail their efforts to organize inside the institution.[21]

Footnotes

[1]Code of Virginia, Section 53-128.7 (1973 Supp.).

[2]"Southampton Drug Treatment Program," DJCP Grant #73-A1651 (Rev.), pp. 1-3.

[3]"Drug Abuse Prevention, Treatment and Control," DJCP Grant (Original).

[4]Ibid,. pp. 5i-5j.

[5]J. D. Cox, Administrative Services, Assistant Director, Division of Adult Services, interview August 23, 1974.

[6]Ibid.

[7]Ibid.

[8]Ibid.

[9]Ibid.

[10]Dr. Daniel F. Johnson and Dr. E. Scott Geller, Operational Manual Contingency Management Programs, Mecklenburg Pilot Program Building 1 and Building 2, September 15, 1973, pp. 2, 5.

[11]J. D. Cox, interview August 23, 1974.

[12]Ibid.

[13]Ibid.

[14]Minimum Operational Standards, (Richmond: Division of Adult Services, Department of Corrections, 1974), #2706.

[15]J. D. Cox, interview August 23, 1974.

[16]Minimum Operational Standards, op. cit., #2707.

[17]J. D. Cox, interview August 23, 1974.

[18]Ibid.

[19]"Rational and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 12.

[20]American Correctional Association Committee on Standards Review, December 10, 1973.

[21]Florida Division of Corrections, Response to National Standards and Goals for Corrections, (Tallahassee: Department of Health and Rehabilitation, February 1974), pp. 157-158.

Standard 11.6

Women in Major Institutions

Each State correctional agency operating institutions to which women offenders are committed should reexamine immediately its policies, procedures, and programs for women offenders, and make such adjustments as may be indicated to make these policies, procedures, and programs more relevant to the problems and needs of women.

1. Facilities for women offenders should be considered an integral part of the overall corrections system, rather than an isolated activity or the responsibility of an unrelated agency.

2. Comprehensive evaluation of the woman offender should be developed through research. Each State should determine differences in the needs between male and female offenders and implement differential programming.

3. Appropriate vocational training programs should be implemented. Vocational programs that promote dependency and exist solely for administrative ease should be abolished. A comprehensive research effort should be initiated to determine the aptitudes and abilities of the female institutional population. This information should be coordinated with labor statistics predicting job availability. From data so obtained, creative vocational training should be developed which will provide a woman with skills necessary to allow independence.

4. Classification systems should be investigated to determine their applicability to the female offender. If necessary, systems should be modified or completely restructured to provide information necessary for an adequate program.

5. Adequate diversionary methods for female offenders should be implemented. Community programs should be available to women. Special attempts should be made to create alternative programs in community centers and halfway houses or other arrangements, allowing the woman to keep her family with her.

6. State correctional agencies with such small numbers of women inmates as to make adequate facilities and programming uneconomical should make every effort to find alternatives to imprisonment for them, including parole and local residential facilities. For those women inmates for whom such alternatives cannot be employed, contractual arrangements should be made with nearby States with more adequate facilities and programs.

7. As a 5-year objective, male and female institutions of adaptable design and comparable populations should be converted to coeducational facilities.

   a. In coeducational facilities, classification and diagnostic procedures also should give consideration to offenders' problems with relation to the opposite sex, and coeducational programs should be provided to meet those needs.

b. Programs within the facility should be open to both sexes.

c. Staff of both sexes should be hired who have interest, ability, and training in coping with the problems of both male and female offenders. Assignments of staff and offenders to programs and activities should not be based on the sex of either.

Analysis

According to Leake W. Parrish, Superintendent of the State Center for Women located in Goochland, the facilities for women offenders are considered an integral part of the overall corrections ssystem. There has been no systematic research evaluation of differences in the needs of male and female offenders.[1]

The aptitudes and abilities of the female institutional population are identified through psychological testing (which is not extensive) and through social histories. The criteria used to determine the vocational training programs to be provided are not explicitedly defined, but are somewhat affected by the size and interests of the inmate population, the budget, and the expertise of the correctional personnel. The vocational programs offered include: cosmetology, commercial sewing, and secretarial skills. Women are also assigned non-educational work, such as work in the laundry and greenhouse at the State Center for Women.

The same procedures that apply to the classification of male offenders are used for the classification of female offenders. The actual process of classification occurs at the State Farm in Goochland, under the supervision of the Classification Section of the Division of Adult Services.[2] To make the classification system more adequate for the women offenders, consideration has been given to more extensive testing, the development of indepth pre-sentence reporting, and the preparation of indepth social history data.[3]

At present, there are no arrangements which allow a female offender to keep her family with her, nor are there any plans to establish a co-educational facility for Virginia's male and female offenders.[4]

Alternative Standards

Regarding the female offender, the Florida Division of Corrections agrees in part and disagrees in part with the National Advisory Commission on Criminal Justice Standards and Goals recommendation:

> This Standard is concerned with operating institutions to which women offenders are committed. It stipulates that policies, procedures, and programs for women offenders should be re-examined and such adjustment made, as may be indicated, to make these policies, procedures, and programs more relevant to the problems and needs of women. It also discusses the possibility of converting to co-educational facilities, male and female institutions of adaptable design, and comparable populations. The Division agrees with some of the provisions of this chapter and notes that we are in partial compliance. However, we disagree that institutions should be co-educational at the present time.
>
> Prudent discretion should be used in the assignment of staff and offenders to programs and activities where members of the opposite sex are involved.[5]

The following comment provided by the American Correctional Association Committee on Standards Review is somewhat skeptical of the value of the types of programs recommended by the NAC for female offenders:

> Bold print, item 3: "Appropriate vocational training...to allow independence" - Comment: It may benefit some female offenders more to provide training in home economics/management and interpersonal relationships, rather than skills necessary to allow independence.[6]

The American Association of Correctional Administrators find this Standard "unacceptable and rejected":

> This standard is open to question as impractical. Co-educational programs are approvable but offer no universal answers. These questions must be resolved in relation to time, place, persons, and practicality.
>
> Unacceptable and rejected. Needs total reworking as viewed from the practitioners' point of view. Inconsistency is noted in paragraph 5. "woman to keep her family with her" and the final sentence in paragraph, "for those women inmates for whom such alternatives cannot be employed, contractual arrangement should be made...with nearby states." These two statements are viewed as conflicting and not workable. In any event should not become a standard. Paragraph 7 is not acceptable in major adult institutions.[7]

Footnotes

[1]Leake W. Parrish, Superintendent, State Center for Women. Letter August 19, 1974.

[2]Glenn E. Brands, Supervisor, Classification Section, Division of Adult Services, interview August 22, 1974.

[3]Leake W. Parrish, letter August 19, 1974.

[4]Ibid.

[5]Florida Division of Corrections, Response to National Standards and Goals for Corrections, (Tallahassee: Department of Health and Rehabilitation, February 1974), p. 160.

[6]American Correctional Association Committee on Standards Review, December 10, 1973.

[7]"Rationale and Reasonings Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 12.

Standard 11.7

Religious Programs

Each institution should immediately adopt policies and practices to insure the development of a full range of religious programs.

1. Program planning procedures should include religious history and practices of the individual, to maximize his opportunities to pursue the religious faith of his choice while confined.

2. The chaplain should play an integral part in institutional programs.

3. To prevent the chaplain from becoming institutionalized and losing touch with the significance of religion in free society, sabbaticals should be required. The chaplain should return to the community and participate in religious activities during the sabbatical. Sabbatical leave also should include further studies, including study of religions and sects alien to the chaplain but existing in his institution. Funds should be provided for this purpose.

4. The chaplain should locate religious resources in the civilian community for those offenders who desire assistance on release.

5. The correctional administrator should develop an adaptive attitude toward the growing numbers of religious sects and beliefs and provide all reasonable assistance to their practice.

6. Community representatives of all faiths should be encouraged to participate in religious services and other activities within the institution.

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Analysis

An inmate's religious history and practices are not considered in planning his treatment program.[1]

There are no provisions for sabbatical leave for chaplains serving in Virginia's correctional system.[2]

As of now, chaplains are not active in locating religious resources in the community for those offenders desiring assistance on release.[3] Departmental policy explicitly prohibits favor of certain religions over others. According to the section, "Chaplaincy Services," of the Minimum Operational Standards:

> No preferance shall be given to any activity of one religious denomination, faith or sect over another.[4]

The community representatives of the various denominations are permitted to enter Virginia's state operated institutions. These representatives conduct religious services, Bible studies, prayer meetings, and singing sessions.[5]

Alternative Standards

The Fourth United Nations Congress on Prevention of Crime and Treatment of Offenders:

> recognized the religious needs of the institutionalized offender in the Standard Minimum Roles for the Treatment of Prisoners. If a sufficient representative should be designated to serve the needs of that group, on a full-time basis if numbers are great enough and space allows. All prionsers should have free access to qualified representative of his or her religion, but the prisoner should have the right to refuse a visit by a religious representative. Prisoners should be allowed to attend services in the institution when possible and have access to books on and instructors in his faith.[6]

A possible alternative for prison religious programs was found in Corrections by the Ohio Standards and Goals Comparison Project:

> One example of community involvement in the religious program of the institution is the Yokefellow Prison Ministry which was begun in 1955 in the U.S. Penitentiary at McNeil Island, Washington. The Yokefellow groups are Christian and nonsectarian laymen. They meet in small groups to promote worship, show common concerns and spiritual growth with those prisoners who feel alienated. The groups try to show concern by helping a prisoner reintegrate into society by finding him employment and aiding him to adjust economically, socially, religiously, etc. The groups have even supported efforts in establishing halfway houses, as well as seeking to educate both the prisoner and the community in problems of reintegration.[7]

Footnotes

[1]Joseph Lewis, Assistant Director, Division of Adult Services, interview August 12, 1974.

[2]Ibid.

[3]Ibid.

[4]Minimum Operational Standards (Richmond: Division of Adult Services, Department of Corrections, 1974) #3002.

[5]Joseph Lewis, interview August 12, 1974.

[6]American Bar Association, Council of State Governments, Compendium of Model Correctional Legislation and Standards, New York, N.Y.: American Bar Association, 1972, pp. IV-12.

[7]Standards and Goals Comparison Project, Corrections, (Columbus, Ohio State University, 1974), p. 134.

Standard 11.8

Recreation Programs

Each institution should develop and implement immediately policies and practices for the provision of recreation activities as an important resource for changing behavior patterns of offenders.

1. Every institution should have a full-time trained and qualified recreation director with responsibility for the total recreation program of that facility. He also should be responsible for integration of the program with the total planning for the offender.

2. Program planning for every offender should include specific information concerning interests and capabilities related to leisure-time activities.

3. Recreation should provide ongoing interaction with the community while the offender is incarcerated. This can be accomplished by bringing volunteers and community members into the institution and taking offenders into the community for recreational activities. Institutional restriction in policy and practice which bars use of community recreational resources should be relaxed to the maximum extent possible.

4. The range of recreational activities to be made available to inmates should be broad in order to meet a wide range of interests and talents and stimulate the development of the constructive use of leisure time that can be followed when the offender is reintegrated into the community. Recreational activities to be offered inmates should include music, athletics, painting, writing, drama, handcrafts, and similar pursuits that reflect the legitimate leisure-time activities of free citizens.

Analysis

All of Virginia's major state-operated institutions have a full-time trained and qualified recreation supervisor.[1] The National Advisory Commission Report recommends that the recreation supervisor be "responsible for the integration of the program with the total planning for the offender." This practice is called for in the Minimum Operational Standards:

> Recreational program planning for each inmate shall be coordinated with their personal Treatment Team and shall be in accord with network rehabilitation programming planned for the inmate.[2]

As of now, this standard is being implemented on a limited basis.[3] Departmental regulations require that records be kept concerning participation in recreational programs:

> Recreation Director or Supervisor shall keep a current record card on each person showing his full participation and involvement in the various aspects of the Recreational Program.[4]

Criminal offenders within the Virginia correctional system participate in recreational activities with the community on a limited basis. An inmate softball team, composed of 20-25 inmates, is involved in the softball league of Southampton County. The use of community softball fields seems the only way in which community recreational resources are utilized.[5]

The various recreational activites provided in the large institution must include the following:

1. one director of recreation and athletics;
2. one arts and crafts teacher, part time;
3. one music teacher, part time;
4. two Recreation Supervisors;
5. four correctional officers.[6]

> Every large institution shall have a multi-purpose recreational building that will house the following: basketball, volleyball, combined area, boxing, weight lifting, wrestling, combined area, arts and crafts separate, spectator seating (enough to accomodate spectator participation), storage separate office.[7]

Recreational programs and equipment available in the individual state-operated institutions is not uniform as the revenue for much recreational equipment comes from commissary profits. In this sense, inmates are buying their own equipment. It is hoped that there will be money allotted for recreation in the institutional budget for future years.[8] The Minimum Operational Standards provides guidelines as follows:

> Funds shall be provided out of the regular institutional budget and the canteen fund.[9]

Alternative Standards

The American Correctional Association's Manual of Correctional Standards is quite detailed in its discussion of the essential elements of a recreation program, noting the following necessary elements:

I. Administration

A. Leadership: There should be a well-trained recreation leader responsible for the leadership of the program.

B. Funds: Adequate funds should be provided in the regular institution budget for the support of the recreation program.

C. Areas, Facilities and Equipment: Areas, facilities, and equipment should be provided for a year-round program of diversified indoor and outdoor activities.

II. Program:

The well-rounded program should include the following activities:

A. Athletic Activities:

1. Individual and Dual Sports
2. Team Sports - Intramural and Varsity
3. Combative Sports

B. Cultural Activities:

1. Arts and Crafts
2. Music
3. Drama
4. Literary
5. Special Events - Radio, Television and Movies
6. Social Games
7. Group Activities

C. Corrective Activities:

1. Physical Fitness Testing Training
2. Physiotherapy
3. Records and Evaluations
4. Research.[10]

Footnotes

[1]Joseph Lewis, Assistant Director, Division of Adult Services, interview August 12, 1974.

[2]Minimum Operational Standards (Richmond: Division of Adult Services, Department of Corrections, 1974), # 3301.4.

[3]Joseph Lewis, interview August 12, 1974.

[4]Minimum Operational Standards. op. cit., #3301.5.

[5]Joseph Lewis, interview August 12, 1974.

[6]Minimum Operational Standards, op. cit., #3302.2A.

[7]Ibid., #3303.1.

[8]Joseph Lewis, interview August 12, 1974.

[9]Minimum Operational Standards, op. cit., #3305.1.

[10]American Correctional Association, Manual of Correctional Standards (Washington, D.C.: American Correctional Association, 1966), Chapter 32.

Standard 11.9

Counseling Programs

Each institution should begin immediately to develop planned, organized, ongoing counseling programs, in conjunction with the implementation of Standard 11.3, Social Environment of Institutions, which is intended to provide a social-emotional climate conducive to the motivation of behavioral change and interpersonal growth.

1. Three levels of counseling programs should be provided:

   a. Individual, for self-discovery in a one-to-one relationship.

   b. Small group, for self-discovery in an intimate group setting with open communication.

   c. Large group, for self-discovery as a member of a living unit community with responsibility for the welfare of that community.

2. Institutional organization should support counseling programs by coordinating group living, education, work, and recreational programs to maintain an overall supportive climate. This should be accomplished through a participative management approach.

3. Each institution should have a full-time counseling supervisor responsible for developing and maintaining an overall institutional program through training and supervising staff and volunteers. A bachelor's degree with training in social work, group work, and counseling psychology should be required. Each unit should have at least one qualified counselor to train and supervise nonprofessional staff. Trained ex-offenders and paraprofessionals with well-defined roles should be used.

4. Counseling within institutions should be given high priority in resources and time.

Analysis

Standard 11.9 concerning "Counseling Programs" advises the use of three levels of counseling programs. These three levels are found verbatim in the Minimum Operational Standards:

> Individual - for self-discovery in social group setting with open communication.
>
> Small group- for self-discovery in a social group setting with open communication.
>
> Large group- for self-discovery as a member of the living-unit with responsibility for the welfare of that community.[1]

The majority of counseling within the institutional setting takes place on a one-to-one basis with a limited use of the small group approach. The following guidelines are provided for group settings:

> There shall be conferences between counselors for the purpose of making referrals to groups. To justify the placement of an inmate in a group setting, it must be shown to the satisfaction of the inmate and the Counselor that clear gains and benefits would accrue. Group membership is not dependent upon an individual's desire or interest in the group, but his need to be there as determined by the Counselor.[2]

All of the major state-operated correctional institutions have full-time counseling supervisors. The qualifications of a counselor working in the Virginia corrections system are:

> A baccalaureate degree from an accredited college or university in the field of psychology, counseling, personnel, social service, human relations, or related fields. If the degree is not one mentioned above, for example, a liberal arts degree, specific coursework in counseling, psychology, and sociology will be required.[3]

Virginia has a rule that ex-offenders must be out of the correctional system three years before becoming an employee of that system. The Correctional system has five ex-offenders working within the counseling program serving as counselors in the field

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units and the drug programs. The use of paraprofessionals has been very limited. They have been utilized in the various drug programs where they work with counselors in areas they have knowledge to expand the services offered to the inmate.[4]

Alternative Standards

The Ohio Standards and Goals Comparison Project contains the following summary of the sense of the 1967 President's Commission on Law Enforcement and Administration of Justice suggesting possible alternatives for penal counseling programs:

> The PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE Task Force Report: Corrections cited the success of new staff arrangements that place caseworkers, custodial officers, and other counseling staff members into smaller working units including housing or living units. Such contact provides a more informal working relationship and, hopefully, a closer personal relationship between staff and offender.
>
> The Task Force noted that the emergence of group counseling as a technique for more extensive communication has proven a valuable tool especially in the California institutional programs. There is some indication that such group counseling sessions reduce inter-inmate tensions and reduce their tensions toward the staff.
>
> According to the Task Force, the use of inmate groups themselves as a source for approval or disapproval of inmate behavior has proved to be successful in regulating standards of inmate behavior. Peer counseling appears particularly suited for setting housekeeping and production standards, but the staff must provide positive guidance.[10]

Footnotes

[1]Minimum Operational Standards (Richmond: Division of Adult Services, Department of Corrections, 1974), # 2603.1.

[2]Ibid.

[3]Ibid.

[4]Joseph Lewis, Assistant Director, Division of Adult Services, interview August 12, 1974.

[5]Standards and Goals Comparison Project, Corrections (Columbus: Ohio State University, 1974), p. 136.

Standard 11.10

Prison Labor and Industries

Each correctional agency and each institution operating industrial and labor programs should take steps immediately to reorganize their programs to support the reintegrative purpose of correctional institutions.

1. Prison industries should be diversified and job specifications defined to fit work assignments to offenders' needs as determined by release planning.

2. All work should form part of a designed training program with provisions for:

a. Involving the offender in the decision concerning his assignment.

b. Giving him the opportunity to achieve on a productive job to further his confidence in his ability to work.

c. Assisting him to learn and develop his skills in a number of job areas.

d. Instilling good working habits by providing incentives.

3. Joint bodies consisting of institution management, inmates, labor organizations, and industry should be responsible for planning and implementing a work program useful to the offender, efficient, and closely related to skills in demand outside the prison.

4. Training modules integrated into a total training plan for individual offenders should be provided. Such plans must be periodically monitored and flexible enough to provide for modification in line with individuals' needs.

5. Where job training needs cannot be met within the institution, placement in private industry on work-furlough programs should be implemented consistent with security needs.

6. Inmates should be compensated for all work performed that is of economic benefit to the correctional authority or another public or private entity. As a long-range objective to be implemented by 1978, such compensation should be at rates representing the prevailing wage for work of the same type in the vicinity of the correctional facility.

Analysis

The Minimum Operational Standards for the Division of Adult Services sets forth the following standards for work programs:

> Work Programs shall be diversified and classified by type.
>
> Enterprises shall include all work activities which produce a salable product.
>
> Maintenance and Support Activities shall include those work activities required to operate and maintain the institution.
>
> Inter-Agency work programs shall include programs of cooperative agreements with public agencies for use of inmate labor.
>
> Capital Projects work programs are those where inmates are utilized in new contruction or remodeling projects under the supervision of the Division of Corrections.[1]

The various programs offered within the major state-operated institutions include drafting and industrial arts (silk-screen process, machine design, metal fabricating, and furniture design), data services (keypunch and disc tapes), the machine shop (bearings, gears, and shafts are produced, repairs and rebuilding of machinery, operation of lathe, pantograph, tool and dye work, and the machinist trade), metal shop with three divisions: metal fabrication, metal finishing, and sign fabrication (welding, metal cutting with torches, metal finishing, and press and forming work), the tag shop (tool and die setting, punch press operation, metal finishing, and assembly line production experience), clothing shop (learn the operation of almost every piece of sewing equipment found in a up-to-date factory), print department (linotype, monotype skills, offset and letterpress processes, camera techniques), wood-working department (cabinet-making wood finishing,

machine skills, on-the-job training), book repair (restoration of books), the feed mill (formulizes and standardizes feed), laundry (laundry mechanics and wash-room and pressing room operations), dental lab (preparing upper and lower plates and partial plates and repairs for all the adult and juvenile institutions).[2]

Subpoint 2 of this standard appears verbatim in the Minimum Operational Standards.[3]

The inmate in Virginia's Correctional institutions has a voice in his work assignment in that he has the right to request a transfer to another trade if he is not satisfied in his present assignment. The request is processed through the Institutional Classification Committee, which makes the decision whether or not to grant the transfer based on the inmate's record and his total treatment plan.[4]

Offenders are encouraged to learn and develop skills in a number of job areas. This is especially easy for the long termer as the time span needed to gain skill in a trade area takes two to four years.

The Virginia correctional system provides several incentives to instill good working habits. One of these is the possibility of gaining furlough privileges. Another incentive is the financial compensation for work accomplished by the inmate. Everyone who works receives a payment of twenty-five cents a day. This is referred to as "State Pay". A "Bonus" is given to the inmates according to specific work assignments. There are five catagories of job descriptions. The "Bonus"

is given to the inmates according to specific work assignments. There are five catagories of job descriptions. The "Bonus" ranges from fifteen cents to fifty cents additional pay per day. The "Group Incentive Plan" has been in operation for a year in all industrial shops. It will eventually be put into effect in all jobs. The amount of additional pay is based on the work of the group, that is, total productivity. To illustrate how the "Group Incentive Plan" operates, the position of a press operator will be used. A person running the press receives the "State Pay" of twenty-five cents and a "Bonus" consisting of twenty-five cents a day. If the print shop has average profits of $10,000 a month, for every dollar earned over this figure, the inmates in this shop will all receive additional compensation. If the press shop were to take in $20,000 one month, this being 100% over the norm, the workers would receive fifty cents a day more. Inmates working in programs under this plan are averaging 116% above normal production.[5]

The workers within Virginia's correctional institutions do not receive the minimum wage for their services; however, when one takes into account the fact that while incarcerated, an inmate receives his food, clothing, medical services, education, and training at the expense of the State, correctional officials feel another dimension is added to the minimum wage issue.[6]

Training modules are used exclusively in the Data Service Program.

The lack of particular training capability within the work

program of a correctional institution is not a criteria for the placement of an inmate on work release. Inmates must meet the standards as set forth in the guidelines to qualify for participation in work release programs:

a. At the time of assignment he must have been in a custody status for at least three months.

b. He must be within one year of eligibility for parole consideration.

c. His record must not indicate conviction for an escape or attempted escape during the past three years.

d. He must not have been assigned to a segregation facility within the past six months.

e. His record must be clear of punishment reports for the past six months.

f. Any previously taken good conduct time must have been restored for escape.

g. Parole violators and pardon violators must have had a revocation hearing and been reassigned for at least six months before making application. If revocation resulted from a new conviction, application for work release may not be filed for at least one year following the date of revocation or date of new sentence, whichever is the later.

h. An inmate who has been disapproved for the program may not reapply for at least one year.[7]

Alternative Standards

This standard dealing with prison labor and industries is found "slightly acceptable" by the Association of State Correctional Administrators:

> Slightly acceptable. When compared with conditions and responsibilities in the free community it is acceptable. Needs work. Deadline too soon in order that the problems are worked out. Serious consideration should be given that all inmates are paid from capital generated by industries, supplemented, if necessary, by appropriated money. Needless to add, markets for industrial products and services need enlarging.[8]

The American Wardens' Association accepts this standard, but questions the idea of compensation at the prevailing rate of the free community.[9]

The Florida Division of Corrections finds portions of this standard agreeable and portions disagreeable:

> We concur with the opening paragraph of this Standard, and we definitely are aware of the opinion that an evaluation of our work programs and industry programs is essential, in order to constantly review the re-integration purposes of these activities.
>
> The Division is in general agreement with sub-Standards 1 and 2. In regard to sub-Standard 2 a, we definitely agree that the offender should be involved in any decision concerning work assignment; however, because of the nature of existing institutions and crowded conditions, the logistics of placing every offender, initially, into an assignment of his choice is very difficult. The Division has committed itself, however, to make every effort to assure that each offender is vocationally trained, and that sometime during their incarceration, they are afforded the opportunity to work in a productive job related to their training.
>
> The Division agrees with sub-Standards 3,4, and 5,and most of these are presently partially implemented, with plans for expansion in the future.
>
> The Florida Division of Corrections has serious reservations regarding sub-Standard 6, which provides that "inmates should be compensated for all work performed that is of economic benefit to the correctional authority or another public or private entity." We strongly believe in the work ethic and consequently, we attempt to ensure that every offender is given responsibility of performing work. We are in disagreement with the last paragraph in sub-Standard 6, that compensation should be at rates representing the prevailing wage for work of the same type in the vicinity of the correctional facility. Should the Division reach the decision that offenders should receive some pay, the cost of all services provided by the State would be deducted from the wage scale authorized.
>
> The Florida Division of Corrections is presently conducting a study regarding the feasibility of payment of wages to offenders in industry related programs.[10]

The Correctional Industries Organization proposed several desirable standards concerning prison industries:

1. Improve an inmate's educational level up to the level that the Industry requires in the field he proposes to enter.

2. Encourage, through our factory plans, the promotion of inmate toward a long range job to which he can apply himself by further training after release.

3. Attempt through job placement services to place inmate in a situation involving skills learned in prison factory equipment.

4. Provide modern up-to-date equipment so that instruction will not be "stale".

5. Provide an approved inmate evaluation form that accurately portrays work performance, attitudes, etc.

6. Provide a sound on-the-job training program and related instruction of inmates of industrial shops.

7. Provide services of trained counsellors who have the ability to understand problems of others and the desire to help.

8. Provide on-the-job training and factory employment recorded and correlated with occupational titles and descriptions shown in Dictionary of Occupational Titles, and where certificates are earned, process same through appropriate channels.

9. Areas used for related trades instruction should be located adjacent to work areas.

10. Provide skilled supervisors knowledgeable in their trade and capable of instructing others.[11]

Footnotes

[1] Minimum Operational Standards (Richmond: Division of Adult Services, Department of Corrections, 1974), #2400.

[2] "Virginia Correctional Industries" (Richmond: Department of Welfare and Institutions, 1974).

[3] Minimum Operational Standards, op. cit., #2400.

[4] Mr. Carrol Proctor, Deputy Director, Division of Adult Services, Department of Corrections, Interview August 16, 1974.

[5] Ibid.

[6] Ibid.

[7] Department of Corrections Division Guidelines No. 806 (Revised), issued March 15, 1974.

[8] "Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 13.

[9] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 7.

[10] Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Department of Health and Rehabilitation, February 1974), p. 167.

[11] Correctional Industries Organization, "Response to Standard 11.10 of the National Advisory Commission on Criminal Justice Standards and Goals - Corrections Volume," issued in 1974.

CHAPTER TWELVE

Parole

The NAC definition of parole comes from the Attorney General's Study of Release Procedures in 1939 where parole was defined as "release of an offender from a penal or correctional institution, after he has served a portion of his sentence, under the continued custody of the state and under conditions that permit his reincarceration in the event of misbehavior." Though the effectiveness of properly implemented parole programs has been accepted, their full cost/benefit potential is yet to be documented on a nationwide basis. A major weakness in parole services as seen by the NAC is that they have never received adequate funds for the number of offenders under supervision.

The parole system consists of supervision and control to reduce the likelihood of criminal acts while the offender is serving his sentence in the community so that noncriminal behavior is reinforced. The aspects of parole have been characterized as the "surveillance" and "helping" functions. Decisions constantly must be made assessing and balancing the relative risk of a law violation and the probable long-term gain if a parolee is allowed freedom and opportunity to develop.

The NAC recommends many policies for the parole system which Virginia's system does not include, such as the use of hearing examiners at parole grant and revocation hearings,

citizen committees, a specific period of incarceration before becoming eligible for a parole grant hearing, and the number of Board members who must hear the case. Virginia parole policies are in accord with NAC recommendations, however, in other areas. Virginia does provide legal counsel for indigent offenders, notification in writing of reasons for his denial of parole, and full-time Board members with varied backgrounds.

Research methodology for this chapter consisted of interviewing key officials and examining a number of documents dealing with parole.

Standard 12.1

Organization of Paroling Authorities

Each State that has not already done so should, by 1975, establish parole decisionmaking bodies for adult and juvenile offenders that are independent of correctional institutions. These boards may be administratively part of an overall statewide correctional services agency, but they should be autonomous in their decisionmaking authority and separate from field services. The board responsible for the parole of adult offenders should have jurisdiction over both felons and misdemeanants.

1. The boards should be specifically responsible for articulating and fixing policy, for acting on appeals by correctional authorities or inmates on decisions made by hearing examiners, and for issuing and signing warrants to arrest and hold alleged parole violators.

2. The boards of larger States should have a staff of full-time hearing examiners appointed under civil service regulations.

3. The boards of smaller States may assume responsibility for all functions; but should establish clearly defined procedures for policy development, hearings, and appeals.

4. Hearing examiners should be empowered to hear and make initial decisions in parole grant and revocation cases under the specific policies of the parole board. The report of the hearing examiner containing a transcript of the hearing and the evidence should constitute the exclusive record. The decision of the hearing examiner should be final unless appealed to the parole board within 5 days by the correctional authority or the offender. In the case of an appeal, the parole board should review the case on the basis of whether there is substantial evidence in the report to support the finding or whether the finding was erroneous as a matter of law.

5. Both board members and hearing examiners should have close understanding of correctional institutions and be fully aware of the nature of their programs and the activities of offenders.

6. The parole board should develop a citizen committee, broadly representative of the community and including ex-offenders, to advise the board on the development of policies.

Analysis

There is no separate parole board for the juvenile offender in Virginia. The release of a juvenile is determined by the juvenile facility's staff, based on the offender's progress in the rehabilitative programs. Once released, the offender is put into an "aftercare" program which is administered within the community setting. The rules for an "aftercare" program are similar to those required of an adult parolee. The basis for these practices is found in Virginia statutes:

> Take custody and commit the child or minor coming within the provisions of paragraphs (g) and (i) of subsection (1) of 16.1-158 of this law to the care and custody of the State Board of Welfare and Institutions if the child's or minor's behavior is such that the court deems it cannot be satisfactorily or adequately dealt with in his own locality or with its resources. All children intended to be placed in one of the industrial schools of the State shall be committed tc the State Board of Welfare and Institutions, it being the purpose of this law that the Director shall determine which children or minors shall be so placed.[1]

Even though there is no separate juvenile parole board, there is a statute which allows the courts to treat children fifteen years of age or over as adults. In due course, a child falling under this statute could come before the Virginia Probation and Parole Board to be considered for parole. The statute reads:

> If a child fifteen years of age or over is charged with an offense which, if committed by an adult, would be a misdemeanor or a felony, and the court deems that such child cannot be adquately controlled or induced to lead a correct life by use of the various disciplinary and corrective measures available to the court under this law, then the court may, in such cases, try such child and impose the penalties which are authorized to be imposed on adults for such violations, not to exceed twelve months in jail.[2]

The Virginia Probation and Parole Board is directly answerable to the Governor. It has "been described as being in

but not under the Virginia Department of Welfare and Institutions" (the predecessor agency of the Department of Corrections before July 1, 1974).[3] One change that has occurred within the structure of the probation and parole services is that the field officers are under the direct control of the newly formed Department of Corrections.[4]

The Virginia Probation and Parole Board's broad delegation of responsibility for determining parole policy is contained in the Virginia statutes:

> Adopt, subject to approval by the Governor, general rules governing the granting of parole and the investigation, conduct and supervision of persons placed upon parole.[5]

Further duties of the Board are the following:

> The Board may at any time, in its discretion, upon information or a showing of a violation or a probable violation by any parolee of any of the terms or conditions upon which he was released on parole, issue, or cause to be issued, a warrant for the arrest and return of such parolee to the institution from which he was paroled, or to any other penal institution which may be designated by the Board. The Chairman may also at any time, in his discretion, upon information or a showing of a violation or probable violation by any parolee, issue, or cause to be issued, a warrant for the arrest and return of such parolee to the institution from which he was paroled, or to any other penal institution which may be designated by the Board. Each such warrant shall authorize all officers named therein to arrest and return such parolee to actual custody in the penal institution from which he was paroled, or to any other institution designated by the Board or the Chairman, as the case may be.[6]

Virginia is one of the larger states, ranking thirteenth in population. According to the National Advisory Commission, a state of this size should have full-time hearing examiners.[7] The parole hearing load of the Parole Board is heavy, consisting of 3,500 - 4,000 parole cases a year.[8] However, the Virginia

Probation and Parole Board, at this time, does not have any hearing examiners who have statutory power to grant, deny, or revoke parole, subject to parole board rules and regulations. Consideration is being given to the addition of hearing examiners who would hear and review parole cases so that Board members would be able to devote more time to general policy-making activities.

The position of case analyst has recently been introduced on the staff of Virginia Probation and Parole Board. The position is new and as of yet, not well defined; but their duties include gathering information concerning offenders eligible for parole. The material the case analyst includes in his report consists of background data on the offender's family situation and work history, an account of the inmate's adjustment during incarceration, and information on any particular problem(s) the inmate might have. The three case analysts now employed may go to the field officers for assistance in locating needed information, to the offender's family, to his psychiatrist, or any other source that might be of assistance in developing their reports.[9] The case summaries as collected by the case analysts will provide the Board members with a condensed form of an offender's often times thick personal file. The Board still retains the right to review the complete personal file of any prospective parolee whenever it is deemed necessary.

The educational and employment background of Virginia's Probation and Parole Board members demonstrates a strong

background in the field of corrections. Experience of the Board members includes membership on the Juvenile Delinquency Facilities Planning Advisory Council, psychology professor, superintendent of the Southampton Center, director of the Division of Adult Services, probation and parole officer, Executive Secretary of Probation and Parole Board, assistant director of education and recreation at Southampton Center, and probation and parole training supervisor.

There is no citizen advisory committee used by the Virginia Probation and Parole Board.

Alternative Standards

None.

Footnotes

[1] Code of Virginia, Sec. 16.1-178 (4) (Supp. 1973).

[2] Ibid., Sec. 16.1-1771. (Supp. 1973).

[3] Comprehensive Long Range Master Plan for Juvenile and Youthful Offender Justice Systems in the Commonwealth of Virginia (Chicago: Howard Association, February 15, 1974), p. 154.

[4] Interview with N.W. Perdue, member, Virginia Probation and Parole Board, June 28, 1974.

[5] Code of Virginia, Sec. 53-238.1 (1972).

[6] Ibid., Sec. 53-258 (Supp. 1973).

[7] National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 417.

[8] Interview with N.W. Perdue, June 28, 1974.

[9] Ibid.

Standard 12.2

Parole Authority Personnel

Each State should specify by statute by 1975 the qualifications and conditions of appointment of parole board members.

1. Parole boards for adult and juvenile offenders should consist of full-time members.

2. Members should possess academic training in fields such as criminology, education, psychology, psychiatry, law, social work, or sociology.

3. Members should have a high degree of skill in comprehending legal issues and statistical information and an ability to develop and promulgate policy.

4. Members should be appointed by the governor for six-year terms from a panel of nominees selected by an advisory group broadly representative of the community. Besides being representative of relevant professional organizations, the advisory group should include all important ethnic and socioeconomic groups.

5. Parole boards in the small States should consist of no less than three full-time members. In most States, they should not exceed five members.

6. Parole board members should be compensated at a rate equal to that of a judge of a court of general jurisdiction.

7. Hearing examiners should have backgrounds similar to that of members but need not be as specialized. Their education and experiential qualifications should allow them to understand programs, to relate to people, and to make sound and reasonable decisions.

8. Parole board members should participate in continuing training on a national basis. The exchange of parole board members and hearing examiners between States for training purposes should be supported and encouraged.

Analysis

The Virginia statutes do not list any qualifications to be considered in the selection of new Board members:

> The Probation and Parole Board shall consist of five members appointed by the Governor subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, then at its next succeeding session.[1]

There is no specific advisory group used in the selection of nominees to be submitted to the Governor in considering the appointment of new Board members. The Governor makes the appointments to the Board.

As stated in the above quoted statute, there are five members, and they are all full-time. The members are appointed for four-year terms.[2] This statute became effective as of July 1, 1974. The 1974 amendment changed the term from six years to four. This change allows each new Governor to appoint a totally new Probation and Parole Board during his term in office.

The National Advisory Commission proposes that the Board members should be compensated at a rate equal to that of a judge of a court of record. In Virginia this has not been true and the gap between the two salaries is wider now than it has been in the past. The guidelines concerning the salary of the members is found in the statutes as follows:

> The members of the Board shall receive such salary as may be provided from time to time in the general appropriation acts. The Chairman shall receive an additional compensation of ten per centum of such salary received by a member of the Board.[3]

The 1974 General Assembly set the Board members' salary at $25,300 per year as of July 1. A circuit court judge in Virginia receives $26,910 a year in salary. A monetary supplement from the various localities in which the judges serve helps to emphasize the gap in salaries of the Board members and the judges.

Through correspondence with Frederick Ward, Jr., Executive Vice President of the National Council on Crime and Delinquency, information was received on a program designed to expose parole board members to alternative ideas in the area of parole. To accomplish this purpose the NCCD sponsored the exchange of forty-one board members from twenty-seven states and the District of Columbia who visited twenty-eight other jurisdictions. The visits were one week in length and allowed sufficient time for the board member to "gain some insight into the host parole board's operations, the parole field services office and the institution housing the inmates seeking parole release."[4] The various areas that were studied during the visits included: the board and its practices, the staff and inmates of the institutions housing offenders under the jurisdiction of the host board, the parole field services office, and parolees. Those board members paritcipating in this exchange appraised the program as worthwhile, giving it an average ranking of 3.0 where "changed very much" (the way they viewed their job) was given a value of 5, and "changed very little" was given a value of 1.[5]

The Virginia Probation and Parole Board acted as a host to board members from the states of South Dakota and Pennsylvania

while one Virginia Board member was hosted by the Probation and Parole Board of New York. Virginia also takes part in nationwide seminars conducted by NICD, the National Institute on Crime and Delinquency which is an annual meeting for employees of correctional systems.

Alternative Standards

None.

Footnotes

[1] Code of Virginia, Sec. 53-231 (supp. 1973).

[2] Ibid., Sec. 53-232 (1974 amendment).

[3] Ibid., Sec. 53-236 (Supp. 1973).

[4] Parole Board Exchange Program (New York: National Council on Crime and Delinquency, 1973), p. 7.

[5] Ibid., p. 15.

Standard 12.3

The Parole Grant Hearing

Each parole jurisdiction immediately should develop policies for parole release hearings that include opportunities for personal and adequate participation by the inmates concerned; procedural guidelines to insure proper, fair, and thorough consideration of every case; prompt decisions and personal notification of decisions to inmates; and provision for accurate records of deliberations and conclusions.

A proper parole grant process should have the following characteristics:

1. Hearings should be scheduled with inmates within one year after they are received in an institution. Inmates should appear personally at hearings.

2. At these hearings, decisions should be directed toward the quality and pertinence of program objectives agreed upon by the inmate and the institution staff.

3. Board representatives should monitor and approve programs that can have the effect of releasing the inmate without further board hearings.

4. Each jurisdiction should have a statutory requirement, patterned after the Model Penal Code, under which offenders must be released on parole when first eligible unless certain specific conditions exist.

5. When a release date is not agreed upon, a further hearing date within one year should be set.

6. A parole board member or hearing examiner should hold no more than 20 hearings in any full day.

7. One examiner or member should conduct hearings. His findings should be final unless appealed to the full parole board by the correctional authority or the inmate within 5 days.

8. Inmates should be notified of any decision directly and personally by the board member or representative before he leaves the institution.

9. The person hearing the case should specify in detail and in writing the reasons for his decision, whether to grant parole or to deny or defer it.

10. Parole procedures should permit disclosure of information on which the hearing examiner bases his decisions. Sensitive information may be withheld, but in such cases nondisclosure should be noted in the record so that subsequent reviewers will know what information was not available to the offender.

11. Parole procedures should permit representation of offenders under appropriate conditions, if required. Such representation should conform generally to Standard 2.2 on Access to Legal Services.

Analysis

In the Virginia correctional system, guidelines regarding the scheduling of parole hearings are set forth in statutes:

> 1. Except as herein otherwise provided, every person convicted of a felony, and sentenced and committed under the laws of this Commonwealth to any State correctional institution shall be eligible for parole after serving one fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment if one fourth of the term of imprisonment imposed is more than twelve years. In case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment.
>
> 2. Persons sentenced to die shall not be eligible for parole.
>
> 3. Persons sentenced to life imprisonment shall be eligible for parole after serving fifteen years.[1]

Virginia law does not require that the inmate be present at his parole hearing, but thirty years of tradition has established the practice of having the inmate present in the majority of cases. The Probation and Parole Board does exercise its authority to review parole grant cases with the offender being present. The statute dealing with this situation reads:

> The Probation and Parole Board shall review the case of each prisoner as he becomes eligible for parole and at least annually thereafter until he is released on parole or otherwise. The Board may in addition thereto review the case of any prisoner eligible for parole at any other time when it is of the opinion that such should be done.[2]

The Probation and Parole Board does allow friends, family members, community people, and an inmate's attorney the opportunity to meet with them prior to that inmate's actual parole hearing. The hearing itself is private with only the inmate attending.

Upon entry into a state correctional institution, the offender is given the opportunity to talk with an institutional counselor and an institutional parole officer. These people advise the offender of programs available to him while he is incarcerated and attempt to guide him in the direction of self improvement. Because the guidelines in determining parole selection and release are somewhat vague and ill-defined, the inmate often experiences difficulty in establishing a record that will assist him in acquiring parole. The guidelines the Board uses are:

a. The nature and circumstances of the offense, including any aggravating, extenuating or mitigating factor, prior criminal record, effect of parole upon the administration of justice;

b. Inmate character, capacity, mentality, physical condition, habits and attitudes, institutional record, employment history, and;

c. The environment to which the paroled prisoner may return and the general nature of his parole plan.[3]

The National Advisory Commission proposes that "Board representatives should monitor and approve programs that will have the effect of releasing the inmate without further board meetings."[4] Under current Virginia law, an inmate automatically reappears before a Board member annually to have his case reviewed.

The Virginia Probation and Parole Board likes to have teams of two members hear a parole case. The case load for such a team is not to exceed twenty hearings in any one day and if only one Board member is hearing the case, then the caseload is not to exceed fifteen in any one day. A third Board member must be consulted and all three members must be unanimous in their

decision to finalize a case. If there is not unanimity, then another member (or members) must be consulted until there are three members in agreement on whether or not parole should be granted. This policy requiring a majority (3 out of 5) of the Board members to be in agreement has come into being in the past year. Prior to that time, two out of five members in agreement constituted an action.[5]

The matter of parole denial notification has been studied before and in January 1973, a committee, the Parole Action Notification Committee, was organized by the Virginia Probation and Parole Board to study the existing system of parole denial notification. There were several reasons dictating the need for a change in policy. One was the then recent court decisions in such states as New Jersey and Pennsylavania that indicated a growing trend toward specifying the reasons for denial.

The second reason which reflects a need for change is a belief:

> that all of us (inmates, society, and those of us who must meet the needs of and expectations of both) will profit from a more responsive correctional system.

The most important reason for the change is that by specifically identifying areas of concern and reasons for denial of parole, the offender can establish clear and concise goals toward which he can work.

In conducting the study of the best system of parole denial notification, the committee decided on two catagories of inmate: those who had previously been denied parole and inmates newly received into the system. The institutional

staff was also surveyed.

The results of these surveys are as follows, including a description of the various alternative methods suggested. The source of this information is the report mentioned above, "A System for Parole Action Notification to Inmates" which details parole denial notification:

1. The Board member (s) who interviews you will tell you following the interview (perhaps by calling you back into the interview room the same day or the following day) that you are not being paroled. He gives you this information orally only and also gives you the reasons for denial. You will at a later date be mailed an official written notification which will be like the form currently being used and will not give the reasons for denial (see example marked Exhibit A) (Exhibit A is a notice of Board action which states the inmate's name and number, that parole has been denied, and provides a space for comments.)

2. Following the interview, the Board member(s) tells you nothing, but within a short period of time (perhaps less than 30 days), a written notice of denial will be mailed to you which will be much like the example marked Exhibit B (see exhibit B). (Exhibit B is an example of parole notification that lists the reasons for denying parole.)

3. Following the interview the Board member(s) tells you nothing, but, within a short period of time (perhaps less than 30 days), a written notice of denial will be mailed to you which will be much like the example marked Exhibit C (see Exhibit C). (Exhibit C is similar to Exhibit B, except that C is an abbreviated form.)

4. Following the interview the Board member(s) tells you nothing, but within a short period of time (perhaps less than 30 days), a written notice of denial such as the example (see Exhibit B) will be delivered to you in person by an institutional parole officer who will discuss with you any items the Board may feel need to be corrected or improved if you are to be paroled some time in the future.

5. Following the interview, the Board member(s) tells you nothing, but, within a short period of time (perhaps less than 30 days), a written notice of denial such as the example (see Exhibit C), will be delivered to you in person by an institutional parole officer

who will discuss with you any items the Board may feel need to be corrected or improved if you are to be paroled sometime in the future.

6. One of the previously listed methods (place the number of your choice here_____), your institutional counselor or some other appropriate institutional staff person also being advised in the same manner that you are, this in order that the two of you can work together to correct in the future any problem areas shown by the notice.

7. None of these. (In this case, you may choose to describe briefly a system you would prefer.)

A comparison of method choice by the three groups is as follows:

	NEWLY REC'D	PREV. DENIED INMATES		
STAFF	INMATES	Black	White	
0%	5%	15%	11%	chose Method 1
1 2/3%	3%	7%	4%	" " 2
0%	2%	0%	0%	" " 3
1 2/3%	5%	20%	6%	" " 4
1 2/3%	5%	4%	0%	" " 5
90%	80%	54%	79%	" " 6
5%	0%	0%	0%	" " 7

Of those persons choosing method #6, a comparison of their choices of base methods to go with Method 6 is as follows:

	NEWLY REC'D	PREV. DENIED INMATES		
STAFF	INMATES	Black	White	
6%	8%	50%	24%	chose Method 1
12%	2%	6%	5%	" " 2
0%	0%	0%	0%	" " 3
62%	38%	28%	49%	" " 4
20%	52%	16%	22%	" " 5 7

After much study and investigation, the Parole Action Notification Committee came up with several proposals for establishing a new system. One proposed that the inmate be informed of the initial decision of the Board, in the prescence of the Board. An official written notice of the

of the Board's action would be mailed to the inmate within thirty days. To enable implementation of this proposal, it was recommended that all interviews be conducted with at least two members who have the ability to make a decision at the time of the interview.[8]

After reviewing the recommendation of this group, it was decided that an inmate would be notified of the Board's decision in thirty days. If an inmate is denied parole, he is given the specific reasons for denial so that the institutional parole staff and the institutional staff can plan and work with the inmate to try to correct the areas of concern as shown by the Board's decision.

Notes are kept by the Board member hearing the case which includes pertinent remarks from the actual parole hearing and the reasons for his decision. The Virginia parole procedures do not permit disclosure of information on which the Board member bases his decisions.

A Virginia inmate is allowed the right to consult with an attorney before or after a parole hearing. The attorney is not allowed to sit in on the hearing nor is he permitted to review the inmate's personal file. The Probation and Parole Board will only assist in procuring an attorney for an inmate in special cases. These special cases are cited in Standard 12.4 in discussing the rights of the parolee in a preliminary parole revocation hearing. This matter is also addressed in Virginia statutes:

> The judge of a court of record having jurisdiction in the trial of criminal offenses, in whose county or city the State Penitentiary, a prison farm or a unit of the Bureau of Correctional Field Units, is located, shall on motion of the Commonwealth's Attorney for such county or city, when he is requested so to do by the Superintendent of the State Penitentiary, of a prison farm or a unit of the Bureau of Correctional Field Units, appoint one or more discreet and competent attorney-at-law to counsel and assist indigent inmates therein confined regarding any legal matter relating to their incarceration other than that pending in any court and for which an attorney-at-law has been appointed by the court or otherwise obtained by an inmate.[9]

Alternative Standards

The Florida Division of Corrections disagrees with subpoint seven of this standard which recommends that parole decisions made by a hearing examiner be final unless changed by the parole board in five days. The Division stated that "all decisions should be reviewed and finalized by a majority of the parole board."[10] The Division is also in disagreement with the recommendation that offenders be represented at hearings because "the functions of the professional staff would be negated."[11]

Footnotes

[1] Code of Virginia, Sec. 53-251 (1), (2), (3), (1972).

[2] Ibid., Sec. 53-252 (1972).

[3] "General Parole Policy and Rules" (Richmond: Board of Probation and Parole, adopted June 1, 1967), p. 4.

[4] National Advisory Commission on Criminal Justice Standards and Goals, Corrections, (Washington, D.C.: Government Printing Office, 1973), p. 422.

[5] Interview with N.W. Perdue, member, Virginia Probation and Parole Board, June 28, 1974.

[6] "A System for Parole Action Notification to Inmates" (Richmond: Board of Probation and Parole, 1973), p. 2.

[7] Ibid., p. 29.

[8] Ibid., p. 36.

[9] Code of Virginia, Sec. 53-21.2 (1972).

[10] Florida Division of Corrections, Response to National Standards and Goals (Tallahassee: Department of Health and Rehabilitation, 1974), p. 173.

[11] Ibid.

Standard 12.4

Revocation Hearings

Each parole jurisdiction immediately should develop and implement a system of revocation procedures to permit the prompt confinement of parolees exhibiting behavior that poses a serious threat to others. At the same time, it should provide careful controls, methods of fact-finding, and possible alternatives to keep as many offenders as possible in the community. Return to the institution should be used as a last resort, even when a factual basis for revocation can be demonstrated.

1. Warrants to arrest and hold alleged parole violators should be issued and signed by parole board members. Tight control should be developed over the process of issuing such warrants. They should never be issued unless there is sufficient evidence of probable serious violation. In some instances, there may be a need to detain alleged parole violators. In general, however, detention is not required and is to be discouraged. Any parolee who is detained should be granted a prompt preliminary hearing. Administrative arrest and detention should never be used simply to permit investigation of possible violations.

2. Parolees alleged to have committed a new crime but without other violations of conditions sufficient to require parole revocation should be eligible for bail or other release pending the outcome of the new charges, as determined by the court.

3. A preliminary hearing conducted by an individual not previously directly involved in the case should be held promptly on all alleged parole violations, including convictions of new crimes, in or near the community in which the violation occurred unless waived by the parolee after due notification of his rights. The purpose should be to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions and a determination of the value question of whether the case should be carried further, even if probable cause exists. The parolee should be given notice that the hearing will take place and of what parole violations have been alleged. He should have the right to present evidence, to confront and cross-examine witnesses, and to be represented by counsel.

The person who conducts the hearing should make a summary of what transpired at the hearing and the information he used to determine whether probable cause existed to hold the parolee for the final decision of the parole board on revocation. If the evidence is insufficient to support a further hearing, or if it is otherwise determined that revocation would not be desirable, the offender should be released to the community immediately.

4. At parole revocation hearings, the parolee should have written notice of the alleged infractions of his rules or conditions; access to official

records regarding his case; the right to be represented by counsel, including the right to appointed counsel if he is indigent; the opportunity to be heard in person; the right to subpena witnesses in his own behalf; and the right to cross-examine witnesses or otherwise to challenge allegations or evidence held by the State. Hearing examiners should be empowered to hear and decide parole revocation cases under policies established by the parole board. Parole should not be revoked unless there is substantial evidence of a violation of one of the conditions of parole. The hearing examiner should provide a written statement of findings, the reasons for the decision, and the evidence relied upon.

5. Each jurisdiction should develop alternatives to parole revocaton, such as warnings, short-time local confinement, special conditions of future parole, variations in intensity of supervision or surveillance, fines, and referral to other community resources. Such alternative measures should be utilized as often as is practicable.

6. If return to a correctional institution is warranted, the offender should be scheduled for subsequent appearances for parole considerations when appropriate. There should be no automatic prohibition against reparole of a parole violator.

Analysis

Virginia grants the Probation and Parole Board the right to issue warrants of arrests:

> The Board may at any time, in its discretion, upon information or a showing of a violation or a probable violation of any parolee of any of the terms or conditions upon which he was released on parole, issue, or cause to be issued, a warrant for the arrest and return of such parolee to the institution from which he was paroled, or to any other penal institution which may be designated by the Board. The Chairman may also at any time, in his discretion, upon information or a showing of a violation by any parolee of any of the terms or conditions upon which such parolee was released on parole, issue, or cause to be issued, a warrant for the arrest and return of such parolee to the institution from which he was paroled, or to any other penal institution designated by the Board or the Chairman, as the case may be.[1]

The statutes make further provisions for the arrest of parolees without a warrant:

> Any probation and parole officer may arrest a parolee without a warrant, or may deputize any other officer with power of arrest to do so, by a written statement setting forth that the parolee has, in the judgement of such probation and parole officer, violated one or more of the terms or conditions upon which such parolee was released on parole. Such a written statement by a probation and parole officer delivered to the officer in charge of any State or local penal institution shall be sufficient warrant for the detention of the parolee.[2]

Many of the conditions the National Advisory Commission has established for preliminary parole revocation hearings have been implemented because of the decision of Morrissey v. Brewer, 408 U.S. 471 (1972). The required conditions of this decision have been complied with in Virginia, the effective date being February 21, 1974. In the "Parole Violation Procedures" distributed by the Virginia Probation and Parole Board, it is required that the detention order be personally served to the

parolee. It further states that the probation and parole officer should personally interview the parolee upon arrest and explain the reason(s) for issuing a detention order. Article 5 of the document under "Technical Violations" deals with the parolee's right to counsel during the preliminary hearing. This article reads:

> At the time the Notice of Preliminary Hearing is served, the parolee will be informed of his right to be represented by counsel at the preliminary hearing. If he desires counsel but cannot afford to employ an attorney, the Supervising Officer will determine, on a case-by-case basis, whether due process requires that the indigent parolee be represented by counsel. In advance of the hearing the Supervising Officer will use the following guidelines in making the proper determination:
>
> a. If it is determined the parolee is indigent and will have difficulty in presenting his version of disputed facts, without the cross-examination of witnesses, counsel should be provided.
>
> b. If it is determined that the parolee is indigent and needs help in presenting or refuting complicated documentary evidence, counsel should be provided.
>
> c. If the parolee is indigent and requests counsel based on a reasonable claim that he has not committed the alleged violation, or if the violation is a matter of public record or uncontested and there are substantial reasons in justification or mitigation that would make revocation inappropriate, counsel should be provided.
>
> d. In the event the Supervising Officer determines that an appointed attorney is not necessary, he will note his reasons for the record in specific detail.
>
> e. In the event the circumstances require the appointment of an attorney, the Supervising Officer will immediately apply to the Circuit Court for appointment of counsel as provided for under Section 53-21.2, Code of Virginia.

f. The Hearing Officer will review the decision regarding counsel at the time of the hearing. Another hearing will be required if the Hearing Officer determines counsel was not provided in a proper case.

Virginia follows the directives in Morrissey v. Brewer which require that:

> reasonable prompt informal inquiry conducted by an impartial hearing officer near the place of the alleged parole violation or arrest to determine if there is reasonable ground to believe that the arrested parolee has violated a parole condition.[4]

A Notice of Preliminary hearing should be served on the parolee within seventy-two hours of arrest as stated in the "Parole Violations Procedures". Other provisions found in this document are:

> The parolee may appear and speak in his own behalf. He may bring letters, documents, or individuals who can give relevant information to the hearing officer. The parolee may request that persons who have given adverse information be present for questioning in his presence. If the Hearing Officer determines that such person or persons would be subject to risk or harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination; however, the Hearing Officer will hear that witness in camera and confront the parolee with the substance of the testimony consistant with security.
>
> Upon completion of the hearing the Hearing Officer will prepare a summary, or digest, of what transpired at the hearing.
>
> The Hearing Officer will, in addition, prepare specific findings with reasons for his decision.
>
> A copy of the Hearing Officer's findings will be furnished the parolee, Central Office, Parole Officer, and Hearing Officer.[5]

The parolee is required to be informed of his right to be represented by counsel at his revocation hearing. If he cannot afford a counsel, then the same provisions as listed

under preliminary hearings apply. When the parolee is given notice of the date and time of his revocation hearing, he is also given a disclosure of the evidence against him. The parolee has the right to be heard in person and to present witnesses and documentary evidence. He has the right to confront and cross-examine adverse witnesses. The same restrictions on cross-examining witnesses during preliminary hearing by parolees applies at revocation hearings.

Virginia requires that the full Board conduct the hearing if reasonably possible; and, in any event no less than three of the members must be present. If parole is revoked, "a written statement by the fact finders will be issued to the parolee as the evidence relied on and reasons for revoking of parole."[6]

There is not an extensive system of alternatives to parole revocation in Virginia. If reasonable grounds are found for parole violation, but "the officer feels restoration to supervision is appropriate, he may so recommend to the Hearing Officer".[7] The Virginia Department of Welfare and Institutions was granted in 1972 authorization to establish "Community Correctional Facilities". There are two such facilities, one in Richmond and one in Charlottesville, serving parolees, probationers, delinquent parolees, delinquent probationers, and pre-parolees. A more detailed account of these facilities can be found under Standard 12.6 which deals with "Community Services for Parolees".

If an offender is returned to a correctional institution

for a technical violation, he is further considered for parole usually after a year's time providing the remainder of the sentence is at least one year. If an offender is returned because of a new crime, he gains a new parole eligibility date according to his new sentence.

Alternative Standards

Most organizations have accepted the elements of this standard as they parallel procedural requirements outlined by the United States Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972), for the protection of the alleged parole violators. The American Warden's Association, however, recommends a minor modification:

> Modify. Arrest power must stay with the agent and be subject to review by the board if parole is to be effective.[8]

Footnotes

[1] Code of Virginia, Sec. 53-258 (Supp. 1973).

[2] Code of Virginia, Sec. 53-259 (1972).

[3] "Parole Violation Procedures," (Richmond: Probation and Parole Board, 1973), p. 2.

[4] Morrissey v. Brewer, 408 U.S. 471 (1972).

[5] "Parole Violation Procedures," op. cit., p. 4.

[6] Ibid, p. 6.

[7] Ibid.,

[8] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Warden's Association, Draft, August 1974, p. 7.

Standard 12.5

Organization of Field Services

Each State should provide by 19[illegible] for the consolidation of institutional and parole field services in departments or divisions of correctional services. Such consolidations should occur as closely as possible to operational levels.

1. Juvenile and adult correctional services may be part of the same parent agency but should be maintained as autonomous program units within it.

2. Regional administration should be established so that institutional and field services are jointly managed and coordinated at the program level.

3. Joint training programs for institutional and field staffs should be undertaken, and transfers of personnel between the two programs should be encouraged.

4. Parole services should be delivered, wherever practical, under a team system in which a variety of persons including parolees, parole managers, and community representatives participate.

5. Teams should be located, whenever practical, in the neighborhoods where parolees reside. Specific team members should be assigned to specific community groups and institutions designated by the team as especially significant.

6. Organizational and administrative practices should be altered to provide greatly increased autonomy and decisionmaking power to the parole teams.

Analysis

Services for youth and adult offenders are both a part of the Virginia Department of Corrections. However, they are maintained as autonomous program units.

At this time there is no regional administration to provide for jointly managing and coordinating institutional and field services at the program level. There are hopes that such an administration will evolve as the new organization of the Department of Corrections takes shape. There are no joint training programs or transfer of personnel between the institutional and field staffs.

Virginia's parole services are administered by a single parole officer as compared to the team approach that the National Advisory Commission proposes. The Virginia parole officer calls on the service of the various community agencies whenever one of his parolees has need of their services. The location of the teams in the community where parolees reside does not apply to Virginia as the team approach is not in extensive use. The organizational and administrative practices seem to provide autonomy and substantial decision making power to the parole officers.

Alternative Standards

None.

Standard 12.6

Community Services for Parolees

Each State should begin immediately to develop a diverse range of programs to meet the needs of parolees. These services should be drawn to the greatest extent possible from community programs available to all citizens, with parole staff providing linkage between services and the parolees needing or desiring them.

1. Stringent review procedures should be adopted, so that parolees not requiring supervision are released from supervision immediately and those requiring minimal attention are placed in minimum supervision caseloads.

2. Parole officers should be selected and trained to fulfill the role of community resource manager.

3. Parole staff should participate fully in developing coordinated delivery systems of human services.

4. Funds should be made available for parolees without interest charge. Parole staff should have authority to waive repayment to fit the individual case.

5. State funds should be available to offenders, so that some mechanism similar to unemployment benefits may be available to inmates at the time of their release, in order to tide them over until they find a job.

6. All States should use, as much as possible, a requirement that offenders have a visible means of support, rather than a promise of a specific job, before authorizing their release on parole.

7. Parole and State employment staffs should develop effective communication systems at the local level. Joint meetings and training sessions should be undertaken.

8. Each parole agency should have one or more persons attached to the central office to act as liaison with major program agencies, such as the Office of Economic Opportunity, Office of Vocational Rehabilitation, and Department of Labor.

9. Institutional vocational training tied directly to specific subsequent job placements should be supported.

10. Parole boards should encourage institutions to maintain effective quality control over programs.

11. Small community-based group homes should be available to parole staff for prerelease programs, for crises, and as a substitute to recommitment to an institution in appropriately reviewed cases of parole violation.

12. Funds should be made available to parole staffs to purchase needed community resources for parolees.

13. Special caseloads should be established for offenders with specific types of problems, such as drug abuse.

Analysis

Virginia's probation and parole system has been operating under a graded classification system when assigning parolees to the various levels of supervision (maximum, medium, or minimum). The handbook for probation and parole officers contains the following guidelines for the classification for supervision of probation, parole, and pardon cases:

> The grades of supervision which follow represent only the minimum requirements and are not to be interpreted as the maximum supervision desired.
>
> A. MAXIMUM
>
> 1. Personal contact with the individual at home within one month after release. (This is in addition to the initial contact). This interview shall include a review of the home adjustment of the individual as it relates to the other members of the family. It may well include a plan for budgeting, systematic savings, insurance, and other responsibilities of the individual to his family and of the family to the individual.
>
> 2. Employment contact within one month after release. The employer should be contacted to determine if the probationer or parolee is adjusting to the employment situation. This should include the determination of whether the subject is capable of performing the work for which he has been employed. Any problem indicated at this time should be resolved to the satisfaction of all concerned.
>
> 3. During the next two month period, there should be two personal, one home and one employment contact.
>
> 4. In subsequent quarters, there should be three personal, home and employment contacts.
>
> 5. Review of the local police records each quarter and make other collateral contacts as needed.
>
> B. MEDIUM
>
> 1. Two personal contacts each quarter.

2. One home and one employment contact each quarter.

3. Review of the local police records each quarter and other collateral contacts as needed.

C. MINIMUM

1. Personal contact with the individual each quarter.

2. A home and/or employment contact each quarter.

3. Review of the police records each quarter, and make other collateral contacts as needed.

D. SPECIAL INTENSE

This category would require more intensive supervision than is indicated for maximum, and may relate to special cases with recognized problems. Contacts in this category should be made as indicated by the Court or Executive Secretary.

E. SPECIAL RELAXED

This category will require less supervision than is indicated for minimum. Contacts in this category should be made as indicated by the Court or Executive Secretary.

There is a pilot project being conducted in the Arlington area, District 10, to devise new classification categories according to individual needs. The project is called "Differential Case Load/Differential Investigative Load Project- A Team Management Approach - Phase I". Six teams with three officers each have been established. Each officer will be responsible for handling an intense, normal, and ideal case load. Two of the teams will primarily handle the pure drug and pure sex cases.[1]

The use of the team approach and differential case load supervision:

> will provide decentralized decision-making, affording the officers on the team greater flexibility and control in the management of their respective case loads within the established policy and procedural guidelines... The teams will classify and re-classify cases for differential case load placement and follow up with the minimum requirements for each designated case load, ideal, normal, and intense.[2]

Parole officers are required to have a minimum of nine hours in sociology and /or psychology. A degree in either of these disciplines is preferred. A year of related experience in counseling, teaching or the supervision of other people is required.

There are few sources that supply funds to the parolee without interest; it is the exception rather than the rule. The Community Correctional Center at 7 North Second Street does have a temporary financial fund:

> Providing temporary financial aid is one of the objectives of the Center program; therefore the following standards are outlined:
>
> a. Each new resident can be financed for a two-week period at a rate not to exceed five dollars daily. This is given to him by a check for which he signs a receipt. He is given enough funds to last for a week and is expected to budget that amount for that period of time. This can be an effective treatment mechanism and should be focused on by the counselor.
>
> b. A resident who has not found regular employment during his first two weeks in the program will be expected to assume "day laborer" employment.
>
> c. As a resident becomes employed he will be withdrawn from maintenance and will be expected to provide for his own meals.[3]

The State of Virginia provides $25.00 for each offender who has served at least eight months on his release. No other state funds are available to him beyond this amount. The Code of Virginia provides the following guidelines:

> The Director shall give a felon or a misdemeanant who has served at least eight months on his release, all funds accumulated to his credit pursuant to Sections 53-220, 53-220.1, and 53-222 of the Code of Virginia, and not withdrawn by him. In the event such funds do not total twenty-five dollars, the Director in his discretion, may add sufficient money from the appropriation for criminal charges to enable the felon or misdemeanant to have a minimum of twenty-five dollars available for withdrawal by him at the time of his release...[4]

The Virginia Probation and Parole Board is not rigid about requiring the parolee to have a promise of a specific job as opposed to a visible means of support. This factor is determined in individual cases depending on the marketability of a parolee's trade. The Board does retain the right to require the promise of a specific job in considering the parole of an offender.

The parole and state employment staffs do not have joint meetings or training sessions, but communication lines between the two agencies are open. Statistics from the Department of Vocational Rehabilitation covering the period from July 1972 to July 1974, show that 162 parolees entered the vocational training school. Of this number, 119 cases were closed with the parolees having found employment, 43 cases were closed with parolees unemployed for various reasons (refusing services, dropping out of the training school, or recidivism), and 50 cases were not accepted for services as the parolees were not eligible under the Department of Vocational Rehabilitation's regulations. The Virginia Employment Commission supplied statistics for the parolee cases it had handled in 1973. During this period there were 281 new applications, with 212 referrals to job interviews, and 125

parolees being placed into jobs.

Of the twenty-one probation and parole districts, only District #1, which consists of the Richmond area, has counselors from the Department of Vocational Rehabiliation. If any of the probation and parole agencies need the assistance of a DVR counselor, they can request such a counselor from the unit Department of Vocational Rehabilitation offices found in the four DVR regions.

The Virginia Probation and Parole Board has no authority over institutional vocational training programs. The Board does express its concern and interest that vocational training is tied to subsequent job placement. The Board does encourage institutions to maintain effective quality control over programs.[5]

Virginia has two community-based group homes in operation in Richmond and Charlottesville. They represent:

1. an early diversion resource for offenders needing more than customary probation, but not needing the harsher treatment represented by incarceration;

2. a resource to the Probation and Parole Board for selected parole cases whc need initially upon parole some intensive counseling efforts;

3. a resource to the Division of Corrections for selected individuals whose needs can best be met in their home community in a non-secure environment; and

4. a resource to the Probation and Parole Officer who is sometimes faced with recommending the incarceration of a probationer or parolee who is becoming delinquent in his adjustment.

The statutory guidelines for community corrections facilities are found in Sections 53-128.7, 53-128.8, 53-128.9, and 53-128.10

of the Virginia Code. These statutes read as follows:

> 53-128.7... The Director of the Department of Welfare and Institutions is hereby authorized to establish and maintain a system of community correctional facilities as he may from time to time purchase, construct or rent for the care, custody, education and rehabilitation which justifies their confinement therein.
>
> The Director is further authorized to employ necessary staff personnel for such facilities and to promulgate such rules and regulations for the operation of such facilities as may be appropriate.
>
> 53-128.8...Any wages earned by persons confined in such facilities shall be paid to the Director, and such persons shall contribute an amount of said wages to the cost of their maintenance and support, but not less than $2.00 per day. The amount of such contribution shall be established from time to time by the Director, on a scale approved by the Board. Any funds remaining shall be disbursed as if the person were on a work release program. All persons confined in such facilities may be regularly employed, or enrolled in educational institutions or other rehabilitative programs.
>
> 53-128.9...Any person confined in such facility may be transferred to any other penal institution within the State upon finding by the Department that his intractable behavior indicates that he will not benefit from the programs of such facilities.
>
> 53-128.10...Assignment of a prisoner to such facilities shall be at the discretion of the Director.

Seven North Second in Richmond has a capacity of 24 residents and is now (July 1974) housing 12 residents. The number is low because the facility opened on March 5, 1974 and is building its programs carefully. The downtown location of the community corrections facility is accessible to public transportation, eating establishments, and is near other social service agencies.[7] The Center operates on a level system of advancement.

> Each level requires a certain standard behavior conformity with movement to a higher level when success is met in the current level. Each level has its own criteria with

differing privileges and restrictions.[8]
The average stay is nine months.

The staff at Seven North Second consists of a director, two professional counselors who meet with their clients at least once a week, and five paraprofessional counselors who provide twenty-four hour surveillance of the facility. In addition, there is a Residence Executive Committee, which includes all the the residents now as the number is so small, that meets every week to discuss house problems. There is a Community Advisory Board that meets once a month to educate themselves, gain community support and involvement, and to disseminate the information about the Center to others.[9]

There are no funds expressly allocated to Virginia Probation and Parole Board for the purchasing of community resources. Many of the community services (i.e. mental health clinics, legal aid, drug programs, etc.) make assessments to individuals in charging for their assistance which would allow a parolee access to such services.

The Department of Vocational Rehabilitation provides various services for those parolees meeting their eligibility requirements. Of the toal number of parolees, the percentage that qualify for these benefits is very small. Services that are provided include: room, board, clothes, medical services, tools for their job, and transportation.

Special caseloads have been established only for those parole officers who deal solely with drug problems.

Alternative Standards

The position of the American Correctional Association is similar to that of the NAC regarding community service for parolees:

> Correctional agencies do not function in a vacuum. Whenever they are located in or near a community they should function as part of a network of community agencies concerned with such individual and community needs as health, welfare, religion, recreation, education, employment, and public safety. Because of their unique sensitivity and knowledge of the conditions and forces within the community which cause crime, and because they receive many persons for detention or rehabiliation who require the services of other agencies, the correctional agencies should participate in total community planning to see that essential services are available. A community agency is usually a formal group or association organized to promote social or individual welfare. Community agencies may be financed from public, voluntary, or mixed funds. They may not be informed or even particularly concerned with offenders but they can be of great assistance if their services are known and are properly enlisted.[10]

The Florida Division of Corrections raises questions concerning the aspects of the NAC recommendations that would result in making a parolee self-sufficient:

> Again, with the general statement of this Standard, we have no real disagreement; however, in the discussion, particularly involving loans being made available to parolees without interest charge, or the State establishing something similar to unemployment benefits, which should be made available to the offenders at the time of release, seems to be unrealistic. If unemployment is paid, this could well be a discouraging factor toward a parolee becoming self-sufficient. A parole plan should include employment prior to release. Currently, jobs and release funds are being given, and this approach seems to be working well.
>
> We feel that parole staff fulfills its obligation more realistically when it becomes a participant in developing and coordinating delivery systems of human services, such as liaison between vocational rehabilitation, Department of Labor, etc. and when funds are provided to parole staff to purchase needed community resources for parolees. We

feel that improvement of self-image does not come with creating further dependency.[11]

Footnotes

[1]A.C. Gaudio, Chief Probation and Parole Officer, District 10, letter August 1, 1974.

[2] Ibid.

[3] "A Proposal to Operate Community Correctional Centers in Virginia," (Richmond: Department of Welfare and Institutions, October 1973), p. 10.

[4] Code of Virginia, Sec. 53-219 (1972).

[5] Interview with N.W. Perdue, Member, Virginia Probation and Parole Board, August 5, 1974.

[6] "A Proposal to Operate Community Correctional Centers in Virginia," op. cit., p. 1.

[7] Interview with Daniel Farris, Community Correctional Coordinator, Division of Probation and Parole Services, Virginia Department of Corrections.

[8]"Seven North Second," (Richmond: Virginia Community Correctional Center, 1974), p. 8.

[9] Interview with Daniel Farris, Community Correctional Coordinator, Division of Probation and Parole Service, Virginia Department of Corrections.

[10] American Correctional Association, Manual of Correctional Standards (Washington, D.C.: American Correctional Association, 1966), p. 280.

[11] Florida Division of Corrections, Response to National Standards and Goals (Tallahassee: Department of Health and Rehabilitation, 1974), p. 178.

Standard 12.7

Measures of Control

Each State should take immediate action to reduce parole rules to an absolute minimum, retaining only those critical in the individual case, and to provide for effective means of enforcing the conditions established.

1. After considering suggestions from correctional staff and preferences of the individual, parole boards should establish in each case the specific parole conditions appropriate for the individual offender.

2. Parole staff should be able to request the board to amend rules to fit the needs of each case and should be empowered to require the parolee to obey any such rule when put in writing, pending the final action of the parole board.

3. Special caseloads for intensive supervision should be established and staffed by personnel of suitable skill and temperament. Careful review procedures should be established to determine which offenders should be assigned or removed from such caseloads.

4. Parole officers should develop close liaison with police agencies, so that any formal arrests necessary can be made by police. Parole officers, therefore, would not need to be armed.

Analysis

The Virginia Probation and Parole Board has published a standard list of parole rules containing ten required conditions The "Order of Release and Conditions of Parole" are used for all parolees. The conditions are:

1. I will obey all Municipal, County, State and Federal laws and ordinances. I will report any arrests or citations within three days to the district Parole Officer.

2. I will maintain regular employment and support myself and legal dependents to the best of my ability. I will notify my Parole Officer promptly of any changes in my employment.

3. I will obtain the written permission of my Parole Officer before buying or operating a motor vehicle.

4. I will submit a written report at the end of each month to my Parole Officer on forms furnished by him and will report as otherwise instructed.

5. I will permit my Parole Officer to visit my home or place of employment.

6. I will follow my Parole Officer's instructions and will be truthful and cooperative.

7. I will not use alcoholic beverages to excess. The excessive use of alcohol here is understood to mean that the effects disrupt or interfere with my domestic life, employment or orderly conduct.

8. I will not illegally use, possess or distribute narcotics, dangerous drugs, controlled substances or related paraphernalia.

9. I will not use, own, possess, transport or carry a firearm without the written permission of my Parole Officer.

10. I will not change my residence without the permission of my Parole Officer. I will not leave the State of Virginia or travel outside of a designated area without permission.

The parole staff may request within reason that the Virginia Board amend the parole rules to fit the needs of each case.

The only special caseloads for intensive supervision are for those parolees who have had a drug problem in the past. The staff handling this caseload are trained in dealing with drug problems.

There is a close liaison between parole officers and the police agencies. There is no law prohibiting parole officers from carrying firearms, but it has been a Board policy.

Alternative Standards

The American Bar Association standards vary somewhat from the measures of control recommended by the NAC. A succinct comparison has been made by Program for the Study of Crime and Delinquency at the Ohio State University. Their analysis is as follows:

> The Standard Probation and Parole Act authorizes release on parole when the parole board feels the prisoner can be released without harm to the community and himself. The prisoner is expected to be willing and able to fulfill the obligations of a law-abiding citizen and to conform to any rules the parole board imposes as conditions of release that are necessary, proper, and within the law. There are no guidelines for establishing the scope of rules which might be imposed. In opposition to Standard 12.7(4), Section 25 of the Act authorizes parole officers to arrest alleged violators without a warrant. It is implicit in the statement that the officer could be armed.
>
> The Model Penal Code - Articles on Suspended Sentences, Probation and Parole promulgated by the AMERICAN LAW INSTITUTE specifically requires the parolee to refrain from engaging in any criminal conduct and then lists ten other conditions which might be imposed upon the parolee at any time. It can be inferred that since these added conditions can be required at any time, that the parole officer has some discretion in making rules for individual parolees. All condtions are to be in writing on the Certificate of Parole. In objection to Standard 12.7(4), the parole officer can arrest the parole violator with or without a warrant if the officer believes that a violation has occurred and an emergency situation exists that "creates an undue risk to the public or the parolee".[2]

Footnotes

[1] "Order of Release and Conditions of Parole," P.B. Form 1 (Richmond: Department of Corrections, Revised 7-74).

[2] Standards and Goals Comparison Project, Corrections (Columbus: Program for the Study of Crime and Delinquency, Ohio State University, March 1974), p. 149.

Standard 12.8

Manpower for Parole

By 1975, each State should develop a comprehensive manpower and training program which would make it possible to recruit persons with a wide variety of skills, including significant numbers of minority group members and volunteers, and use them effectively in parole programs.

Among the elements of State manpower and training programs for corrections that are prescribed in Chapter 14, the following apply with special force to parole.

1. A functional workload system linking specific tasks to different categories of parolees should be instituted by each State and should form the basis of allocating manpower resources.
2. The bachelor's degree should constitute the requisite educational level for the beginning parole officer.
3. Provisions should be made for the employment of parole personnel having less than a college degree to work with parole officers on a team basis, carrying out the tasks appropriate to their individual skills.
4. Career ladders that offer opportunities for advancement of persons with less than college degrees should be provided.
5. Recruitment efforts should be designed to produce a staff roughly proportional in ethnic background to the offender population being served.
6. Ex-offenders should receive high priority consideration for employment in parole agencies.
7. Use of volunteers should be extended substantially.
8. Training programs designed to deal with the organizational issues and the kinds of personnel required by the program should be established in each parole agency.

Analysis

The workload system for parole officers in Virginia is done on a caseload basis. There were 9,518 cases under supervision as of May 1, 1974. This figure included those on probation, parole, and pardoned. There were 161 probation and parole officers (including Chief Officers most of whom do not have caseloads) working as of May 1, 1974. The average caseload is 65 persons per officer. This varies according to whether the parole district is rural or urban, with the urban caseload being higher.

The requisite educational level for a beginning parole officer is a bachelor's degree. An officer aide, a para-professional position, has been established in the Norfolk district. The person currently occupying this position is an ex-parolee who does not have a bachelor's degree. He acts as a community liaison and counsels young parolees and probationers. This practice is just in the beginning stages and has not become widespread throughout the state.

As of now, Virginia has no career ladders that offer opportunities for advancement of persons with less than a college degree.

There are no statistics kept on the ethnic background of the staff.

The use of volunteers in the Virginia parole system is limited as the Board has never had the staff to recruit, organize, and train them.

"Volunteer Parole Aides" is a group that originated

in 1972 according to Mr. Paul Turner, an attorney involved in establishing this group. The purpose of this program was to find members of Virginia's "Young Lawyers Association" who would be interested in working on a one-to-one basis with a parolee. The initial grant came through the American Bar Association but did not provide enough funds to hire a full time coordinator. The program got off to a good start as there were seventeen active volunteers initially, but the number has dropped to six as of July 1974.

Ex-offenders have been used as volunteers on an unofficial basis. Those that express an interest have been used to assist parolees who are having problems. Ex-offenders are especially valuable in this capacity as they can relate to many difficulties a parolee experiences.

The Virginia Probation and Parole system has several training programs available to their personnel. There is a three-day orientation program for new officers. This serves to introduce the officers to the system's structure, staff, and to inform them of the views of the central office. When an officer is first assigned to field service, he is on six-months probation. During this time he is involved in on-the-job training. The purpose of this training is to expose the new officer to the various facets of his job. Another training program is in-service training which allows probation and parole staff members to attend seminars on topics that are related to their duties. A further training program is conducted for the management staff of the Virginia

Probation and Parole agency where the supervisors learn new skills and methods. In the latter part of the month of April a state-wide conference was held for the entire probation and parole staff and Board members. Discussions were held at this time on topics such as training officers, changes in revelant legislation, and the new organization of the Department of Corrections.

Alternative Standards

None.

CHAPTER THIRTEEN

Organization and Administration

The basic organizational recommendation of the Task Force on Corrections is that state correctional services be administered by a unified Department of Corrections, and that the correctional agency emphasize three management principles: organizational analysis--adopting the internal organizational structure to meet changing needs; management by objectives--emphasis on "measurable goals, objectives and subobjectives"; and planning--long-range and middle-range examination of the future of the organization as well as developing short-range plans. The more specific recommendations of the Task Force relate to developing managerial styles that allow greater subordinate participation in organizational goal setting and implementation. The Task Force also recommends that correctional agencies develop the capability to monitor agency progress toward objectives, that agency managers receive in-depth training to deal with employee-management problems, and that correctional administrators establish plans to deal with employee work stoppages.

The State of Virginia is generally in noncompliance with the NAC standards of this chapter. (This fact, it must be pointed out, should not be accepted as prima facie evidence that the Virginia Department of Corrections is poorly managed as the

subpoints of this chapter represent a management philosophy different than that operational in Virginia.) The Virginia correctional system exhibits examples of delegation of work-related authority, team working units, a minimum research capability, and other practices recommended in this chapter; however, the participatory management theme that permeates the standards represents a system that is very much different from the Virginia practice.

Information for this chapter was gathered through interviews with several officials in the Division of Staff Services. With respect to many practices, personnel in the Division of Staff Services questioned administrators in other divisions prior to providing information.

Standard 13.1

Professional Correctional Management

Each corrections agency should begin immediately to train a management staff that can provide, at minimum, the following system capabilities:

1. Managerial attitude and administrative procedures permitting each employee to have more say about what he does, including more responsibility for deciding how to proceed for setting goals and producing effective rehabilitation programs.

2. A management philosophy encouraging delegation of work-related authority to the employee level and acceptance of employee decisions, with the recognition that such diffusion of authority does not mean managerial abdication but rather that decisions can be made by the persons most involved and thus presumably best qualified.

3. Administrative flexibility to organize employees into teams or groups, recognizing that individuals involved in small working units become concerned with helping their teammates and achieving common goals.

4. Desire and administrative capacity to eliminate consciously as many as possible of the visible distinctions between employee categories, thereby shifting organizational emphasis from an authority or status orientation to a goal orientation.

5. The capability of accomplishing promotion from within the system through a carefully designed and properly implemented career development program.

Analysis

Our research finds no formal program geared to involving employees to allow, in the words of the NAC, "more responsibility for deciding how to proceed for setting goals and producing effective rehabilitation programs". However, the extent to which each individual employee has input into the policy decisions of a large organization primarily is a function of management style. Patterns of organizational communication in the context of this standard are a hybrid of the downward and upward models of information flow. In the Virginia Department of Corrections, it is very likely that the point of view of lower level employees is taken into account because most key correctional officials once held the positions that they now supervise.

Subpoint two, which recommends the "delegation of work-related authority to the employee level and acceptance of employee decisions", is one of the standards most difficult to analyze in an objective fashion. Appropriately, the response of correctional officials is that delegation of authority is accomplished within the scope of statutory and departmental guidelines. Our assessment is that, at present, decision-making is, for the most part, restricted to fewer personnel in the Division of Adult Services and the Division of Staff Services, while greater delegation of authority generally takes place in the Division of Youth Services and the Division of Probation and Parole.

At the departmental, divisional, and bureau levels, there

are many examples of employees being assigned to ad hoc groups to deal with particular problems.

In recent years, committees have been appointed to study the classification system, management information systems, job classification, the future of corrections, and other problem situations. Thus, in regard to members of study groups, the Virginia Department of Corrections is probably not a great deal different from other large bureaucratic organizations.

Shifting organizational emphasis from an authority or status orientation to goal orientation seems only a future possiblity for the Virginia Department of Corrections. The organizational structure appears, without exception, to be authority oriented.

The high level and supervisory positions in the Department of Corrections are, for the most part, filled by individuals from within the Virginia correctional system. This situation has not been accomplished necessarily in the NAC's words because of a "carefully designed and properly implemented career development program."

Alternative Standards

The American Correctional Association recommends against the traditional all-powerful role of wardens which recognizes the personnel resources available to an institutional head:

> In the past, the warden made practically all decisions and there was extremely limited delegation of authority and responsibility. Today, the warden limits his role to considering policy matters and major problems; he

delegates with confidence to well-trained subordinate executives, sufficient authority for management of daily operations in line with established policy.[1]

Footnotes

[1] American Correctional Association, A Manual of Correctional Standards (Washington, D.C.: American Correctional Association, 1966), p. 316.

Standard 13.2

Planning and Organization

Each correctional agency should begin immediately to develop an operational, integrated process of long-, intermediate-, and short-range planning for administrative and operation functions. This should include:

1. An established procedure open to as many employees as possible for establishing and reviewing organizational goals and objectives at least annually.
2. A research capability for adequately identifying the key social, economic, and functional influences impinging on that agency and for predicting the future impact of each influence (See Chapter 15).
3. The capability to monitor, at least annually, progress toward previously specified objectives.
4. An administrative capability for properly assessing the future support services required for effective implementation of formulated plans.

These functions should be combined in one organizational unit responsible to the chief executive officer but drawing heavily on objectives, plans, and information from each organizational subunit.

Each agency should have an operating cost-accounting system by 1975 which should include the following capabilities:

1. Classification of all offender functions and activities in terms of specific action programs.
2. Allocation of costs to specific action programs.
3. Administrative conduct, through program analysis, of ongoing programmatic analyses for management.

Analysis

The planning capability in the Department of Corrections is exclusively that of short-range planning. The Department has a Bureau of Research and Planning, but the limited planning staff allows this unit only to deal with problems of immediate concern. Thus, given current staff levels, long-range and intermediate-range planning seem likely to be some distance in the future, as a major responsibility of the Bureau of Research and Planning is the coordination of all departmental grant activities.

There is no indication that a procedure has been developed to review organizational goals and objectives on an annual basis. In the Division of Adult Services, a publication titled Blueprint for Action[1] was distributed to all supervisory personnel. However, there was no requirement that these personnel discuss the philosophy of corrections exposed in Blueprint, nor is there any indication that a substantial number of supervisors on their own initiative relayed the information in this publication to their staff.

Research of the magnitude suggested in subpoint two is not conducted to any great extent in the Virginia correctional system. The staff of five research analysts in the Bureau of Research and Planning has in the past devoted most of its activity to producing a limited number of annual and ad hoc reports.

As management by objectives (MBO) is not used in Virginia correctional system, there can be no official monitoring of

such activities. However, correctional administrators in the Virginia system, as might be expected, are continually assessing on an informal basis the extent to which programs and personnel are meeting their expectations. There seems to be a genuine interest on the part of key line officials in developing a capability for systematically assessing the performance of personnel and programs in the correctional system. However, such a capability seems well in the future, certainly not before the end of 1975.

Cost benefit analysis has been used to only a very limited degree in the Virginia correctional system. Such analyses have been performed to some extent on the farming and industrial operations, but not for other programs or personnel performance. Departmental officials indicate that the closest the Department comes to formal cost benefit analysis is in the area of grants where evaluation and monitoring components are built into the grant activities.

Alternative Standards

None.

Footnotes

[1] Blueprint for Action in Virginia Corrections (Richmond: Virginia Department of Welfare and Institutions, January 1974).

Standard 13.3

Employee-Management Relations

Each correctional agency should begin immediately to develop the capability to relate effectively to and negotiate with employees and offenders. This labor-offender-management relations capability should consist, at minimum, of the following elements:

1. All management levels should receive in-depth management training designed to reduce interpersonal friction and employee-offender alienation. Such training specifically should include methods of conflict resolution, psychology, group dynamics, human relations, interpersonal communication, motivation of employees, and relations with minority and disadvantaged groups.

2. All nonmanagement personnel in direct, continuing contact with offenders should receive training in psychology, basic counseling, group dynamics, human relations, interpersonal communication, motivation with emphasis on indirect offender rehabilitation, and relations with minority groups and the disadvantaged.

3. All system personnel, including executives and supervisors, should be evaluated, in part, on their interpersonal competence and human sensitivity.

4. All managers should receive training in the strategy and tactics of union organization, managerial strategies, tactical responses to such organizational efforts, labor law and legislation with emphasis on the public sector, and the collective bargaining process.

5. Top management should have carefully developed and detailed procedures for responding immediately and effectively to problems that may develop in the labor-management or inmate-management relations. These should include specific assignment of responsibility and precise delegation of authority for action, sequenced steps for resolving grievances and adverse actions, and an appeal procedure from agency decisions.

6. Each such system should have, designated and functioning, a trained, compensated, and organizationally experienced ombudsman. He would hear complaints of employees or inmates who feel aggrieved by the organization or its management, or (in the case of offenders) who feel aggrieved by employees or the conditions of their incarceration. Such an ombudsman would be roughly analogous to the inspector general in the military and would require substantially the same degree of authority to stimulate changes, ameliorate problem situations, and render satisfactory responses to legitimate problems. The ombudsman should be located organizationally in the office of the top administrator.

Analysis

Official policy regarding the Department of Corrections' procedures relating to offenders is much more extensive and accessible than the Department's official personnel policies.

Every correctional officer in Virginia is required to have a total of two hundred fifty-two hours of training. Of that total one hundred sixty-four hours are devoted to classroom training with forty-four hours devoted to human relations and supervision of inmates. Some time is devoted to the elements recommended in subpoint 1; however, there has been no in-depth training provided in this area. Several years ago, the University of Richmond's Institute of Business and Community Development conducted a program for all correctional personnel down through the level of sergeant in the area of human relations and sensitivity training. Other than the training for correctional officers, there is no indication of similar programs operating currently. In sum, human relations training in the correctional system is primarily being conducted for those personnel who have direct and constant contact with inmates.

There seems to be no ongoing and systematic evaluation of the inner personal competence and human sensitivity of all system personnel, including executives and supervisors. Rather, the process is reported as being "nothing other than daily routine supervisory oversight and 'off the cuff' evaluations".

Managers of the correctional system do not receive formal training in the "strategy and tactics of union organization

managerial strategies, tactical responses to such organizational efforts, labor law and legislation with emphasis on the public sector, and the collective bargaining process". It is the researcher's best interpretation that the above areas are not part of a management training program because the prevailing opinion in state government is that correctional employees are not allowed by state law to strike. Further, formalized training in any of these areas might be interpreted as a change in policy. Here, administrators might be looking to the General Assembly for guidance.

Although a policy on work stoppages has not been promulgated, a recent walk-out at the St. Bride's Correctional Facility in Chesapeake indicates how this type of situation might be dealt with in the future. Thus, short of a strike affecting most correctional institutions, employees from other institutions will be called to replace those off the job. As the Department of Corrections' largest facilities are centrally located in the State, the Department has the mobility to deal effectively with strikes at smaller units in the system. Carefully developed and detailed procedures for responding to a system-wide work stoppage as that which took place during the past summer in Ohio do not seem to exist.

A new investigative unit reporting directly to the Director of Corrections has been established in the Department of Corrections. The chief investigator and his staff are authorized to investigate complaints of inmates and personnel in the Department. The investigative unit is not a perfect

likeness of the Scandinavian ombudsman or the inspector general in the military, because the individual who heads up this unit has other departmental responsibilities and does not seem to have the organizational independence of an ombusman or an inspector general.

Alternative Standards

The American Wardens' Association calls for the rejection of this standard:

> Reject. No institution should be forced by national standards to unionize employees. This is something the employees should vote for or against. If unionized, many of the suggestions of this standard should be implemented. This standard also talked or implied that inmate unions should be forced. This idea is rejected. Inmate input can be obtained in other ways such as staff-inmate ad hoc committees that work on specific problems. The ombudsman concept has not been used enough in this country to justify its recommendation by a committee.

Footnotes

[1] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 8.

Standard 13.4

Work Stoppages and Job Actions

Correctional administrators should immediately make preparations to be able to deal with any concerted work stoppage or job action by correctional employees. Such planning should have the principles outlined in Standard 13.3 as its primary components. In addition, further steps may be necessary to insure that the public, other correctional staff, or inmates are not endangered or denied necessary services because of a work stoppage.

1. Every State should enact legislation by 1978 that specifically prohibits correctional employees from participating in any concerted work stoppage or job action.

2. Every correctional agency should establish formal written policy prohibiting employees from engaging in any concerted work stoppage. Such policy should specify the alternatives available to employees for resolving grievances. It should delineate internal disciplinary actions that may result from participation in concerted work stoppages.

3. Every correctional agency should develop a plan which will provide for continuing correctional operations in the event of a concerted employee work stoppage.

Analysis

In the discussion of Standard 13.3, mention was made that the prevailing opinion in state governement is that state employees do not have the right to strike in Virginia, so there is no need to specifically prohibit correctional employees per se from participating in work stoppages. Correctional officials indicated that institutions have policies against personnel participating in work stoppages, and that there are alternate means available to employees for resolving grievances; but at this time, there are no plans to deal with a concerted employee work stoppage because "situations have not warrented developing of such at this time".

Alternative Standards

The Advisory Commission on Intergovernmental Relations has dealt in detail with whether the public employee has the right to strike. The points relevant to this standard have been summarized by the Ohio standards and goals study group:

> The ADVISORY COMMISSION ON INTERGOVERNMENTAL AFFAIRS (ACIR), Labor-Management Policies for State and Local Government, addresses itself directly to the problems of strikes and work stoppages by public employees. The ACIR recommends a flat prohibition against strikes by public employees, but urges that state laws banning such strikes also mandate the use of specific procedures, such as fact finding, mediation, and advisory arbitration to resolve impasses in public employment.
>
> The ACIR further emphasizes certain distinctions between the private employer and the public employer which makes strikes tolerable against the former, but not the latter. First, the private employer can counter a work stoppage with a weapon of his own - the lockout. Secondly, the consequences of strikes against the private employer usually are not injurious to large segments of the public. However, recent private sector strikes endangering the

public health, safety, and welfare have been enjoined. A work stoppage in a correctional institution is a prime example where a strike directed against a public employer would critically endanger the public safety and welfare. The Commission critisizes the recommendations of certain state commissions for a limited right to strike for nonessential employees on the grounds that "objective criteria to determine the occupational categories which are 'essential' and 'nonessential' would be difficult to develop and next to impossible to implement."[1]

Footnotes

[1] Standards and Goals Comparison Project, Corrections (Columbus: Program for the Study of Crime and Delinquency, Ohio State University, March 1974), p. 158.

CHAPTER FOURTEEN

Manpower for Corrections

The Task Force on Corrections identifies a number of correctional manpower problems and recommends a number of standards that they feel will begin to rectify these problems. The Task Force emphasizes the need for correctional agencies to recruit able personnel and to develop training programs for those currently employed. The Task Force is of the opinion that correctional systems have not tapped several groups that could be utilized as effective correctional personnel. More specifically, they recommend active recruitment of members of ethnic minorities, women, ex-offenders, and volunteers. With regard to education and training, the Task Force recommends development of state educational plans for criminal justice education, development and implementation of internship program in cooperation with institutions of higher education, and comprehensive training programs for in-service personnel.

The degree of compliance with standard in this chapter vary considerably. A majority of the subpoints in the standards dealing with education and training reflect practice in Virginia. However, in the areas where the NAC is recommending an active recruiting role, Virginia is generally in non-compliance as it usually plays a passive role in the recruitment of the groups mentioned in this chapter.

Information for this chapter was collected from interviews

with several officials in the Division of Staff Services. With respect to many practices, personnel in the Division of Staff Services questioned administrators in other divisions prior to providing information. In addition, several documents dealing with personnel practices were also consulted.

Standard 14.1
Recruitment of Correctional Staff

Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions.

To improve the image of corrections, agencies should:

1. Discontinue the use of uniforms.
2. Replace all military titles with names appropriate to the correctional task.
3. Discontinue the use of badges and, except where absolutely necessary, the carrying of weapons.
4. Abolish such military terms as company, mess hall, drill, inspection, and gig list.
5. Abandon regimented behavior in all facilities, both for personnel and for inmates.

In the recruitment of personnel, agencies should:

1. Eliminate all political patronage for staff selection.
2. Eliminate such personnel practices as:
   a. Unreasonable age or sex restrictions.
   b. Unreasonable physical restrictions (e.g., height, weight).
   c. Barriers to hiring physically handicapped.
   d. Questionable personality tests.
   e. Legal or administrative barriers to hiring ex-offenders.
   f. Unnecessarily long requirements for experience in correctional work.
   g. Residency requirements.
3. Actively recruit from minority groups, women, young persons, and prospective indigenous workers, and see that employment announcements reach these groups and the general public.
4. Make a task analysis of each correctional position (to be updated periodically) to determine those tasks, skills, and qualities needed. Testing based solely on these relevant features should be designed to assure that proper qualifications are considered for each position.
5. Use an open system of selection in which any testing device used is related to a specific job and is a practical test of a person's ability to perform that job.

Analysis

Correctional officials in Virginia, like members of the NAC, seem to be very much concerned with improving the image of corrections; however, image enhancement actions recommended in this standard are not generally a part of Virginia correctional practice.

The recommendations to discontinue the use of uniforms and replace military titles for personnel are not likely to be adopted in the near future. The use of badges in the adult system is being discontinued, but all institutional employees are required to carry identification cards at all times. In addition, "restricted identification cards" are required of all persons working institutional programs who are not employees of the Division of Adult Services.[1] Departmental policy requires that every institution establish a system for firearms control. Firearms are not allowed within the security perimeter of Virginia correctional facilities, and, if there is a need for firearms, only state owned weapons are to be used.[2] Regarding subpoint five, the Division of Youth Services has implemented some programs with less regimentation, such as "positive peer culture"; and the Division of Adult Services is probably more flexible now than in the past in its institutional policies dealing with inmates. However, it is likely that substantial regimintation will remain as long as so many people are living in close proximity.

Different from the personnel policies of local sheriffs' officers, state correctional officers have civil service status

as recommended by the NAC in this standard.

Assuming proper qualifications for the position, anyone eighteen years of age or older can be hired for any position in the Department of Corrections. Although there are no official restrictions regarding sex for any position, in practice, correctional officers are required to be of the same sex as those housed in the institutions where they are assigned.

There are no official physical restrictions for positions in the Department of Corrections, but officials of the Division of Adult Services indicated that "there is a strong preference for security officers to be at least 5'8" or taller.".

There are no official policies against hiring the physically handicapped in the Virginia correctional system, but there are de facto barriers. Most correctional facilities are old buildings that were not designed to accomodate the physically handicapped. Other than this practical consideration, the physically handicapped are considered on a nondiscriminatory basis.

Some administrative barriers exist when consideration is given to hiring of ex-offenders. Departmental policy requires that ex-offenders cannot be hired for positions handling sensitive material or money without the approval of the Director of the Department of Corrections, nor can ex-offenders be hired for any position requiring bonding or the use of firearms.

Prospective employees of the Department of Corrections can substitute military experience and advanced education for experience in correctional work.

There are no plans at present to make task analyses of correctional positions. Job descriptions for positions in the correctional system are reviewed as the top correctional officials feel there is a need. Within the last two years the Bureau of Personnel has rewritten all security positions within the Division of Adult Services. In addition, there are no plans to move to an open system of selection in which any testing device can be used if it is "related to a specific job and is a practical test of a person's ability to perform that job." Correctional personnel feel that such a testing system would create far more problems than it would yield positive results.

Alternative Standards

The American Wardens' Association is not entirely satisfied with this standard, especially with the section dealing with hiring ex-offenders.

> Modify. Suggestions 1 thru 5 of the second paragraph should be left to individual institution. There are differences between maximum, medium and minimum security institutions that should be considered. Paragraph 3 should be amended to exclude the removal of barriers to hiring ex-offenders. The ex-offender, in general, has not worked out as a prison employee. A given institution should be able to hire ex-offenders on an individual basis but not required to hire them as a group.[3]

The Florida Division of Corrections is generally in agreement with this standard, but has "reservations" about the recommendations concerning the discontinuance of the use of staff uniforms and the replacement of military titles with names appropriate to tasks. The objectives are based in the pragmatic considerations of finance. In respect to uniforms, it is stated that they are less expensive than civilian clothing;

and, with regard to military titles, the Division argues that the elimination of military titles might lessen the identification of correctional officers with law enforcement and thus jeopardize the correctional salary structure.[4]

Footnotes

[1] Minimum Operational Standards (Richmond: Virginia Department of Corrections, July 1974), Section 2312.

[2] Ibid., Section 2304.

[3] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, (August 1974), p. 8.

[4] Florida Division of Corrections, Response to National Standards and Goals (Tallahassee: Department of Health and Rehabilitation, February 1974), p. 189.

Standard 14.2

Recruitment from Minority Groups

Correctional agencies should take immediate, affirmative action to recruit and employ minority group individuals (black, Chicano, American Indian, Puerto Rican, and others) for all positions.

1. All job qualifications and hiring policies should be reexamined with the assistance of equal employment specialists from outside the hiring agency. All assumptions (implicit and explicit) in qualifications and policies should be reviewed for demonstrated relationship to successful job performance. Particular attention should be devoted to the meaning and relevance of such criteria as age, educational background, specified experience requirements, physical characteristics, prior criminal record or "good moral character" specifications, and "sensitive job" designations. All arbitrary obstacles to employment should be eliminated.

2. If examinations are deemed necessary, outside assistance should be enlisted to insure that all tests, written and oral, are related significantly to the work to be performed and are not culturally biased.

3. Training programs, more intensive and comprehensive than standard programs, should be designed to replace educational and previous experience requirements. Training programs should be concerned also with improving relationships among culturally diverse staff and clients.

4. Recruitment should involve a community relations effort in areas where the general population does not reflect the ethnic and cultural diversity of the correctional population. Agencies should develop suitable housing, transportation, education, and other arrangements for minority staff, where these factors are such as to discourage their recruitment.

Analysis

Active recruitment of members of minority groups is now in effect as the Virginia Division of Justice and Crime Prevention has funded a position of minority recruiter for the Department of Corrections. Other than the minority recruiter's efforts, blacks and other minorities are considered on the same basis as other applicants for positions in the correctional system. The Division of Adult Services is currently studying the Wisconsin Relocation of the Disadvantaged Program to see if it can be adapted within the State of Virginia, but there is no activity beyond the study stage at this point.

Special services discussed in subpoints three and four to upgrade the skills and facilitate the hiring of minority staff are not provided by the Virginia Correctional system.

Alternative Standards

The American Wardens' Association and the Florida Division of Corrections strongly object to the subpoint of this standard which recommends relaxing entry requirements for minorities. The reaction of the wardens is as follows:

> Modify. No special privileges should be given to minority groups. They should, however, have exactly the same chance for employment that is given to whites. There is no proof that minority employees are more effective in dealing with the problems of others of the same minority.[1]

The response of the Florida Division of Corrections is not stated in as forceful terms as the Wardens' Association, but a negative reaction is readily apparent:

> The Division is of the opinion that we presently do, and should, make every reasonable effort to recruit members

of minority groups and ethnic groups, but we do not support a policy of relaxing qualifications to the extent that inferior staff is employed.

In regard to sub-Standard 3, we do not think that training programs should completely replace qualifications such as education or previous experience requirements, but we are in agreement that training programs should be designed to prepare a person to meet these qualifications. We do not feel that the Division has an obligation, to any employee, to provide the services enumerated in sub-Standard 14.2, paragraph 4.[2]

Footnotes

[1] "Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, (August 1974), p. 8.

[2] Florida Division of Corrections, Response to National Standards and Goals (Tallahassee: Department of Health and Rehabilitation, February 1974), p. 191.

Standard 14.3

Employment of Women

Correctional agencies immediately should develop policies and implement practices to recruit and hire more women for all types of positions in corrections, to include the following:

1. Change in correctional agency policy to eliminate discrimination against women for correctional work.

2. Provision for lateral entry to allow immediate placement of women in administrative positions.

3. Development of better criteria for selection of staff for correctional work, removing unreasonable obstacles to employment of women.

4. Assumption by the personnel system of aggressive leadership in giving women a full role in corrections.

Analysis

There are no formal restrictions against hiring women, except for certain types of institutional positions where women would be at times alone with male inmates. As was indicated in the analysis of Standard 14.1, correctional officers have been traditionally the same sex as offenders in institutions. Since correctional institutions house much larger numbers of male than female offenders, the proportion of female employees has been comparable to the proportion of female offenders in the system. In terms of high level administrative positions, women have not advanced beyond superintendent of the State Correctional Center for Women and learning centers that serve female delinquents in the Division of Youth Services.

State personnel rules allow lateral entry into administrative positions where an applicant has had relevant education and experience outside the correctional system; however, as mentioned elsewhere in this report, most upper echelon positions in the correctional system are filled by long-term state correctional employees. Our research indicates no "aggressive leadership" effort to bring greater numbers of women into the Virginia correctional system.

Alternative Standards

The Joint Commission on Correctional Manpower and Training has developed "hard" data concerning the employment of women in correctional systems which has been summarized by the Ohio Standards and Goals Comparison Project:

> According to the JOINT COMMISSION ON CORRECTIONAL MANPOWER AND TRAINING, women account for 40% of the adult labor force

> but only represent 12% of the employees in correctional institutions. In addition, women are relatively absent from administrative ranks. Only 5% of the top and middle management positions are filled by women. Correctional tasks need to be reassessed so that women are not needlessly excluded from meaningful work roles. The commission recommends that opportunities for women should be expanded and work roles should be reassessed to determine the maximum feasible utilization of females.[1]

The American Wardens' Association emphasizes that women should perform all duties associated with particular positions:

> Modify. Women should be given equal rights with men in the area of correctional employment. When hired to do a job that has traditionally been done by a man, they should be required to perform all of the duties of the job.[2]

Footnotes

[1]Standards and Goals Comparison Project, Corrections (Columbus: Program for the Study of Crime and Delinquency, Ohio State University, March 1974), p. 164.

[2]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, (August 1974), p. 8.

Standard 14.4

Employment of Ex-Offenders

Correctional agencies should take immediate and affirmative action to recruit and employ capable and qualified ex-offenders in correctional roles.

1. Policies and practices restricting the hiring of ex-offenders should be reviewed and, where found unreasonable, eliminated or changed.

2. Agencies not only should open their doors to the recruitment of ex-offenders but also should actively seek qualified applicants.

3. Training programs should be developed to prepare ex-offenders to work in various correctional positions, and career development should be extended to them so they can advance in the system.

Analysis

The Virginia Department of Corrections does not have a policy of actively recruiting ex-offenders for correctional positions nor is such a policy of affirmative action under consideration. Policies restricting the hiring of ex-offenders provide that they can be hired in any position except those requiring bonding or the use of firearms. Interviews with correctional personnel indicate that only two former inmates are in the employment of the adult system, one a canteen-commissary employee at a major institution and the other a counselor at one of the field units.

As there are very few ex-offenders working in the system, neither training nor career development programs exist for these individuals.

Alternative Standards

The American Wardens' Association is concerned that correctional systems be selective in the types of ex-offenders hired and thus has the following reaction to this standard:

> Modify. The key words here are "capable and qualified ex-offenders." An institution should be able to hire any capable and qualified individual. They should not be compelled to hire an ex-offender whose sole qualifications are that he is an ex-offender.[1]

The Joint Commission on Correctional Manpower outlines the important aspects of a meaningful program for ex-offenders:

1. A viable staff climate must be created which involves participation at all levels of planning and operation. The involvement of staff as co-equal participants with offenders is necessary to bridge existing barriers of mistrust and lack of communication. The sequal of such involvement is the need for changing attitudes and taking on new and unfamiliar roles. Time must be allowed for this to occur.

2. There must be well-thought-through selection procedures, and selections must be made with regard to the kinds of

placement opportunities which will ultimately be available for offenders.

3. Placement strategies must be developed that allow exploration of new roles and exposure to a variety of training experiences.

4. Education and training must be geared to the actual work being performed and should involve learning through participation, by doing and by teaching others.

5. Supportive services need to be developed to handle the problems of living and adjusting not only to concerns that any offender has as he tries to adapt to the outside world but also to the special problems that are created by the new careers and by the demands for value and behavior shifts as he adapts to these new roles within the agency and within society at large.

6. Attention must be given to building career lines that optimize the offender's mobility within as well as outside of the administration of justice field. Attention must also be given to developing programs that do not get bogged down in meaningless routine or meet with administrative roadblocks.

7. Community support must be developed at the outset, both for building community understanding and for developing strategies for coping with the anti-social behavior that is bound to occur.[2]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, (August 1974), p. 8.

[2]Joint Commission on Correctional Manpower and Training, Offenders as a Correctional Manpower Resource (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1968), pp. 60-61.

Standard 14.5

Employment of Volunteers

Correctional agencies immediately should begin to recruit and use volunteers from all ranks of life as a valuable additional resource in correctional programs and operations, as follows:

1. Volunteers should be recruited from the ranks of minority groups, the poor, inner-city residents, ex-offenders who can serve as success models, and professionals who can bring special expertise to the field.

2. Training should be provided volunteers to give them an understanding of the needs and life-styles common among offenders and to acquaint them with the objectives and problems of corrections.

3. A paid volunteer coordinator should be provided for efficient program operation.

4. Administrators should plan for and bring about full participation of volunteers in their programs; volunteers should be included in organizational development efforts.

5. Insurance plans should be available to protect the volunteer from any mishaps experienced during participation in the program.

6. Monetary rewards and honorary recognition should be given to volunteers making exceptional contribution to an agency.

Analysis

Substantial numbers of volunteers work in the state correctional system. Volunteer areas of competence range from alcohol and drug expertise to recreation and educational skills. The largest group working with state offenders is the Offender Aid and Restoration (OAR) which includes substantial numbers of ex-offenders and members from minority groups.

At present training for volunteers is limited to briefings by full-time paid personnel of the Department of Corrections. However, plans are currently being formulated to develop a training program for volunteers. Correctional officials indicated that such a training program would probably be of one week's duration, though not necessarily offered in five consecutive days.

Currently, at most correctional institutions, a member of the staff will coordinate volunteer activities in addition to whatever other duties he may have. Again, plans under consideration would provide a volunteer coordinator at each major correctional institution. Additional commentary regarding the coordination of volunteer activities in the correctional system can be found in the treatment of Standards 8.4 and 12.8.

Key administrators in the correctional system indicated that they encouraged management personnel in institutions to make full use of volunteers in their programmed activities. There is currently no insurance protection for volunteers, although correctional officials indicated that when volunteer involvement gets more numerous than is currently the case, insurance protection will probably be considered. Finally, no monetary rewards are made to volunteers, nor is there any formal program honoring the service of volunteers.

Alternative Standards

Most organizations that have commented on the use of volunteers are in agreement with this standard; however, the American Wardens' Association feels that greater emphasis should be placed on screening prospective volunteers:

> Modify. This standard should be accepted with more emphasis placed on screening and training in order to make sure that the volunteers are mature individuals and not just trying to satisfy their own emotional needs at the expense of the inmate.[1]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standard Committee of the American Wardens' Association, Draft, (August 1974), p. 9.

Standard 14.6

Personnel Practices for Retaining Staff

Correctional agencies should immediately reexamine and revise personnel practices to create a favorable organizational climate and eliminate legitimate causes of employee dissatisfaction in order to retain capable staff. Policies should be developed that would provide:

1. Salaries for all personnel that are competitive with other parts of the criminal justice system as well as with comparable occupation groups of the private sector of the local economy. An annual cost-of-living adjustment should be mandatory.
2. Opportunities for staff advancement within the system. The system also should be opened to provide opportunities for lateral entry and promotional mobility within jurisdictions and across jurisdictional lines.
3. Elimination of excessive and unnecessary paperwork and chains of command that are too rigidly structured and bureaucratic in function, with the objective of facilitating communication and decisionmaking so as to encourage innovation and initiative.
4. Appropriate recognition for jobs well done.
5. Workload distribution and schedules based on flexible staffing arrangements. Size of the workload should be only one determinant. Also to be included should be such others as nature of cases, team assignments, and the needs of offenders and the community.
6. A criminal justice career pension system to include investment in an annuity and equity system for each correctional worker. The system should permit movement within elements of the criminal justice system and from one corrections agency to another without loss of benefits.

Analysis

Entry level salaries for correctional officers are much more competitive than they were a few years ago, but correctional officers are still paid less than state policemen. In two years the salaries of security personnel have increased 20 percent and will increase an additional 10 percent in January 1975.

Personnel officials state that opportunities for advancement are excellent, especially if a new employee has a higher educational background. Lateral entry is a possibility under the state personnel rules, but personnel officials estimate that over ninety percent of the supervisors and managers in the Department of Corrections have been promoted from within.

Bureaucracies by nature seem to generate considerable paper work and possess formal or informal chains of command. Whether paper work and chains of command are excessive is a subject on which it is difficult to reach general agreement. In the single, specific area of record keeping for adult inmates, there seems to be agreement that the system needs to be upgraded. In this regard, a new Bureau of Inmate Records was established in August 1974 to improve the paperwork system for adult offenders. Assisting this effort are representatives from the units using adult records and personnel with management expertise from the staff service bureaus of the Department.[1]

Our research did not find any formalized program in any major divisions or bureaus to "grant appropriate recognition for a job well done."

As all state criminal justice employees are covered under the state retirement system, they are free to move to and from

other state agencies in the criminal justice system without the loss of retirement benefits. In addition, as a number of localities in Virginia have joined the state retirement system, employees of those jurisdictions can transfer to the state service without losing their retirement investment. Thus, the purpose of subpoint 6 is achieved without a criminal justice career pension system per se.

Alternative Standards

None.

Footnotes

[1]For a detailed discussion of the problems with inmate records and proposed solutions, see Bennet Greenberg, "Recommendations to Improve Utilization and Maintenance of Inmate Records," Bureau of Research and Planning, August 9, 1974, pp. 1-7.

Standard 14.7

Participatory Management

Correctional agencies should adopt immediately a program of participatory management in which everyone involved—managers, staff, and offenders—shares in identifying problems, finding mutually agreeable solutions, setting goals and objectives, defining new roles for participants, and evaluating effectiveness of these processes.

This program should include the following:

1. Training and development sessions to prepare managers, staff, and offenders for their new roles in organizational development.
2. An ongoing evaluation process to determine progress toward participatory management and role changes of managers, staff, and offenders.
3. A procedure for the participation of other elements of the criminal justice system in long-range planning for the correctional system.
4. A change of manpower utilization from traditional roles to those in keeping with new management and correctional concepts.

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Analysis

As the role of correctional staff (managers, supervisors, and lower level employees) was discussed in the analysis of Standard 13.1, the few comments that will be made here regarding participatory management will deal with the role of the inmates. State correctional officials acknowledge only minimal participation by offenders in the development of policies and operation of the Department of Corrections and its institutions. In the youth and adult divisions, use is made of advisory committees; however, these groups are characterized as "sounding boards" rather than as having a participatory management role.

The Department of Corrections, like any other large bureaucratic unit, must cooperate with a number of public and private agencies in order to deliver its services. Obviously, the correctional system has a great deal of contact with the courts, as they provide the clients of the agency. In addition, as courts have been defining the rights of offenders quite extensively in the last few years, substantially more contact with the state Office of Attorney General has been required. In this respect, the State Attorney General has located in the offices of the Department of Corrections an Assistant Attorney General to advise and consult with correctional officials. While the examples of involvement of other agencies are too numerous to be developed in full, the Department of Vocational Rehabilitation, the Department of Mental Health, and the Medical College of Virginia are among those which have been utilized frequently in the development and implementation of correctional policy and programs.

Alternative Standards

The American Correctional Association emphasizes the need for inmate councils to be only advisory:

> The inmate advisory council's functions always remain advisory. No actual administrative powers are ever delegated to it. The council encourages, develops, and supports projects for the general welfare of inmates, but all responsibility for management remains in the hands of regularly employed personnel.[1]

The American Wardens' Association scores the necessity of final decision-making power to rest with correctional administrators:

> Modify. Input should be sought from both staff and inmates. The final decision should remain with those that by law or policy are held accountable for whatever decisions are made or whatever action is taken.[2]

Footnotes

[1]American Correctional Association, A Manual of Correctional Standards (Washington, D.C.: American Correctional Association, 1966), p. 161.

[2]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standard Committee of the American Wardens' Association, Draft, (August 1974), p. 9.

Standard 14.8

Redistribution of Correctional Manpower Resources to Community-Based Programs

Correctional and other agencies, in implementing the recommendations of Chapters 7 and 11 for reducing the use of major institutions and increasing the use of community resources for correctional purposes, should undertake immediate cooperative studies to determine proper redistribution of manpower from institutional to community-based programs. This plan should include the following:

1. Development of a statewide correctional manpower profile including appropriate data on each worker.

2. Proposals for retraining staff relocated by institutional closures.

3. A process of updating information on program effectiveness and needed role changes for correctional staff working in community-based programs.

4. Methods for formal, official corrections to cooperate effectively with informal and private correctional efforts found increasingly in the community. Both should develop collaboratively rather than competitively.

Analysis

This standard is generally inapplicable to the Virginia situation. While there are two half-way houses operating in the state, most of the community-based programs (study release, work release, etc.) are operated out of existing institutions and will likely be operating out of these institutions for some time in the future. The fact that a statewide correctional manpower profile has not been developed has been noted elsewhere, and that report characterizes availability of personnel information in this way:

> There are no data retrieval systems in respect to correctional personnel. The only available information concerning correctional personnel is that information in the individual employee's file. The "application for employment" of the Commonwealth of Virginia allows tabulation of the following information - age, education, years of service, marital status, place of origin, employment history, and military service. As part of a larger study of position classification in the adult system, the consulting firm of Peat, Marwick, Mitchell tabulated the above information for personnel in the Division of Corrections. Additionally, the probation and parole board participated in a national study in 1965 on the educational background and experience of probation and parole officers. Thus, other than the above snap-shot of those working in the adult system and an eight year old study in the probation and parole area, little is known in a definitive sense concerning correctional personnel.[1]

Alternative Standards

The American Wardens' Association is concerned about the absence of any mention in this standard of a role for institutional corrections:

> Modify. This standard seems to assume that community corrections is a cure-all rather than just one aspect of the correctional process. Where a given state determines that its needs and the needs of the offender can best be met by increasing community correctional programs, training will certainly be necessary.[2]

Footnotes

[1]Thomas Vocino, An Inventory and Evaluation of Data Sources, Reporting, and Research in the Virginia Correctional System (Richmond: Virginia Division of Justice and Crime Prevention, August 1973), Section II, pp. 12-13.

[2]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standard Committee of the American Wardens' Association, Draft, (August 1974), p. 9.

Standard 14.9

Coordinated State Plan for Criminal Justice Education

Each State should establish by 1975 a State plan for coordinating criminal justice education to assure a sound academic continuum from an associate of arts through graduate studies in criminal justice, to allocate education resources to sections of the State with defined needs, and to work toward proper placement of persons completing these programs.

1. Where a State higher education coordinating agency exists, it should be utilized to formulate and implement the plan.

2. Educational leaders, State planners, and criminal justice staff members should meet to chart current and future statewide distribution and location of academic programs, based on proven needs and resources.

3. Award of Law Enforcement Education Program funds should be based on a sound educational plan.

4. Preservice graduates of criminal justice education programs should be assisted in finding proper employment.

Each unified State correctional system should ensure that proper incentives are provided for participation in higher education programs.

1. Inservice graduates of criminal justice education programs should be aided in proper job advancement or reassignment.

2. Rewards (either increased salary or new work assignments) should be provided to encourage inservice staff to pursue these educational opportunities.

Analysis

With the infusion of funds for criminal justice education resulting from the passage of the 1968 Omnibus Crime Control and Safe Streets Act, interest in Virginia developed respecting a coordinated state plan for criminal justice education. In 1971 a committee was established with members from the State Council of Higher Education, the Attorney General's office, representatives of colleges and universities, and members of the staff of the Division of Justice and Crime Prevention. Following several meetings of this group a document, "A Master Plan for Higher Education for Criminal Justice Personnel,"[1] was produced. This report is an operational model for the award of academic funds for criminal justice education. Included in the document are discussions of the role of various educational institutions, grant and loan program priorities, academic organization and curriculum, and service obligations, among other areas of discussion.

The education master plan states an intention to utilize the statewide community college system and four-year institutions so that students can pursue criminal justice programs "within reasonably convenient commuting distance from their homes or places of employment."[2]

With the high level of interest in law enforcement education program funds available from the regional offices of the Law Enforcement Assistance Administration, LEAA began to prioritize the distribution of these funds so that there are very limited funds now available for new pre-service students. The categories of highest priority are now "all returning LEEP recipients" and

"new local and state criminal justice personnel on academic leave."[3] Thus, interest in developing state-wide referral services for pre-service graduates of criminal justice education programs are not now under active consideration as the pre-service recipients continue to be a lesser proportion of all LEEP recipients.

A survey in 1973 of those individuals currently receiving LEEP funds was conducted by the Virginia Division of Justice and Crime Prevention. Among the findings in this study was that there seemed to be a correlation between higher education credentials and pay raises and promotions. The report states: "Throughout Virginia there is evidence of growing recognition of college credit attainment as a significant criterion for advancement and increased pay."[4]

Alternative Standards

None.

Footnotes

[1]"A Master Plan for Higher Education for Criminal Justice Personnel" (Richmond: Virginia Division of Justice and Crime Prevention, 1972).

[2]Ibid., p. 2.

[3]Law Enforcement Assistance Administration, 1973 Annual Report (Washington, D.C.: Department of Justice, 1974), p. 119.

[4]LEEP Survey in Virginia, Draft (Richmond: Virginia Division of Justice and Crime Prevention, 1974), n.p.

Standard 14.10

Intern and Work-Study Programs

Correctional agencies should immediately begin to plan, support, and implement internship and work-study programs to attract students to corrections as a career and improve the relationship between educational institutions and the field of practice.

These programs should include the following:

1. Recruitment efforts concentrating on minority groups, women, and socially concerned students.

2. Careful linking between the academic component, work assignments, and practical experiences for the students.

3. Collaborative planning for program objectives and execution agreeable to university faculty, student interns, and agency staff.

4. Evaluation of each program.

5. Realistic pay for students.

6. Followup with participating students to encourage entrance into correctional work.

Analysis

In recent years the Department of Corrections has employed a large number of intern and work-study students. These student-employees have been drawn for the most part from social work and administration of justice programs at higher educational institutions in Virginia, with a strong representation from these programs at Virginia Commonwealth University.

Among the interns have been a substantial number of blacks and women. Correctional officials indicate that students were very much "socially concerned" in that they had a strong interest in working with and helping individuals housed in a correctional system.

Except for some work done by academic advisors at higher educational institutions, until the summer of 1974 no effort had been made to link the academic component, work assignments, and practical experiences for students. With the assistance of the Virginia Program (the state Internship office), the central office of the Department of Corrections organized an internship program which provided greater insights for participants than had been the case in the past. In contrast to what had gone before, a representative from the Virginia Program visited potential supervisors to identify meaningful work situations. Then, the pool of applicants was matched against the jobs available, and students were placed in work assignments based on their academic interests and career goals.

An academic component was added to the internship program for the summer of 1974. The academic component was a series of seminars dealing with correctional administration taught

by three members of the Department of Corrections and three faculty members from Richmond area universities and colleges. The seminars consisted of lectures and discussions conducted by the faculty group as well as speakers from inside and outside the Virginia correctional system. The last seminar meeting was devoted to the evaluation of the program. Evaluation took the form of having each student respond to a structured questionnaire, and discussion in depth of the advantages and disadvantages of summer internship work at the Department of Corrections.

The students received $2.50 an hour for a period of ten to twelve weeks. Representatives of higher educational institutions indicated that some potential participants decided against working as an intern because they felt they could find higher paying summer work. One of the summer interns from 1974 has been hired as a full time employee of the Department of Corrections and other students indicate an interest in correctional employment for the future; however, there seemed to be no plans to follow up with participating students to encourage entrance into correctional work. Finally, a member of the Virginia program staff is developing a report to be submitted to the Department of Corrections for use in developing future internship programs.[1]

Alternative Standards

The American Wardens' Association is in disagreement with subpoint 1 of this standard which recommends that recruitment efforts be concentrated "on minority groups, women, and socially concerned students":

> Modify. This standard should be accepted after leaving out the implied preferential treatment for certain groups of people.[2]

The President's Commission on Law Enforcement and Administration of Justice recognized the utility of internships as screening devices for prospective employees:

> Many interviewing techniques and questionnaires have been developed which provide a measure of assistance in screening potential employees. However, to a large extent, the existence of needed traits and skills is best identified when they are demonstrated on the job and even here best impressions frequently are misleading. Hence, as in many fields, there seems no better screening device than an opportunity to observe the prospective career employee carefully through a period of internship or probationary employment.[3]

Footnotes

[1]For a detailed description of the Virginia internship program in Corrections, see Thomas Vocino, "An Agency-Institution Model: Service Learning in Virginia's Department of Corrections," paper presented to the Second Virginia Conference on Internship, Charlottesville, University of Virginia, October 22, 1974.

[2]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standard Committee of the American Wardens' Association, Draft, (August 1974), p. 9.

[3]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C.: Government Printing Office, 1967), p. 93.

Standard 14.11

Staff Development

Correctional agencies immediately should plan and implement a staff development program that prepares and sustains all staff members.

1. Qualified trainers should develop and direct the program.

2. Training should be the responsibility of management and should provide staff with skills and knowledge to fulfill organizational goals and objectives.

3. To the fullest extent possible, training should include all members of the organization, including the clients.

4. Training should be conducted at the organization site and also in community settings reflecting the context of crime and community resources.

   a. All top and middle managers should have at least 40 hours a year of executive development training, including training in the operations of police, courts, prosecution, and defense attorneys.

   b. All new staff members should have at least 40 hours of orientation training during their first week on the job and at least 60 hours additional training during their first year.

   c. All staff members, after their first year, should have at least 40 hours of additional training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections.

5. Financial support for staff development should continue from the Law Enforcement Assistance Administration, but State and local correctional agencies must assume support as rapidly as possible.

6. Trainers should cooperate with their counterparts in the private sector and draw resources from higher education.

7. Sabbatical leaves should be granted for correctional personnel to teach or attend courses in colleges and universities.

Analysis

The Virginia correctional system has four training programs; each is run independently of the other for a different clientele. The training activities serve the Division of Adult Services, the Division of Youth Services, the Division of Probation and Parole, and local jailers. Approximately forty persons are assigned to training, and these activities are substantially supported by funds from the Virginia Division of Justice and Crime Prevention. Correctional trainers tend to have extensive work experience and a number have higher education degrees in the areas where they conduct training programs.

With the establishment of the Department of Corrections on July 1, 1974, a beginning effort was made to coordinate the various correctional training activities when the Bureau of Staff Organization and Development was established. At this time the Bureau consists of two professionals who have been evaluating training and staff development programs in corrections.

The training programs are conducted primarily for line personnel who come into contact with the department's clients. The training ranges from the highly structured curricula for personnel working in the Division of Adult Services where the educational program is determined by the Criminal Justice Officer's Training and Standards Commission, to the more flexible and varied training sessions conducted by the Division of Youth Services. The training programs are conducted in a variety of settings. The jail training activities take place in local institutions and mobile units outfitted for that purpose, while the Division of Adult Services has a number of

rooms in Richmond set aside specifically for training classes. The Division of Youth Services, on the other hand, is more decentralized as it utilizes various correctional facilities around the state to conduct its training programs.

Various departmental training programs have a goal of at least forty hours of training a year for professional personnel. Whether the training programs deal with all of the items recommended by the National Advisory Commission is difficult to determine. In many cases, the curriculum for top and middle managers is ad hoc, depending on professional and agency needs and interests at the time training takes place. In training adult correctional officers the Commonwealth of Virginia exceeds the training requirements in terms of hours. The NAC recommends that all new staff members receive at least 100 hours of training, while correctional officers receive 252 hours upon assignment to the Department.

As mentioned above, training in Virginia (personnel and equipment costs) is supported substantially by LEAA funds from the Virginia Division of Justice and Crime Prevention. There does not appear to be an effort, as recommended by the NAC, for state and local governments to assume the financial costs of training programs.

In respect to subpoint 6, contact and cooperation is maintained between correctional trainers and their counterparts in the private sector and higher education, but correctional training in Virginia is, for the most part, an "in-house" activity.

Our research did not find any examples of correctional

personnel who have taken leave to teach courses in criminal justice; however, three members of the staff of the Department of Corrections were faculty members for a seminar conducted for the summer interns during 1974. Training funds in the department exist to support personnel interested in pursuing a work-related degree on a full time basis. The stipends are funded from the Law Enforcement Assistance Administration's Law Enforcement Education Program (LEEP). If a departmental employee is selected, he or she is required to work two years for a criminal justice agency for every year supported with training funds.

Alternative Standards

None.

Footnotes

None.

CHAPTER FIFTEEN

Research and Development, Information, and Statistics

The National Advisory Commission on Criminal Justice Standards and Goals recommends that correctional managers utilize systematic data collection and analysis techniques as tools in policy formulation and specific decision situations. The NAC recommends more specifically that correctional agencies establish data banks on units, personnel, finances, and programs so that the information base is at hand when various types of analyses are desired. In this respect, states are urged to hire staffs capable of maintaining and utilizing these systems, with the information-statistics manager having direct access to top correctional administrators.

The NAC envisions not only a situation where various reports and statistics are produced for top managers and others, but a situation where state correctional agencies have the capability to conduct sophisticated evaluations of program activities.

Within Virginia, correctional information systems are at an early stage of development so that the system capability recommended by the NAC is at least a few years into the future. A number of manual systems are presently employed to produce several statistical reports on an annual basis; these are the base on which the more sophisticated systems are being developed. Currently, correctional officials in Virginia are examining the information systems operational in other states to determine

which components of these technologies can be suitably adapted in Virginia.

The information for this chapter was obtained from interviews with information systems specialists and examination of several documents dealing with the research and data systems in Virginia corrections.

Standard 15.1

State Correctional Information Systems

Each State by 1978 should develop and maintain, or cooperate with other States in the development and maintenance of, a correctional information system to collect, store, analyze, and display information for planning, operational control, offender tracking, and program review for all State and county correctional programs and agencies.

1. Statewide information systems should be feasible for the larger States. Local and central correctional components (facilities, branch offices, programs) of all sizes should be included in such systems. Regional (multistate) systems should be feasible for smaller States.

2. In all cases, the State or regional system should store local data, with access provided through terminals at various points throughout the State. Control of the system should be in the hands of participating agency representatives. Until unified correctional systems are established, admission to the system should be voluntary, but benefits should be clear enough to encourage membership. A share of the development costs should be borne by the State or regional consortium.

3. In States where data processing for the department of corrections must be done on a shared computer facility under the administration of some other agency, the programers and analysts for the department should be assigned full time to it and should be under the complete administrative control of the department of corrections.

4. The department of corrections should be responsible for maintaining the security and privacy of records in its data base and should allow data processing of its records only under its guidance and administrative authority. This should not be construed as prohibitive, as the department of corrections should encourage research in the correctional system and provide easy access to authorized social science researchers. (Only information that would identify individuals should be withheld.)

5. The information-statistics function should be placed organizationally so as to have direct access to the top administrators of the department. The director of the information group should report directly to the agency administrator.

6. The mission of the information-statistics function should be broad enough to assume informational and research support to all divisions within the department of corrections and to support development of an offender-based transaction system. Priorities of activity undertaken should be established by the top administrators in consultation with the director of the information system.

Commentary

Analysis

In the area of management information systems, Virginia falls far short of the types of systems recommended by the Corrections Task Force. Our research found that the state of development of correctional information systems is little different than that found in the summer of 1973:

> Most correctional data concerns the offender under the control of state institutions. Many data elements are collected on numerous forms, most of which are transmitted to the offender's file, however, only a small portion of these data become a part of ongoing information systems. Thus for this and other reasons that will become apparent in this report, few general system questions can be answered with systematic data from the Bureau of Research and Reporting at D.W. & I.[1]

It appears that effort has been made in the last few months that will upgrade correctional information to contain most of the elements recommended by the NAC by the year 1978. The process of upgrading these systems will be done in large part with federal funds provided by the Virginia Division of Justice and Crime Prevention. Approximately $800,000 for a three-year period are allocated to corrections systems.[2]

It is unclear whether information on local corrections (jails) will become an integral part of the future state systems; however, provision has been made for technical assistance to localities for the development of their systems.[3]

In Virginia, computer facilities are shared with other state agencies; but, as the NAC recommends, all correctional programmers and analysts are assigned and under the complete administrative control of the state Department of Corrections. However, contrary to the NAC recommendation, the information-statistics function is not given direct formal organizational

access to the director of corrections. The chief of the Bureau of Management Systems must report through two officials to the Director of Corrections. Security and privacy of ongoing and future systems has been a concern of Virginia officials and policies are being developed to safeguard systems from unauthorized use.[4]

Information systems specialists in the Department of Corrections indicate that top correctional administrators are being surveyed concerning their informational needs so that the systems being developed are "their systems and not the systems of the data processors." Our research indicates that correctional officials are examining several state systems (specifically, those in Illinois, Wisconsin, and Arkansas) to determine which aspects of those systems can be adapted to Virginia's needs. As yet, however, Virginia administrators have not determined the priority for components of new systems. Plans call for the establishment of a capability that would, as the Corrections Task Force recommends, "be broad enough to assume information and research support to all divisions within the department of corrections and to support development of an offender-based transaction system."

Alternative Standards

The Association of State Correctional Research Administrators found this conditionally acceptable:

> The Committee expressed mixed opinions concerning this standard. If there is to be a state-wide Department of Corrections which has administrative responsibility for all correctional programs within the state, including correctional facilities at the county level, then a state-wide system as set forth in Standard 15.1 would be appropriate.

Note, however, that if this Standard envisions such a state-wide Department of Corrections, this concept constitutes a very important implied recommendation of the Standards Committee.

If, however, the Standard refers to an information system for an existing Department of Corrections, the Standard as presented would be sufficient. It is interpreted that local data would represent information gathered from individual correctional facilities.

A principle consideration to be followed in designing an information system is that it should provide information to those managers who have administrative control over the units reporting data, unless a contrary situation prevails as a result of a statutory provision. In general, a system should monitor data that is primarily related to its administrative or statistical reporting responsibilities.[5]

Footnotes

[1]Thomas Vocino, An Inventory and Evaluation of Data Sources, Reporting, and Research in the Virginia Correctional System (Richmond: Virginia Division of Justice and Crime Prevention, August 1973), Section One, Page One. Section two of this document is a nineteen page description of ongoing manual and computer systems.

[2]See Comprehensive Data System Action Plan (Richmond: Virginia Division of Justice and Crime Prevention, June 1974).

[3]Ibid., Sec. III B.

[4]Ibid., Appendix B.

[5]Association of State Correctional Research Administrators, (Untitled Reaction to NAC Standards and Goals, Draft) (Madison: Bureau of Planning, Development, and Research, Division of Corrections, September 1974), n.p.

Standard 15.2

Staffing for Correctional Research and Information Systems

Each State, in the implementation of Standard 15.1, should provide minimum capabilities for analysis and interpretation of information. For all but the largest components (facilities, branch offices, programs), a small information and statistics section capable of periodic reports on the consequences of policy and decisionmaking will suffice. Larger components will benefit from having a professional staff capable of designing and executing special assessment studies to amplify and explicate reports generated by the information system. Staffing for research and information functions should reflect these considerations:

1. Where the component's size is sufficient to support one or more full-time positions, priority should be given to assigning an information manager who should have minimum qualifications as a statistician. The manager should have full responsibility for coordination and supervision of inputs into the system. He also should edit, analyze, and interpret all output material, preparing tables and interpretive reports as indicated.

2. Where the size of the component does not warrant the allocation of full-time positions to information and statistics, one professional staff member should be designated to perform the functions outlined above on a part-time basis.

3. The manager of the State information system should use members of his staff as training officers and technical consultants. In States where unification has not been achieved, these persons should be responsible for familiarizing county and local correctional administrative and information staff with system requirements and the advantageous use of output.

4. Other steps to achieve effective communication of information include the following:

   a. Researchers and analysts should be given formal training in communication of results to administrators. Such training should include both oral and written communications.

   b. The training program of the National Institute of Corrections should include a session for administrators that covers new techniques in the use of computers, information, and statistics.

   c. Where feasible, management display centers should be constructed for communication of information to administrators. The center should have facilities for graphic presentation of analyses and other information.

Commentary

Analysis

Virginia has the "minimum capabilities for analysis and interpretation of information" that the NAC recommends. In addition to the approximately twenty data processing specialists in the Bureau of Management Systems, the Bureau of Research and Planning employs six research analysts with varied educational and research backgrounds. These personnel represent a substantial increase from the single research analyst available to Corrections prior to June 30, 1973. The chief of data processing and the coordinator of research each have graduate school educational backgrounds and extensive related experience in private and public organizations.

The correctional research and information staff have not served as training and technical consultants to local governments since they are only in the beginning states of developing a state system.

A recent study determined that one of the major weaknesses of existing information systems is that there is little communication between information system personnel and line administrators.

That report commented as follows:

> The most serious problem identified by this research is that there seems little relationship between the data collected and stored and the utilization of this information in the making of correctional policy. Interviews with correctional and data information personnel in the Department of Welfare and Institutions revealed the contact between these groups to be minimal. With a few significant exceptions, the majority of correctional personnel noted that they had little or no contact with data information personnel at the Bureau of Research and Reporting and Bureau of Management Systems at D.W. & I. It is quite apparent that the above service units at D.W. & I.'s Division of General Welfare, and correctional information systems have suffered as a result.[1]

Alternative Standards

The Ohio Standards and Goals Comparison Project has summarized an important point made by Project SEARCH regarding the importance of educating the users of a correctional information system:

> It is the responsibility of the Correctional Information System to initiate an educational program for employees who maintain or receive or are eligible to maintain or receive information from the system. Should the Information System not become a "regular line agency" Project SEARCH suggests that it could appropriately discharge its training responsibilities by having other agencies conduct the training.[2]

Footnotes

[1]Thomas Vocino, An Inventory and Evaluation of Data Sources, Reporting, and Research in the Virginia Correctional System (Richmond: Virginia Division of Justice and Crime Prevention, August 1973), Section One, p. 2.

[2]Standards and Goals Comparison Project, Corrections (Columbus: Program for the Study of Crime and Delinquency, Ohio State University, March 1974), p. 180.

Standard 15.3

Design Characteristics of a Correctional Information System

Each State, in the establishment of its information system under Standard 15.1, should design it to facilitate four distinct functions:

1. Offender accounting.
2. Administrative-management decisionmaking.
3. Ongoing departmental research.
4. Rapid response to ad hoc inquiries.

The design of the correctional information system should insure capability for provision of the following kinds of information and analysis:

1. Point-in-time net results—routine analysis of program status, such as:
   a. Basic population characteristics.
   b. Program definition and participants.
   c. Organizational units, if any.
   d. Personnel characteristics.
   e. Fiscal data.
2. Period-in-time reports—a statement of flow and change over a specified period for the same items available in the point-in-time net results report. The following kinds of data should be stored:
   a. Summary of offender events and results of events.
   b. Personnel summaries.
   c. Event summaries by population characteristics.
   d. Event summaries by personnel characteristics.
   e. Fiscal events summarized by programs.
3. Automatic notifications—the system should be designed to generate exception reports for immediate delivery. Four kinds of exception reports are basic:
   a. Volume of assignments to programs or units varying from a standard capacity.
   b. Movement of any type that varies from planned movement.
   c. Noncompliance with established decision criteria.
   d. Excessive time in process.
4. Statistical-analytical relationships—reports of correlations between certain variables and outcomes, analysis of statistical results for a particular program or group of offenders, etc.

Commentary

Analysis

As mentioned in the analysis of Standard 15.1, information systems planned for the Virginia correctional system will perform the following basic functions: offender accounting, administrative-management decision-making, ongoing departmental research, and rapid or ad hoc inquiries. Also, as mentioned elsewhere in this report, all of the above functions are performed to some degree by existing data processing and research units; however, in terms of the sophisticated capability envisioned in this standard, current systems would have to be characterized as being at an early development state.

The sophisticated system outlined in this standard to produce point-in-time net results, period-in-time reports, and automatic notifications does not presently exist. Of the types of data mentioned, data concerning characteristics of the inmates is most extensive although the data bank is of limited utility, as data on several important variables such as prisoner location in the system is not collected. Thus the development of reports of inmate population characteristics by institution is not possible. Program, fiscal and personnel data do not exist in retrievel systems that are recommended in this standard.

Alternative Standards

The Association of State Correctional Research Administrators emphasized the need for information systems personnel to have strong social science research capabilities:

> Again, it is emphasized that persons with social science research capabilities should be involved in the design and implementation of an information system. Otherwise,

it is felt that a resulting system may be technically functional but may not have the sophistication required to conduct basic social science research.[1]

Footnotes

[1]Association of State Correctional Research Administrators (Untitled Reaction to NAC Standards and Goals, Draft) (Madison: Bureau of Planning, Development, and Research, Division of Corrections, September 1974), n.p.

Standard 15.4

Development of a Correctional Data Base

Each State, in the establishment of its information system under Standard 15.1, should design its data base to satisfy the following requirements:

1. The information-statistics functions of offender accounting, administrative decisionmaking, ongoing research, and rapid response to questions should be reflected in the design.

2. The data base should allow easy compilation of an annual statistical report, including sections on population characteristics tabulated for given points in time, a recapitulation of population movement for the full year, and an analysis of recidivism by offense and other characteristics.

3. The data base should include all data required at decision points. The information useful to corrections personnel at each decision point in the corrections system should be ascertained in designing the data base.

4. The requirements of other criminal justice information systems for corrections data should be considered in the design, and an interface between the corrections system and other criminal justice information systems developed, including support of offender-based transaction systems.

5. All data base records should be individual-based and contain elements that are objectively codable by a clerk. The procedures for coding data should be established uniformly.

6. The integrity and quality of data in each record is the responsibility of the information group. Periodic audits should be made and quality control procedures established.

7. The corrections information-statistics system should be designed and implemented modularly to accommodate expansion of the data base. Techniques should be established for pilot testing new modules without disrupting ongoing operations of the system. Interactions with planners and administrators should occur before introduction of innovations.

8. Data bases should be designed for future analyses, recognizing the lag between program implementation and evaluation.

9. The results of policies (in terms of evaluation) should be reported to administrators, and data base content should be responsive to the needs of changing practices and policies to guarantee that the all-important feedback loop will not be broken.

10. The initial design of the corrections data base should recognize that change will be continual. Procedures to assure smooth transitions should be established.

Commentary

Analysis

The subpoints in this standard are the norms that should be adhered to in the development of sophisticated and functional information systems. When information systems specialists were questioned concerning the subpoints in this standard, they indicated that this and other standards, as well as the commentary, were being employed as guides in the development of information systems for the Virginia Department of Corrections. Thus, whether Virginia is in compliance with this standard will be obvious in one to several years when various components of new information systems become operational.

Alternative Standards

The Ohio Standards and Goals Comparison Project summarized an important recommendation of Project SEARCH regarding the reporting and returning of information supplied by local governments to the state information agency:

> The Correctional Information System will contain input from the same sources that supply other state governmental agencies. Therefore, Project SEARCH recommends that a common base of criminal activity and statistics be maintained by the system in such detail as to allow the transaction statistics to be derived by other systems. No single point is more important to the local and supporting agencies than this recommendation, for too often local agencies are required to re-report the same information to various departments of state government.
>
> Agencies must be returned the data that they have supplied, and in a format usable to them. This return of data analysis and consolidation by the system must be timely so as to affect the outcome of decisions that are to be made in day-to-day operations.[1]

The Association of State Correctional Administrators is concerned about staff capabilities for the operation of information systems:

Reference is made to 15:4:6 in which the Committee believes that strong emphasis needs to be given to adequate and extensive staff to implement an information system.

Adequate staffing is needed to maintain the integrity of the end product by monitoring the input and checking all information entered into the system.

Quality control is definitely needed if the system is to function as intended.

Additional attention needs to be given to training people who generate the source documents and those who encode data. Unless these persons are adequately trained and supervised, the whole information system may function inadequately or may fail to meet its objective.[2]

Footnotes

[1]Standards and Goals Comparison Project, Corrections (Columbus: Program for the Study of Crime and Delinquency, Ohio State University, March 1974), p. 183.

[2]Association of State Correctional Research Administrators (Untitled Reaction to NAC Standards and Goals, Draft) (Madison: Bureau of Planning, Development, and Research, Division of Corrections, September 1974), n.p.

Standard 15.5

Evaluating the Performance of the Correctional System

Each correctional agency immediately should begin to make performance measurements on two evaluative levels—overall performance or system reviews as measured by recidivism, and program reviews that emphasize measurement of more immediate program goal achievement. Agencies allocating funds for correctional programs should require such measurements. Measurement and review should reflect these considerations:

1. For system reviews, measurement of recidivism should be the primary evaluative criterion. The following definition of recidivism should be adopted nationally by all correctional agencies to facilitate comparisons among jurisdictions and compilation of national figures:

Recidivism is measured by (1) criminal acts that resulted in conviction by a court, when committed by individuals who are under correctional supervision or who have been released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or paroling authority took action that resulted in an adverse change in the offender's legal status.

Technical violations should be maintained separately from data on reconvictions. Also, recidivism should be reported in a manner to discern patterns of change. At a minimum, statistical tables should be prepared every 6 months during the 3-year followup period, showing the number of recidivists. Discriminations by age, offense, length of sentence, and disposition should be provided.

2. Program review is a more specific type of evaluation that should entail these five criteria of measurement:

a. Measurement of effort, in terms of cost, time, and types of personnel employed in the project in question.

b. Measurement of performance, in terms of whether immediate goals of the program have been achieved.

c. Determination of adequacy of performance, in terms of the program's value for offenders exposed to it as shown by individual followup.

d. Determination of efficiency, assessing effort and performance for various programs to see which are most effective with comparable groups and at what cost.

e. Study of process, to determine the relative contributions of process to goal achievement, such as attributes of the program related to success or failure, recipients of the program who are more or less benefited, conditions affecting program delivery, and effects produced by the program. Program reviews should provide for classification of offenders by relevant types (age, offense category, base

expectancy rating, psychological state or type, etc.) Evaluative measurement should be applied to discrete and defined cohorts. Where recidivism data are to be used, classifications should be related to reconvictions and technical violations of probation or parole as required in systems reviews.

3. Assertions of system or program success should not be based on unprocessed percentages of offenders not reported in recidivism figures. That is, for individuals to be claimed as successes, their success must be clearly related in some demonstrable way to the program to which they were exposed.

Commentary

Analysis

Except for grant programs where evaluation was a required part of the total activity, there has been little or no systematic research concerning the degree to which programs have achieved their objectives. The absence of systematic evaluation of program activities has been a result of a lack of personnel with training in social science research methodology. Within the last year the problem of skill shortages has been rectified to a degree. However, as the research staff is limited, most research is a response to ad hoc inquiries and the "evaluation" of controversial programs. Our research was unable to identify any research project that began at the time of program implementation, allowing necessary evaluation data to be collected as the program was ongoing. The Virginia Department of Corrections publishes a document annually titled, Report of Recidivists Committed to the Virginia State Penal System; however, this document and others are not the type of research being recommended in this standard. In fact, it seems as though Virginia is at least a few years from the types of program evaluation research recommended in this standard.

Alternative Standards

The Association of State Correctional Research Administrators reacts negatively to the use of recidivism as the primary criterion for evaluation of correctional systems:

> The Committee had a strong negative reaction to the notion of using recidivism as the primary, if not sole, measure of the effectiveness of a correctional system. It was felt that recidivism is an inappropriate criteria for evaluation of a correctional system because it does not

imply a measurement of all the influences which impinge upon a person who has been released from a correctional system. Rather, recidivism is an index to the effectiveness and output of the correctional system, the parole system, the police system, the court system, home and family life, society in general, and economic and social conditions of the time. Since all of these forces have a bearing upon whether a person recidivates or not, it was felt by the Committee that it is completely inappropriate to allege that recidivism is a primary or adequate measure of the effectiveness of a correctional system.

Rather, recidivism may be more appropriately used as a measure of the effectiveness of the total criminal justice system and may reflect the sum total of the attitude of society and its allocation of resources to deal with problems of those persons who are clients in a correctional system.

The Committee recommends the development of an alternate model for evaluating the effectiveness of a correctional system. This type model should reflect insights presented by persons with broad background and training and who have a keen understanding of the problems posed by clients of the criminal justice system in general and the corrections sub-system in particular.

An alternate model for evaluating the correctional sub-system of the criminal justice system might require clearer specification of objectives. Unless the objectives can be adequately operationalized, worthwhile evaluation is questionable if not impossible. Rather, the tendency appears to be to secure opinions from informed (but often biased) observers, or to compare results between other state systems using standardized measures.

The dilemma confronting Corrections stems from the fact that in the past correctional authorities have been charged largely with the responsibility for providing custody for persons committed to their care within limits stipulated by statute. After custody has been provided for a stipulated period of time, the correctional client is released--often with only an assumed measure of rehabilitation.

Professionals in corrections need to specify the assumptions they use, identify objectives or goals toward which they are striving, and stipulate clearly the intended impact of each program or treatment modality upon clients as a means towards achieving an ultimate objective.

An alternative use of recidivism is its use to compare the impact of several systems upon their clients. Comparison of this nature can only be considered valid at a very gross level, since it is potentially fraught with bias or distortion.

> If different criteria are applied in different states at various stages in the criminal justice system, the results will reflect the bias implied in criteria used for selecting clients at every stage of the process. In a real sense, then, recidivism is only a gross measure of the total system within a given jurisdiction and cannot be applied to corrections alone.[1]

Footnotes

[1]Association of State Correctional Research Administrators, (Untitled Reaction to NAC Standards and Goals, Draft) (Madison: Bureau of Planning, Development, and Research, Division of Corrections, September 1974), n.p.

CHAPTER SIXTEEN

The Statutory Framework of Corrections

The statutory framework established for a state's correctional system, according to the National Advisory Commission, is perhaps one of the most crucial elements to an efficient and effective system. The NAC proposes statutory guidelines that illustrate how a legal superstructure for correctional programs could be developed and outlines the problems associated with the development of such a legal system.

As many of the standards in previous chapters deal with the statutory basis of corrections, this chapter is somewhat repetitious. In such instances where the subpoints of standards in this chapter are the same as those of previous chapters, the reader is referred to the earlier analysis.

In researching the Code of Virginia, we found that Virginia is in mixed compliance with the standards of this chapter. More specifically, the Code of Virginia deals with a majority of areas covered in various subpoints in this chapter; however, the Code does not contain a "comprehensive correctional code" or unified sections dealing with the subject areas deemed important by the NAC in this chapter.

Standard 16.1

Comprehensive Correctional Legislation

Each State, by 1978, should enact a comprehensive correctional code, which should include statutes governing:

1. Services for persons awaiting trial.
2. Sentencing criteria, alternatives, and procedures.
3. Probation and other programs short of institutional confinement.
4. Institutional programs.
5. Community-based programs.
6. Parole.
7. Pardon.

The code should include statutes governing the preceding programs for:

1. Felons, misdemeanants, and delinquents.
2. Adults, juveniles, and youth offenders.
3. Male and female offenders.

Each legislature should state the "public policy" governing the correctional system. The policy should include the following premises:

1. Society should subject persons accused of criminal conduct or delinquent behavior and awaiting trial to the least restraint or condition which gives reasonable assurance that the person accused will appear for trial. Confinement should be used only where no other measure is shown to be adequate.

2. The correctional system's first function is to protect the public welfare by emphasizing efforts to assure that an offender will not return to crime after release from the correctional system.

3. The public welfare is best protected by a correctional system characterized by care, differential programming, and reintegration concepts rather than punitive measures.

4. An offender's correctional program should be the least drastic measure consistent with the offender's needs and the safety of the public. Confinement, which is the most drastic disposition for an offender and the most expensive for the public, should be the last alternative considered.

Analysis

There is no comprehensive correctional code provided within the Code of Virginia. However, there are statutes in the Code covering various correctional subareas. The specific statutes have been referred to in the standards concerning these subareas.

Alternative Standards

None.

Standard 16.2

Administrative Justice

Each State should enact by 1975 legislation patterned after the Model State Administrative Procedure Act, to regulate the administrative procedures of correctional agencies. Such legislation, as it applies to corrections, should:

1. Require the use of administrative rules and regulations and provide a formal procedure for their adoption or alteration which will include:

a. Publication of proposed rules.

b. An opportunity for interested and affected parties, including offenders, to submit data, views, or arguments orally or in writing on the proposed rules.

c. Public filing of adopted rules.

2. Require in a contested case where the legal rights, duties, or privileges of a person are determined by an agency after a hearing, that the following procedures be implemented:

a. The agency develop and publish standards and criteria for decisionmaking of a more specific nature than that provided by statute.

b. The agency state in writing the reason for its action in a particular case.

c. The hearings be open except to the extent that confidentiality is required.

d. A system of recorded precedents be developed to supplement the standards and criteria.

3. Require judicial review for agency actions affecting the substantial rights of individuals, including offenders, such review to be limited to the following questions:

a. Whether the agency action violated constitutional or statutory provisions.

b. Whether the agency action was in excess of the statutory authority of the agency.

c. Whether the agency action was made upon unlawful procedure.

d. Whether the agency action was clearly erroneous in view of the reliable, probative, and substantial evidence on the record.

The above legislation should require the correctional agency to establish by agency rules procedures for:

1. The review of grievances of offenders.
2. The imposition of discipline on offenders.
3. The change of an offender's status within correctional programs.

Such procedures should be consistent with the recommendations in Chapter 2, Rights of Offenders.

Analysis

The Code of Virginia does not specifically regulate the administrative procedures of correctional agencies as is recommended in this standard. Standardized administrative procedures are mostly a product of court imposed requirements and administrative procedures developed and codified in departmental "Guidelines" over a period of years.

Alternative Standards

This standard dealing with the statutory framework for administrative procedures is rejected by the American Wardens' Association:

> Reject. Rules and regulations should be under constant review and revision as the nature of the institution population changes, times change, new facilities are added and budget changes. The administration cannot wait to publish rules and get outside input and approval to all rule changes. The government of the United States is founded on a three branch concept of government - the executive, the legislative and the judicial. Court approval of all rules and regulations would be an infringement on the rights of the executive branch of government and correctional decisions would be made by judges not trained in corrections.[1]

The Florida Division of Corrections assesses this standard as only partially acceptable:

> This Standard deals with the administrative procedures of correctional agencies. It suggests that this legislation should require the use of administrative rules and regulations and provide a formal procedure for their adoption or alteration. With this part of the Standard we agree and are in compliance.
>
> Item 2 requires a "case precedent" with stipulated requirements with which we disagree. The need for a system of recorded precedents to supplement standards would require an unrealistic approach in the administration of a correctional system. We believe in guidelines and procedures produced by a professional correctional staff, rather than case law precedent approach. At the present time, we have administrative rules and regulations issued by the Department and directives issued by the Division

in addition to the Florida statutes, minutes of superintendents' meetings, and institutional policy memoranda which we feel are sufficient as guidelines.

Section 3 would require judicial review for agency action. With this we do not agree. Though there is no State legislation requiring judicial review, the offenders presently avail themselves of the Federal and State courts. Since the offenders have this recourse, establishing a required review would be redundant.

Also established are rules and regulations all the way up to, and including, an appeal board for airing offender grievances.

In summary, the sections of this Standard with which we agree are already in operation and should be subject to continuing review. However, Items 2 and 3, with which we disagree, should not be implemented due to the cost factor involved, plus the fact that it would probably be more time-consuming to go through judicial review than to follow the present grievance regulations which accomplish the same purpose.[2]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 10.

[2]Florida Division of Corrections, Response to National Standards and Goals for Corrections (Tallahassee: Department of Health and Rehabilitative Services, February 1974), p. 220.

Standard 16.3

Code of Offenders' Rights

Each State should immediately enact legislation that defines and implements the substantive rights of offenders. Such legislation should be governed by the following principles:

1. Offenders should be entitled to the same rights as free citizens except where the nature of confinement necessarily requires modification.

2. Where modification of the rights of offenders is required by the nature of custody, such modification should be as limited as possible.

3. The duty of showing that custody requires modification of such rights should be upon the correctional agency.

4. Such legislation should implement the substantive rights more fully described in Chapter 2 of this report.

5. Such legislation should provide adequate means for enforcement of the rights so defined. It should authorize the remedies for violations of the rights of offenders listed in Standard 2.18, where they do not already exist.

Analysis

The State of Virginia has no comprehensive statutory definition or code of offenders' rights. Offenders' rights are delineated by a mixture of administrative interdepartmental guidelines and court decisions. No such formal code as envisioned in this standard has even been drafted.

Alternative Standards

The American Wardens' Association suggests the following modification for this standard:

> Modify. Legislation should be worded to the effect that an inmate has all of the rights of a free citizen except those that are inconsistent with the written rules and regulations of the institution.[1]

The Association of State Correctional Administrators are likewise uncomfortable concerning this standard:

> Opinions guarded with reference to this standard. Couched in disturbing language and unclear. Tricky and treading on dangerous ground. Commentary is left to consideration and debate by the full ASCA membership.[2]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 10.

[2]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974, p. 15.

Standard 16.4

Unifying Correctional Programs

Each State should enact legislation by 1978 to unify all correctional facilities and programs. The board of parole may be administratively part of an overall statewide correctional services agency, but it should be autonomous in its decisionmaking authority and separate from field services. Programs for adult, juvenile, and youthful offenders that should be within the agency include:

1. Services for persons awaiting trial.
2. Probation supervision.
3. Institutional confinement.
4. Community-based programs, whether prior to or during institutional confinement.
5. Parole and other aftercare programs.
6. All programs for misdemeanants including probation, confinement, community-based programs, and parole.

The legislation also should authorize the correctional agency to perform the following functions:

1. Planning of diverse correctional facilities.
2. Development and implementation of training programs for correctional personnel.
3. Development and implementation of an information-gathering and research system.
4. Evaluation and assessment of the effectiveness of its functions.
5. Periodic reporting to governmental officials including the legislature and the executive branch.
6. Development and implementation of correctional programs including academic and vocational training and guidance, productive work, religious and recreational activity, counseling and psychotherapy services, organizational activity, and other such programs that will benefit offenders.
7. Contracts for the use of nondepartmental and private resources in correctional programming.

This standard should be regarded as a statement of principle applicable to most State jurisdictions. It is recognized that exceptions may exist, because of local conditions or history, where juvenile and adult corrections or pretrial and postconviction correctional services may operate effectively on a separated basis.

Analysis

As of July 1, 1974, by an act of the Virginia General Assembly, the Virginia State Department of Corrections was created by separating the corrections and welfare functions of the Department of Welfare and Institutions. This action brought into one agency the supervision and control of all correctional functions listed in Standard 16.4 except subpoint six. Programs for misdemeanants still fall under the jurisdiction of the localities and their local correctional facilities.

Alternative Standards

The National Council on Crime and Delinquency has developed the Standard Act for State Correctional Services. Section 3, Institutions and Services, states:

1. The following institutions and services shall be administered by the department;

    a. All state institutions for the care, custody, and correction of persons committed for felonies or misdemeanors, persons adjudicated as youthful offenders, and minors adjudicated as delinquents by the (juvenile or family) courts under sections (...) and committed to the department.

    b. Probation services for courts having jurisdiction over criminals, youthful offenders, and children.

    c. Parole services for persons committed by criminal courts to institutions within the department. The parole board established by (reference to section establishing parole board) shall be continued and shall be responsible for those duties specified by section (...).

2. The department (may) (shall) establish and operate institutions for misdemeanants committed for terms of thirty days or over. It may establish and operate regional adult and juvenile detention facilities.

3. The department shall provide consultation services for the design, construction, programs, and administration of detention and correctional facilities for children

> and adults operated by counties and municipalities and shall make studies and surveys of the programs and administration of such facilities. Personnel of the department shall be admitted to these facilities as required for such purposes. The department shall administer programs of grants in aid of construction and operation of approved local facilities. It shall provide courses of training for the personnel of such institutions and shall conduct demonstration projects with offenders in the institutions. It shall establish standards and rules for the operation of correctional and detention facilities, shall at least once a year inspect each facility for compliance with the standards set, and shall publish the results of such inspections as well as statistical and other data on the persons held in detention. The director may order the closing of any detention or correctional facility that does not meet the standards set by the department.[1]

Footnotes

[1]American Bar Association, Compendium of Model Correctional Legislation and Standards (New York, N.Y.: American Bar Association, 1972), pp. viii-19.

Standard 16.5

Recruiting and Retaining Professional Personnel

Each State, by 1975, should enact legislation entrusting the operation of correctional facilities and programs to professionally trained individuals.

Legislation creating top management correctional positions should be designed to protect the position from political pressure and to attract professionals. Such legislation should include:

1. A statement of the qualifications thought necessary for each position, such qualifications to be directly related to the position created.

2. A stated term of office.

3. A procedure, including a requirement for a showing of cause, for removal of an individual from office during his term.

For purposes of this standard, "top management correctional positions" include:

1. The chief executive officer of the correctional agency.

2. Members of the board of parole.

3. Chief executive officers of major divisions within the correctional agency, such as director of probation, director of parole field services, and director of community-based programs.

This standard assumes a unified correctional system that includes local jails used for service of sentence. In the event that such a system is not adopted, the definition of Item 3 immediately above should include the chief executive officer of each correctional facility including local jails.

The foregoing legislation should authorize some form of personnel system for correctional personnel below the top management level. The system so authorized should promote:

1. Reasonable job security.

2. Recruitment of professionally trained individuals.

3. Utilization of a wide variety of individuals, including minority group members and ex-offenders.

Legislation affecting correctional personnel should not include:

1. Residency requirements.

2. Age requirements.

3. Sex requirements.

4. A requirement that an employee not have been convicted of a felony.

5. Height, weight, or similar physical requirements.

Analysis

Under existing Virginia statutes, the chief executive of the correctional agency holds office at the pleasure of the Governor. As the director of the Department of Corrections serves at the pleasure of the Governor and is not granted a tenured term of office, there is no formal procedure or requirement for a showing of cause for removal from office. In addition, there are no requirements regarding particular qualifications for this position in the statutes.

The members of the Probation and Parole Board are also appointed by the Governor of Virginia with no specific statutory qualifications required. The members of the Board serve four year terms as specified by Section 53-232 as amended by the 1974 session of the Virginia General Assembly. The suspension or removal of Probation and Parole Board members is at the discretion of the Governor.

The chief executive officers of major divisions within the correctional agency are appointed by the director of the Department of Corrections. There is no specified term of office. Chief executive officers (sheriffs) of the local jails are elected within the various localities for stated terms of office.

Provisions for the removal from office of all state, county, city, town and district officers elected or appointed are established in Section 15.1-63 of the Code of Virginia. It contains the following provisions:

> 15.1-63. Power of removal; grounds. - The circuit courts of counties and of cities having no corporation court and

> the corporation courts of cities may remove from office all State, county, city, town and district officers elected or appointed, except such officers as are by the Constitution removable only and exclusively by methods other than those provided by this and the following section (15.1-64), for malfeasance, incompetency or gross neglect of official duty, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any law of this State, or who shall in any public place be in a state of intoxication produced by ardent spirits voluntarily taken, or who shall have been convicted of engaging in any form of gambling or of any act constituting a violation of any penal statute involving moral turpitude, or who is convicted of failing to make a public disclosure of interests in violation of article 4 (15.1-67 et seq.) of chapter 2 of this title.
>
> The power to remove the clerk of a court shall be vested only in the court of which he is clerk.
>
> Nothing in this section shall be construed to interfere with any power which may otherwise be vested in the mayor of any city or to repeal any provision of the charter of any city or town or any ordinance in pursuance of such charter for the removal of any of the officers of such city or town. (Code 1950, 15-500; 1962, c. 623; 1968, c. 686; 1971, Ex. Sess., c. 63.)[1]

Legislation affecting correctional personnel does not have any residency, age, sex, height, weight, or similar physical requirements. There is a requirement that correctional officers be at least 18 years of age. There is no legislation prohibiting the employment of a person convicted of a felony.[2]

Alternative Standards

Regarding the recruiting and retaining or professional personnel for the correction systems, Florida proposes the following changes in the NAC standards:

> Florida Division of Corrections agrees with this Standard in that "legislation creating top management correctional positions should be designed to protect the position from political pressure and to attract professionals.:
>
> We are in general agreement with sub-Standard 1.

> We are opposed to the provision in sub-Standard 2, for "a stated term of office." We do not feel that this provision would necessarily be beneficial to staff or agency, because we are of the opinion that some continuity in leadership is a necessity in corrections.
>
> We are in general agreement with the first three provisions of the legislation coordination portion of this Standard which would provide reasonable job security recruitment of professionally trained individuals and utilization of a wide variety of individuals, including minority group members and ex-offenders.
>
> In the last section of this Standard, five items are listed that legislation affecting corrections should not include. We are in general agreement with this sub-Standard with the exception of Item 2 - age requirements, and Item 3 - sex requirements. We disagree with these two items because we feel that legislation is not required in this regard and we are strongly of the opinion that the Division rules and regulations should stipulate requirements in these two categories. We have stated, elsewhere in our responses, that we are of the opinion that a member of one sex should not exercise supervision over an offender of the opposite sex in which their privacy would be violated. We are also of the opinion that age must always be a determining factor in employing and retaining personnel. The nature of corrections is such that age can impair the effectiveness of a particular staff member.[3]

The Association of State Correctional Administrators express further disagreement with the NAC:

> 1975 admirable but unrealistic that legislation be enacted entrusting the operation of correctional facilities and programs to professionally trained individuals. Legislatures have largely adjourned for FY-75. Attention directed to Paragraph 2, "A stated term of office." Vigorously objected to.[4]

Footnotes

[1]Code of Virginia, Section 15.1-63 (1973).

[2]Paul Broughton, Director of Personnel, Department of Corrections, Interview September 4, 1974.

[3]Florida Division of Corrections, Response to National Standards and Goals (Tallahasse: Department of Health and Rehabilitative Services, February 1974), p. 225.

[4]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974, pp. 15, 16.

Standard 16.6

Regional Cooperation

Each State that has not already done so should immediately adopt legislation specifically ratifying the following interstate agreements:

1. Interstate Compact for the Supervision of Parolees and Probationers.

2. Interstate Compact on Corrections.

3. Interstate Compact on Juveniles.

4. Agreement on Detainers.

5. Mentally Disordered Offender Compact.

In addition, statutory authority should be given to the chief executive officer of the correctional agency to enter into agreements with local jurisdictions, other States, and the Federal Government for cooperative correctional activities.

Analysis

Virginia's authority for participation in an interstate compact for the supervision of parolees and probationers is found in Section 53-289 of the Code of Virginia.

Virginia does not participate in an "Interstate Compact on Corrections."

The provisions dealing with Virginia's participation in an interstate compact on juveniles is found in Section 16.1-213.1 of the Code of Virginia.

Finally, there is no mentally disordered offender interstate compact in which the Commonwealth of Virginia participates.

Alternative Standards

None.

Standard 16.7

Sentencing Legislation

Each State, in enacting sentencing legislation (as proposed in Chapter 5) should classify all crimes into not more than 10 categories based on the gravity of the offense. The legislature should state for each category, a maximum term for State control over the offender that should not exceed 5 years—except for the crime of murder and except that, where necessary for the protection of the public, extended terms of up to 25 years may be imposed on the following categories of offenders:

1. **Persistent felony offenders.**
2. **Dangerous offenders.**
3. **Professional criminals.**

The legislation should contain detailed criteria, patterned after Section 7.03 of the Model Penal Code as adapted in Standard 5.3, defining the above categories of offenders.

Analysis

Under existing Virginia statutes there is no classification or breakdown of all crimes into categories based on the gravity of the offense. As was previously documented in the analysis of Standards 5.2 and 5.3, some 52 of the 72 listed statutory offenses carry a maximum sentence of over five years. In addition, there are no provisions in the Code of Virginia for categorization of persistent felony offenders, dangerous offenders, or professional offenders such that they can be sentenced to extended terms up to 25 years as recommended in this standard.

Alternative Standards

This standard focusing on sentencing legislation is viewed as unrealistic by the American Wardens' Association:

> Reject. This is an unrealistic standard. The people of the state, thru their elected representatives should make the decision with regard to length of sentence.[1]

Footnotes

[1]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 10.

Standard 16.8

Sentencing Alternatives

By 1975 each State should enact the sentencing legislation proposed in Chapter 5, Sentencing, reflecting the following major provisions:

1. All sentences should be determined by the court rather than by a jury.

2. The court should be authorized to utilize a variety of sentencing alternatives including:

a. Unconditional release.

b. Conditional release.

c. A fine payable in installments with a civil remedy for nonpayment.

d. Release under supervision in the community.

e. Sentence to a halfway house or other residential facility located in the community.

f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.

g. Imposition of a maximum sentence of total confinement less than that established by the legislature for the offense.

3. Where the court imposes an extended term under Standard 5.3 and feels that the community requires reassurance as to the continued confinement of the offender, the court should be authorized to:

a. Recommend to the board of parole that the offender not be paroled until a given period of time has been served.

b. Impose a minimum sentence to be served prior to eligibility for parole, not to exceed one-third of the maximum sentence imposed or be more than three years.

c. Allow the parole of an offender sentenced to a minimum term prior to service of the minimum upon the request of the board of parole.

4. The legislature should delineate specific criteria patterned after the Model Penal Code for imposition of the alternatives available.

5. The sentencing court should be required to make specific findings and state specific reasons for the imposition of a particular sentence.

6. The court should be required to grant the offender credit for all time served in jail awaiting trial or appeal arising out of the conduct for which he is sentenced.

Sentencing legislation should not contain:

1. Mandatory sentences of any kind for any offense.

2. Ineligibility for alternative dispositions for any offense except murder.

Analysis

The Commonwealth of Virginia currently operates under a mixed system of judge and jury sentencing. In criminal cases where the defendant pleads guilty or is tried and found guilty by the presiding judge, with the right to trial by jury having been waived, the judge is responsible for sentencing. However, in criminal cases where the accused is tried and found guilty by a jury, that jury is empowered to pass sentence upon the convicted individual. The Code of Virginia specifically states regarding the imposition of sentence in criminal cases:

> The punishment in all criminal cases tried by a jury shall be ascertained by the jury trying the same within the limits prescribed by law.[1]

The Code of Virginia further states:

> The terms of confinement in the penitentiary or in jail of a person convicted of felony, if that punishment is prescribed, and the amount of fine, if the felony be also punishable by fine, shall be ascertained by the jury, if there be one, or by the court trying the case without a jury, so far as the term of confinement and the amount of the fine are not fixed by law.[2]

As for the variety of sentencing alternatives available in the State of Virginia, some 63 of 72 penalties require some type of minimum sentence. Conditional release and unconditional release by means of suspension of sentence and probation are available to Virginia courts.[3] In addition, the courts do have the authority to sentence to a halfway house or partial confinement. They may impose a sentence less than the maximum statutorily authorized sentence. In cases where there is a minimum sentence required, the judges must sentence between these two restraints. As for fines, the court is authorized under the Code to order payment of fines and costs in installments or upon other terms or conditions.[4]

As for sentencing to extended terms, Virginia courts have no statutory authority to mandate a minimum sentence to be served before eligibility for parole or to recommend to the Probation and Parole Board that the offender not be paroled until a given period of time has been served. The Virginia Probation and Parole Board has specifically and exclusively been granted jurisdiction over the functions of adult parole selection, releases, discharge, or revocation.[5]

There is currently no statutory provision requiring the sentencing court to make specific findings and state specific reasons for the imposition of a particular sentence.

Finally, contrary to the requisites of Standard 16.8, Virginia does require mandatory sentences for many of its offenses; and in the case of certain crimes that carry minimum required sentences of incarceration, alternative disposition is barred.

Alternative Standards

The Association of State Correctional Administrators comments on this standard are as follows:

> In light of late arrival of Standards and Goals, 1975 unrealistic. Discussion on this standard evoked considerable conflict. Paragraph 3, a, b, and c, substandards are not acceptable. The court shall not retain jurisdiction during the service of the sentence. When viewed as a standard having national impact, this standard needs extensive work. Attention drawn to second sequence of numbered paragraphs 1 and 2, under the heading, "Sentencing Legislation Should Not Contain." These substandards also elicited heated debate. Divided opinions predicted without unanimity.[6]

The Florida corrections system is in general agreement, except:

We are in disagreement with sub-Standard 3, because we do not feel that the court should impose restrictions on the parole commission as regards the granting of paroles or eligibility of paroles.[7]

Footnotes

[1]Code of Virginia, Sec. 19.1-291 (1960).

[2]Code of Virginia, Sec. 19.1-292 (1960).

[3]Code of Virginia, Sec. 53-273 (1972).

[4]Code of Virginia, Sec. 19.1-347.1 (Supp. 1973).

[5]Code of Virginia, Sec. 53-251.2 (1972).

[6]"Rationale and Reasoning Behind the Ratings on the Standards and Goals Study," Committee of the Association of State Correctional Administrators, February 1974, p. 16.

[7]Florida Division of Corrections, Response to National Standards and Goals (Tallahasse: Department of Health and Rehabilitation, February 1974), p. 229.

Standard 16.9

Detention and Disposition of Juveniles

Each State should enact legislation by 1975 limiting the delinquency jurisdiction of the courts to those juveniles who commit acts that if committed by an adult would be crimes.

The legislation should also include provisions governing the detention of juveniles accused of delinquent conduct, as follows:

1. A prohibition against detention of juveniles in jails, lockups, or other facilities used for housing adults accused or convicted of crime.

2. Criteria for detention prior to adjudication of delinquency matters which should include the following:

   a. Detention should be considered as a last resort where no other reasonable alternative is available.

   b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings.

3. Prior to first judicial hearing, juveniles should not be detained longer than overnight.

4. Law enforcement officers should be prohibited from making the decision as to whether a juvenile should be detained. Detention decisions should be made by intake personnel and the court.

The legislation should authorize a wide variety of diversion programs as an alternative to formal adjudication. Such legislation should protect the interests of the juvenile by assuring that:

1. Diversion programs are limited to reasonable time periods.

2. The juvenile or his representative has the right to demand formal adjudication at any time as an alternative to participation in the diversion program.

3. Incriminating statements made during participation in diversion programs are not used against the juvenile if a formal adjudication follows.

Legislation, consistent with Standard 16.8 but with the following modifications, should be enacted for the disposition of juveniles:

1. The court should be able to permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

2. Detention, if imposed, should not be in a facility used for housing adults accused or convicted of crime.

3. Detention, if imposed, should be in a facility used only for housing juveniles who have committed acts that would be criminal if committed by an adult.

4. The maximum terms, which should not include extended terms, established for criminal offenses should be applicable to juveniles or youth offenders who engage in activity prohibited by the

criminal code even though the juvenile or youth offender is processed through separate procedures not resulting in a criminal conviction.

Analysis

The Code of Virginia does not have a prohibition against the detention of juveniles in jails, lockups, or other facilities which house adults accused or convicted of crimes.[1]

The criteria for detention as recommended by the National Advisory Commission in subpoint 2 of this Standard are not found in the Code of Virginia.[2]

There is legislation requiring that juveniles not be detained longer than 24 hours prior to first judicial hearing. Section 16.1-197(3) of the Code establishes the statutory framework for this subpoint.

As stated in Standard 8.2 of this document, law enforcement officers are prohibited from making the decision as to whether a juvenile should be detained.

The subpoints of this Standard dealing with legislation to authorize a wide variety of diversion programs as an alternative to formal adjudication are not applicable to Virginia as such legislation is non-existent.

Provisions for allowing a child to remain with his parents, guardian, or other custodian, are found in the Code. The statute reads:

> (2) Leave the child or minor in his own home under the supervision of the court with or without taking custody; or take custody and place the child or minor temporarily in a suitable home, under supervision of the court pending final disposition of the case.[3]

Section 16.1-194 of the Code lists the various instances when a child can be taken into immediate custody.

Statutory legislation does give the courts the right to deal with juveniles coming before a court of record in

"accordance with the criminal laws of this State."[4]

Alternative Standards

The National Jail Association provides the following comments concerning this standard:

> The National Jail Association wholeheartedly agrees that there should be prohibitions against detention of juveniles in jails or lockups under any circumstance. At the present time we must realize that the waiving of juvenile jurisdiction is many times convenient for the juvenile service people because they do not have adequate juvenile facilities to handle bad cases. The misuse of waiver of jurisdiction and placing a 16 year old person in jail which is not properly staffed or lack facilities to take care of the basic needs of the individual is a sham and an insult to dignity of any rational person. There are some states that automatically waiver juvenile status as required by law in capital crimes. In the waiver of juvenile jurisdiction persons 15 or 16 years old are considered and treated as an adult. There are cases where they are mixed with the adult population. We are doing nothing but giving this young individual a training course in crime. If we have problems at the age of 16 we can further assure that by the time he is 18 or 20 his problem will be multiplied and we are doing the community an injustice by putting him in such institutions. If waiver of jurisdiction is felt necessary by the courts, then special institutions under juvenile services should be created.[5]

The State Correctional Administrators found this standard as conditionally acceptable:

> Conditionally acceptable. However, reviewed as restrictive and containing poor choice of words. Example: Paragraph 2, b, "Detention should be used only;" the word "only" subject to debate. Again, Paragraph 3, "Prior to first judicial hearing, juveniles 'should not' be detained longer than overnight." Debatable. In the third sequence of numbered paragraphs, attention is drawn to Paragraph 2, "Detention, if imposed should not be in a facility..." Question raised with regard to small rural communities.[6]

The American Wardens' Association has rejected the standard:

> Reject. This standard is too restrictive. More flexibility is needed. Example #3: Prior to first judicial hearing, juveniles should not be detained longer than overnight. This does not provide for extreme cases at night, on weekends and holidays, etc.[7]

Footnotes

[1]Code of Virginia, Section 16.1-196 (1960).

[2]Code of Virginia, Section 16.1-194 (1960).

[3]Code of Virginia, Section 16.1-178 (1973 Supp.).

[4]Code of Virginia, Section 16.1-177 (1960).

[5]National Jail Association, "Report of the Nations Jail Association on the Recommendation for the National Advisory Commission on Criminal Justice," Draft, August 1974, pp. 9-10.

[6]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 16.

[7]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft, August 1974, p. 10.

Standard 16.10

Presentence Reports

Each State should enact by 1975 legislation authorizing a presentence investigation in all cases and requiring it:

1. In all felonies.

2. In all cases where the offender is a minor.

3. As a prerequisite to a sentence of confinement in any case.

The legislation should require disclosure of the presentence report to the defendant, his counsel, and the prosecutor.

Analysis

Under existing statutory practice in Virginia, there are no formal requirements for a presentence investigation in all felony offenses nor in all cases where the offender is a minor, nor as a prerequisite to confinement in any case.

The use of presentence reports and inquiries in the Commonwealth is formally governed by the statutory provisions of the Code of Virginia as enacted by the Virginia General Assembly. The Code states regarding presentence reports:

> When a person is tried upon a felony charge for which a sentence of death or confinement for a period of over ten years may be imposed and pleads guilty, or upon a plea of not guilty is tried by the court without a jury as provided by law, and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before fixing punishment or imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused and any and all other relevant facts, to the end that the court may be fully advised as to the appropriate and just sentence to be imposed. The probation officer shall present his report in open court in the presence of the accused who shall be advised of the contents of the same and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter which he may desire to present. The report of the investigation shall be filed as a part of the record in the case.[1]

Thus, the range of cases in which a presentence report is formally required by statute is faily narrow. The foremost statutory limitation lies in the fact that, upon conviction of the defendant by a jury, such a presentence report as prescribed by sec. 53-278.1 is denied the jury in its functioning as a sentencing body. As this statute is currently applied, such a report is supplied largely at the request of the sentencing judge. Presentence reports are compiled by probation and parole officers of the Department of Corrections, and, while some

departmental guidelines are followed in terms of content, such reports in fact vary to some extent from one district to another within the state.

As for the preparation and disclosure of a presentence report, the accused must be granted access to the information compiled and released to the sentencing judge. The Code of Virginia specifically states:

> ...The probation officer shall file his report in open court in the presence of the accused who shall be advised of the contents of the same and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter which he may desire to present. The report of the investigation shall be filed as a part of the record of the case.[2]

In addition, the attorney for the Commonwealth likewise must be apprised of the contents. As this procedure is implemented in practice, the probation and parole officer does make the report available to both the Commonwealth's Attorney and the counsel for the accused five days before the data is released in open court, allowing the preparation of rebuttal.[3]

Alternative Standards

The American Correctional Association Committee on Standard Review states the following dealing with this standard:

> Standard 16.10 regarding pre-sentence reports indicates the 1975 legislatures should require disclosure of the report to the defendant, his counsel and the prosecutor.
>
> As indicated in the commentary, a number of states presently authorize or require the disclosure of factual contents and conclusion but protect the confidentiality of the sources of the information. Other exceptions are withholding parts of the report not relevant to proper sentence, diagnostic opinion which might seriously disrupt rehabilitation and information obtained in confidence. We strongly feel that the requirement of total disclosure would put unnecessary stress and threat of reprisal on victims, collateral informants and professional diagnosticians. In many jurisdictions the officer conducting the pre-sentence

investigation may also eventually be the supervising officer. Complete disclosure of his report may prevent any meaningful relationship from being developed in the future.[4]

Footnotes

[1]Code of Virginia, Sec. 52-278.1 (1972).

[2]Ibid.

[3]Interview with Mr. W. E. Boldin, Jr., Acting Director, Division of Probation and Parole Services, July 11, 1974.

[4]American Correctional Association Committee on Standards Review, December 10, 1973.

Standard 16.11

Probation Legislation

Each State should enact by 1975 probation legislation (1) providing probation as an alternative for all offenders; and (2) establishing criteria for (a) the granting of probation, (b) probation conditions, (c) the revocation of probation, and (d) the length of probation.

Criteria for the granting of probation should be patterned after Sec. 7.01 of the Model Penal Code and should:

1. Require probation over confinement unless specified conditions exist.

2. State factors that should be considered in favor of granting probation.

3. Direct the decision on granting probation toward factors relating to the individual offender rather than to the offense.

Criteria for probation conditions should be patterned after Sec. 301.1 of the Model Penal Code and should:

1. Authorize but not require the imposition of a range of specified conditions.

2. Require that any condition imposed in an individual case be reasonably related to the correctional program of the defendant and not unduly restrictive of his liberty or incompatible with his constitutional rights.

3. Direct that conditions be fashioned on the basis of factors relating to the individual offender rather than to the offense committed.

Criteria and procedures for revocation of probation should provide that probation should not be revoked unless:

1. There is substantial evidence of a violation of one of the conditions of probation;

2. The probationer is granted notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel including the right to appointed counsel if he is indigent, the right to subpena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him; and

3. The court provides the probationer a written statement of the findings of fact, the reasons for the revocation, and the evidence relied upon.

In defining the term for which probation may be granted, the legislation should require a specific term not to exceed the maximum sentence authorized by law except that probation for misdemeanants should not exceed one year. The court should be authorized to discharge a person from probation at any time.

The legislation should authorize an appellate court on the initiation of the defendant to review decisions that deny probation, impose conditions, or revoke probation. Such review should include determination of the following:

1. Whether the decision is consistent with statutory criteria.

2. Whether the decision is unjustifiably disparate in comparison with cases of a similar nature.
3. Whether the decision is excessive or inappropriate.
4. Whether the manner in which the decision was arrived at is consistent with statutory and constitutional requirements.

Analysis

Virginia has extensive legislative guidelines in the area of probation.

The authorization for probationary practices lies in section 53-272 of the Code which states:

> After a plea, a verdict or a judgment of guilty in any court having jurisdiction to hear and determine the offense, with which the prisoner at the bar is charged, if there are circumstances in mitigation of the offense, or if it appears compatible with the public interest, the court may suspend the execution of the sentence, in whole or in part, or the imposition of sentence or commitment, and may also place the defendant on probation under the supervision of a probation officer, during good behavior for such time and under such conditions of probation as the court shall determine. In case the prisoner has been sentenced for a misdemeanor and committed, or in case a jail sentence has been imposed upon the prisoner upon conviction of a felony, the court, or judge of such court in vacation may at any time before the sentence has been completely served, suspend the unserved portion of any such sentence.
>
> In case the prisoner has been sentenced but not actually committed and delivered to the penitentiary for a felony the court which head the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may place the defendant on probation under the supervision of a probation officer during good behavior, for such time and under such conditions of probation as the court shall determine.
>
> In any case wherein a court is authorized to suspend imposition or execution of sentence, such court may fix for the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the prisoner might have been sentenced.
>
> In case the prisoner has been sentenced and committed to the penitentiary for a felony and the sentence is partially suspended, for purposes of good behavior credit and for parole eligibility, the term of imprisonment shall be that portion of the sentence which was not suspended.[1]

Thus, the Virginia procedures regarding the granting of probation are at variance with the NAC recommendations in some instances, while generally conforming to the Standards in others.

First, there is no ceiling on the length of time an individual may be required to stay on probation as mandated by the NAC standards. While the Commission suggests that the specific term not exceed the maximum sentence of incarceration allowable for a given offense, the Code of Virginia specifically instructs judges to "fix the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the prisoner might have been sentenced."[2] The Commonwealth does adhere to that facet of the standard which suggests that probation should be levied against an offender for a specific term or length of time.[3]

The Virginia statutes likewise are in agreement with the NAC in the practice of authorizing the imposition of certain specific conditions and requirements on the offender. As is recommended by the Commission, these conditions as well as the length of the probation period may be modified or enlarged at any time or point within the duration of supervision; the Code of Virginia specifically states:

> The court may subsequently increase or decrease the probation period and revoke or modify any condition of probation.[4]

Regarding the nature and extent of these requisite conditions, the administrative practices of the Probation and Parole Board resemble the statutory codes in that some of the probation requirements are in compliance with the NAC Standards, while others do not reflect the philosophy of the Commission. In agreement with the recommendations of the NAC, the probationers in Virginia do receive a written statement of the conditions imposed and an explanation of such conditions, and may request

clarification of any condition from the sentencing judge. In addition, a probationer may petition the sentencing judge for a modification of such conditions.[5]

However, the administrative practices deviate from the recommendations of the Commission with regard to the conditions themselves, as a somewhat mechanical imposition of general conditions does occur in all probationary cases in the Commonwealth. The following set of conditions are imposed upon each probationer in Virginia:

1. I will obey all Municipal, County, State and Federal laws and ordinances. I will report any arrests or citations within 3 days to the district Probation Officer.

2. I will maintain regular employment and support myself and legal dependents to the best of my ability. I will notify my Probation Officer promptly of any changes in my employment.

3. I will obtain the written permission of my Probation Officer before buying or operating a motor vehicle.

4. I will submit a written report at the end of each month to my Probation Officer on forms furnished by him and will report as otherwise instructed.

5. I will permit my Probation Officer to visit my home or place of employment.

6. I will follow my Probation Officer's instructions and will be truthful and cooperative.

7. I will not use alcoholic beverages to excess. The excessive use of alcohol here is understood to mean that the effects disrupt or interfere with my domestic life, employment or orderly conduct.

8. I will not illegally use, possess or distribute narcotics, dangerous drugs, controlled substances or related paraphenalia.

9. I will not use, own, possess, transport or carry a firearm without the written permission of my Probation Officer.

10. I will not change my residence without the permission of my Probation Officer. I will not leave the State of Virginia or travel outside of a designated area without permission.[6]

In addition, the sentencing court may impose such special conditions as it sees fit. In this sense, an effort may be made to tailor the conditions to the needs of the individual; however, for the most part a general set of probation conditions is levied against each offender.

Currently in Virginia, there are no state-wide standardized operating procedures for the conduct of the preliminary hearing in a probation revocation. Generally, the procedure has been for judges not to conduct a preliminary hearing if the violation occurs within the original sentencing court's jurisdiction, but rather to combine the preliminary and final hearings into a single proceeding. If, however, the violation took place outside the court's jurisdiction, then generally there is a preliminary hearing held at the site of the violation. At such a hearing, the accused is afforded the same rights as granted in preliminary hearings in parole revocations by the Supreme Court decision of Morrisey v. Brewer (see Chapter 12 on Parole). Under this ruling, the accused is accorded the right to notice, presentation evidence, confrontation and cross-examination of witnesses, and representation by counsel. However, among Virginia courts, the Morrisey decision has not been fully and uniformly implemented. As for the final judicial hearing, definite regulations have been developed and incorporated into the Code of Virginia.

> Sec. 53-275. REVOCATION OF SUSPENSION OF SENTENCE AND PROBATION. - The court may, for any cause deemed by it sufficient which occured at any time within the probation period, or if none, within the period of suspension fixed by the court, or if neither, within the maximum period for which the defendant might originally have been sentenced to be imprisoned, revoke the suspension of sentence and

> any probation, if the defendant be on probation, and cause the defendant to be arrested and brought before the court at any time within one year after the probation period, or if no probation period has been prescribed then within one year after the maximum period for which the defendant might originally have been sentenced to be imprisoned, whereupon, in case the imposition of sentence has been suspended, the court may pronounce whatever sentence might have been originally imposed. In case the execution of the sentence has been suspended, the original sentence shall be in full force and effect, and neither the time of probation or of suspension shall be taken into account to diminish the original sentence. In the event that any person placed on probation shall leave the jurisdiction of the court without the consent of the judge, or having obtained leave to remove to another locality violates any of the terms of his probation, he may be apprehended and returned to the court and dealt with as provided above. Provided, however, that nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit or corporation court having criminal jurisdiction from a judgment or order revoking any suspended sentence.[7]

Interpretations of the statutes by the Supreme Court of Virginia have resulted in additional procedures being established to supplement the requisites of the Code regarding the final revocation hearing. In the cases of Griffen v. Cunningham, 205 Va. 349, 136 S.E. 2d 840 (1964) and Brown v. Slayton, 337 F. Supp. 10 (W.D. Va. 1971), the Court ruled that the accused in revocation hearings is entitled to a judicial hearing in accordance with familiar principles governing the exercise of judicial discretion, and that the accused has the right to appear and testify and to be represented by counsel. Such a conclusion was also reached in Cook v. Commonwealth, 211 Va. 290, 176 S.E. 2d 815 (1970), where the Court ruled that, since the revocation of a suspension of sentence deprives the probationer of his liberty, he is entitled to a judicial hearing, but that a summary hearing is sufficient.

The grounds necessary for revocation is another area where

the Virginia Supreme Court has had an impact on operating procedures. In Coffey v. Commonwealth, 209, Va. 760, 167 S.E. 2d 343 (1969), the Court ruled that all suspensions include a condition of good behavior, and Marshall v. Commonwealth, 202 Va. 217, 116 S.E. 2d 270 (1960) held that substantial misconduct constituted grounds for revocation of suspension. Also in Marshall the court ruled a suspension of a sentence for cause is not a trial for the commission of a new criminal offense, and that the alleged violation by the probationer of the conditions of the suspension of sentence need not be proven beyond a reasonable doubt. As for disposition of the case, a court is empowered to impose any sentence which might have originally been levied, impose any sentence available under the statutes, or enlarge or modify the existing conditions of probation.

Alternative Standards

The Association of State Correctional Administrators expressed the viewpoint that the idea of providing probation as an alternative for all offenders by 1975 is not a realistic goal.[8]

Footnotes

[1]Code of Virginia, Sec. 53-273 (1972).

[2]Ibid.

[3]Ibid.

[4]Ibid.

[5]Interview with N. W. Perdue, Member, Virginia Probation and Parole Board.

[6]Virginia Probation and Parole Board, "Conditions of Probation," PB Form 2 Revised 7-74.

[7]Code of Virginia, Sec. 53-275 (1972).

[8]"Rationale and Reasoning Behind the Ratings on the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 16.

Standard 16.12

Commitment Legislation

Each State should enact, in conjunction with the implementation of Standard 16.1, legislation governing the commitment, classification, and transfer of offenders sentenced to confinement. Such legislation should include:

1. Provision requiring that offenders sentenced to confinement be sentenced to the custody of the chief executive officer of the correctional agency rather than to any specific institution.

2. Requirement that sufficient information be developed about an individual offender and that assignment to facility, program, and other decisions affecting the offender be based on such information.

3. Authorization for the assignment or transfer of offenders to facilities or programs administered by the agency, local subdivisions of government, the Federal Government, other States, or private individuals or organizations.

4. Prohibition against assigning or transferring juveniles to adult institutions or assigning nondelinquent juveniles to delinquent institutions.

5. Authorization for the transfer of offenders in need of specialized treatment to institutions that can provide it. This should include offenders suffering from physical defects or disease, mental problems, narcotic addiction, or alcoholism.

6. Provision requiring that the decision to assign an offender to a particular facility or program shall not in and of itself affect the offender's eligibility for parole or length of sentence.

7. A requirement that the correctional agency develop through rules and regulations (a) criteria for the assignment of an offender to a particular facility and (b) a procedure allowing the offender to participate in and seek administrative review of decisions affecting his assignment or transfer to a particular facility or program.

Analysis

The Code of Virginia establishes legislation that requires offenders sentenced to confinement through the courts of the Commonwealth to be sent to the "State Penitentiary,"[1] which in practice has come to mean institutions under the control of the Department of Corrections.

The keeping of records on persons incarcerated within Virginia's penal system is prescribed as well in the Code. Section 53-24 requires:

> The Director shall file and preserve a copy of the judgment furnished by the clerk of the court of conviction of each convict, and keep a register describing the term of his confinement, for what offense, and when received into the penitentiary. (Code 1919, Section 4997; R.P. 1948, Section 53-24.)[2]

Fingerprints, photographs and a description of each convict is required by law. A conduct record is further required by the Code of Virginia.[4] Section 53-215 requires that:

> Every time any such jail prisoner or convict is punished, the name of the offender, the offense, a full and detailed description of the punishment, the time when the offense was committed, and when punishment was inflicted, shall be recorded in a register or registers provided for that purpose. (Code 1919, Section 5017; 1928, p. 561; 1932, p. 153; 1944, p. 45; 1946, p. 63; 1948, p. 437; R.P. 1948, Section 53-215.)[5]

The transfer of prisoners is regulated by Section 53-19.17.

> The Director is authorized to transfer, or to require to be transferred, any person accused or convicted of an offense against the laws of the Commonwealth of Virginia or of any other state or country or any offense in violation of any city, town or county ordinance within the Commonwealth, or any witness held in any case to which the Commonwealth is a party, if confined in any penal institution within the Commonwealth, from any penal institution in which such person is confined to such other penal institution in the State as is designated by the Director.[6]

The conditions under which a juvenile offender may be assigned to an adult institution are:

> When the probation department of any court receives reliable information that any child or minor is within the purview of this law or subject to the jurisdiction of the court hereunder, the court may proceed informally and make such adjustment as is practicable without a petition or may authorize a petition to be filled by any person and if any such person does not file a petition a probation officer shall file it; but nothing herein shall affect the right of any person to file a petition if he so desires.[7]

The Code of Virginia does not contain legislation comparable to the National Advisory Commission's recommendations found in subpoints 5, 6, and 7.

Alternative Standards

None.

Footnotes

[1]Code of Virginia, Sec. 53-21, (1972).

[2]Ibid., Sec. 53-24.

[3]Ibid., Sec. 53-40.

[4]Ibid., Sec. 53-209.

[5]Ibid., Sec. 53-215.

[6]Ibid., Sec. 53-19.17.

[7]Ibid., Sec. 16.1-164 (1973).

Standard 16.13

Prison Industries

By 1975, each State with industrial programs operated by or for correctional agencies should amend its statutory authorization for these programs so that, as applicable, they do not prohibit:

1. Specific types of industrial activity from being carried on by a correctional institution.

2. The sale of products of prison industries on the open market.

3. The transport or sale of products produced by prisoners.

4. The employment of offenders by private enterprise at full market wages and comparable working conditions.

5. The payment of full market wages to offenders working in State-operated prison industries.

Analysis

No specific types of industrial activity are prohibited by statutory legislation. The sale of products of prison industries is restricted to municipal, county, federal, and state agencies.[1] There is no provision in the Code of Virginia for the transport or sale of products produced by prisoners, although they are permitted to sell their own arts and crafts products. The employment of offenders by private enterprise is permitted in the work release program. There is no statutory legislation stipulating the payment of full market wages to offenders working in state-operated prison industries.[2]

Alternative Standards

The Florida Division of Corrections has the following comments on the NAC recommendations in this area:

> The Standard deals with statutory authorization for industrial programs operated by correctional agencies.
>
> The Florida Division of Corrections agrees and is presently in compliance with the following: (1) specific types of industrial activity being carried on by correctional institutions, (2) the sale of products of prison industries on the open market, and (3) the transport or sale of products produced by prisoners.
>
> The Standard's recommendation for "employment of offenders by private enterprise at full market wages and comparable working conditions" is being complied with in our work release programs. We do not support private enterprise operating an industry program within, or in conjunction with, a correctional institution.
>
> The Standard also suggests "the payment of full market wages to offenders working in State-operated prison industries." We feel that payment of full market wages to offenders is not realistic and would, in effect, destroy the correctional industries program. It must be remembered that correctional industries is a continuous training program and that at no time does it have, as a resource, a pool or core of trained, skilled workers to produce products as do private industries. This continual turnover of skilled

or semi-skilled workers is an integral part of, and the actual purpose of, correctional programs. It is not economically efficient and must be compensated for if correctional industries is to compete. As a result, we feel that the subsidization of the program through payment of offender maintenance costs by appropriation is necessary. The payment of any offender wages should be based upon productive work and at a percentage of the average wage-earners budget expenditures adjusted to delete those items provided to the offender by the State. For instance, if an average wage-earner who was a brick mason earned $6 per hour, an offender at the same skill level would earn 2.5 percent or $0.15 per hour. This percentage is determined from Bureau of Labor statistics that breaks down living cost for wage-earners by item and percentage of total expenditures. The percentages for items such as food, clothing, medical, etc., that are furnished to offenders are deducted to determine his wage rate.

It should be noted that present laws do not provide for unrestricted sale of products on the open market. There are, however, laws permitting us to sell to specified governmental agencies; city, county, and State and, under certain regulated conditions, to dispose of surplus products on the open market.[3]

The Association of State Correctional Administrators states:

Generally acceptable except departure from present practice too abrupt. Paragraph 5, "The payment of full market wages, etc." idealistic and restrictive. Wages should include all inmates, not just those assigned to industries.[4]

The committee of the Correctional Industries Organization to study this standard concurred with this standard with the following exceptions:

the target date of 1975 is unrealistic and should be deleted and when considering paying minimum wages the costs of incarceration should be taken into account.[5]

Footnotes

[1]Code of Virginia, Sec. 53-63, (1972).

[2]James Hopper, Assistant Attorney General, Attorney General's Office, Interview September 4, 1974.

[3]Florida Division of Corrections, Response to National Standards and Goals for Corrections, (Tallahassee: Department of Health and Rehabilitation, February 1974), pp. 237-238.

[4]"Rationale and Reasoning Behind the Ratings of the Standards and Goals," Study Committee of the Association of State Correctional Administrators, February 1974, p. 17.

[5]Correctional Industries Organization, "Response to Standard 16.13 of the National Advisory Commission of Criminal Justice Standards and Goals," Summer 1974.

Standard 16.14

Community-Based Programs

Legislation should be enacted immediately authorizing the chief executive officer of the correctional agency to extend the limits of confinement of a committed offender so the offender can participate in a wide variety of community-based programs. Such legislation should include these provisions:

1. Authorization for the following programs:
   a. Foster homes and group homes, primarily for juvenile and youthful offenders.
   b. Prerelease guidance centers and halfway houses.
   c. Work-release programs providing that rates of pay and other conditions of employment are similar to those of free employees.
   d. Community-based vocational training programs, either public or private.
   e. Participation in academic programs in the community.
   f. Utilization of community medical, social rehabilitation, vocational rehabilitation, or similar resources.
   g. Furloughs of short duration to visit relatives and family, contact prospective employers, or for any other reason consistent with the public interest.
2. Authorization for the development of community-based residential centers either directly or through contract with governmental agencies or private parties, and authorization to assign offenders to such centers while they are participating in community programs.
3. Authorization to cooperate with and contract for a wide range of community resources.
4. Specific exemption for participants in community-based work programs from State-use and other laws restricting employment of offenders or sale of "convict-made" goods.
5. Requirement that the correctional agency promulgate rules and regulations specifying conduct that will result in revocation of community-based privileges and procedures for such revocation. Such procedures should be governed by the same standards as disciplinary proceedings involving a substantial change in status of the offender.

Analysis

The authorization for the establishment of community-based correctional facilities is given to the Director of Virginia's Department of Corrections. "The assignment of a prisoner to such facilities shall be at the discretion of the Director."[1]

Regulations dealing with the application of wages of persons confined in a community correctional facility, the enrollment in educational institutions, and rehabilitative programs are as follows:

> Any wage earned by persons confined in such facilities shall be paid to the Director, and such persons shall contribute an amount of said wages to the cost of their maintenance and support, but not less than $2 per day. The amount of such contribution shall be established from time to time by the Director, on a scale approved by the Board. Any funds remaining shall be disbursed as if the person were on a work release program. All persons confined in such facilities may be regularly employed, or enrolled in educational institutions or other rehabilitative programs.[2]

Section 53-128.9 deals with the transfer of persons from community-based correctional facilities to other penal institutions. It reads:

> Any person confined in such facility may be transferred to any other penal institution within the State upon a finding by the Department that his intractable behavior indicates that he will not benefit from the programs of such facilities.[3]

As stated above, the assignment of prisoners to these community correctional facilities is at the discretion of the Director.[4]

Legislation governing Virginia's furlough program is as follows:

a. The Director may, subject to such conditions as he may prescribe, extend the limits of confinement of any inmate in any institution subject to his authority to permit him a furlough under the provisions of this section for the purpose of visiting his home or family.

Such furlough shall be for a period to be prescribed by the Director or his designate, in his discretion, not to exceed three days in addition to authorized travel time. The Department shall promulgate rules and regulations governing extension of limits of confinement hereunder.

b. The Director may, when feasible, require the inmate or his relatives to bear the travel expense required for such visit or a prescribed portion thereof. Such travel expense shall include all amounts necessarily expended for travel, food and lodging of such inmate and any accompanying personnel of the Department during such furlough, and a per diem amount set by the Director to reimburse the Department for furnishing custodial personnel.

c. Any inmate who wilfully fails to remain within the limits of confinement set by the Director hereunder, or who wilfully fails to return within the time prescribed to the place designated by the Director in granting such extension, shall be guilty of an escape and shall be subject to penalty as though he left the institution itself.[5] (1972, c. 59; 1973, c. 234).

Section 53-38 of the Code of Virginia provides the guidelines for the outside employment of convicts and the attendance of inmates at outside educational programs.

> While the convicts are employed in any work on the public grounds, or property outside of the penitentiary, they shall be attended by a sufficient guard and shall be subject to the orders of such guard; except that the Director is authorized to establish a work release program subject to such rules and regulations as the Board may prescribe whereby a convict who has evidenced proficiency in any trade or occupation and shown himself to be trustworthy may be employed by private individuals and corporations at their places of business or whereby a convict who has shown himself to be trustworthy and capable of receiving substantial benefit from an educational program that is not available within the penitentiary may attend an educational program outside of the penitentiary, without guard during daylight hours only. The hours of employment or attendance shall be arranged by the Director. The compensation for such employment shall also be arranged by the Director or shall be the same as those of regular employees in similar occupations. Any wages earned shall be paid to the Director, who after deducting a sum sufficient to defray the prisoner's keep and his pro rata share of the cost of administering and supervising the program shall credit the balance to the convict's account or send it to his family, if the convict so chooses. Any prisoner

> who has been placed on a work release program shall, while outside the institution in which he is serving his sentence, be deemed to be in custody whether or not he be under guard, and if he shall leave the area on which he has been assigned to work or attend educational programs or the vehicle or route involved in his going to or coming from such place, he shall be found guilty of escape as though he left the institution itself.[6]

There is no legislative authorization for foster homes and group homes for juvenile and youthful offenders, work release programs providing that rates of pay and other conditions of employment are similar to those of free employees, and community-based vocational training programs.

Alternative Standards

None.

Footnotes

[1]Code of Virginia, Sec. 53-128.10 (1973 Supp.).

[2]Ibid., Sec. 53-128.8.

[3]Ibid., Sec. 53-128.9.

[4]Ibid., Sec. 53-128.10.

[5]Ibid., Sec. 53-37.1.

[6]Ibid., Sec. 53-38, (1972).

Standard 16.15

Parole Legislation

Each State should enact by 1975 legislation (1) authorizing parole for all committed offenders and (2) establishing criteria and procedures for (a) parole eligibility, (b) granting of parole, (c) parole conditions, (d) parole revocation, and (e) length of parole.

In authorizing parole for all committed offenders the legislation should:

1. Not exclude offenders from parole eligibility on account of the particular offense committed.

2. Not exclude offenders from parole eligibility because of number of convictions or past history of parole violations.

3. Authorize parole or aftercare release for adults and juveniles from all correctional institutions.

4. Authorize the parole of an offender at any time unless a minimum sentence is imposed by the court in connection with an extended term (Standard 5.3), in which event parole may be authorized prior to service of the minimum sentence with the permission of the sentencing court.

In establishing procedures for the granting of parole to both adults and juveniles the legislation should require:

1. Parole decisions by a professional board of parole, independent of the institutional staff. Hearing examiners should be empowered to hear and decide parole cases under policies established by the board.

2. Automatic periodic consideration of parole for each offender.

3. A hearing to determine whether an offender is entitled to parole at which the offender may be represented by counsel and present evidence.

4. Agency assistance to the offender in developing a plan for his parole.

5. A written statement by the board explaining decisions denying parole.

6. Authorization for judicial review of board decisions.

7. Each offender to be released prior to the expiration of his term because of the accumulation of "good time" credits to be released to parole supervision until the expiration of his term.

8. Each offender to be released on parole no later than 90 days prior to the expiration of his maximum term.

In establishing criteria for granting parole the legislation should be patterned after Sec. 305.9 of the Model Penal Code and should:

1. Require parole over continued confinement unless specified conditions exist.

2. Stipulate factors that should be considered by the parole board in arriving at its decision.

3. Direct the parole decision toward factors relating to the individual offender and his chance for successful return to the community.

4. Not require a favorable recommendation by the institutional staff, the court, the police, or the prosecutor before parole may be granted.

In establishing criteria for parole conditions, the legislation should be patterned after Sec. 305.13 of the Model Penal Code and should:

1. Authorize but not require the imposition of specified conditions.

2. Require that any condition imposed in an individual case be reasonably related to the correctional program of the defendant and not unduly restrictive of his liberty or incompatible with his constitutional rights.

3. Direct that conditions be fashioned on the basis of factors relating to the individual offender rather than to the offense committed.

In establishing criteria and procedures for parole revocation, the legislation should provide:

1. A parolee charged with a violation should not be detained unless there is a hearing at which probable cause to believe that the parolee did violate a condition of his parole is shown.

   a. Such a hearing should be held promptly near the locality to which the parolee is paroled.

   b. The hearing should be conducted by an impartial person other than the parole officer.

   c. The parolee should be granted notice of the charges against him, the right to present evidence, the right to confront and cross-examine witnesses against him, and the right to be represented by counsel or to have counsel appointed for him if he is indigent.

2. Parole should not be revoked unless:

   a. There is substantial evidence of a violation of one of the conditions of parole.

   b. The parolee, in advance of a hearing on revocation, is informed of the nature of the violation charged against him and is given the opportunity to examine the State's evidence against him.

   c. The parolee is provided with a hearing on the charge of revocation. Hearing examiners should be empowered to hear and decide parole revocation cases under policies established by the parole board. At the hearing the parolee should be given the opportunity to present evidence on his behalf, to confront and cross-examine witnesses against him, and to be represented by counsel or to have counsel appointed for him if he is indigent.

   d. The board or hearing examiner provides a written statement of findings, the reasons for the decision, and the evidence relied upon.

3. Time spent under parole supervision until the date of the violation for which parole is revoked should be credited against the sentence imposed by the court.

4. Judicial review of parole revocation decisions should be available to offenders.

In defining the term for which parole should be granted, the legislation should prohibit the term from extending beyond the maximum prison term imposed on the offender by the sentencing court and should authorize the parole board to discharge the parolee from parole at any time.

Analysis

In the Virginia corrections system, the scheduling of parole grant hearings is set forth in the statutes:

> 1. Except as herein otherwise provided, every person convicted of a felony, and sentenced and committed under the laws of this Commonwealth to any State correctional institution shall be eligible for parole after serving one fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment if one fourth of the term of imprisonment imposed is more than twelve years. In case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment.
>
> 2. Persons sentenced to die shall not be eligible for parole.
>
> 3. Persons sentenced to life imprisonment shall be eligible for parole after serving fifteen years.[1]

Parole decisions in Virginia are made by the members of the Probation and Parole Board. There are no hearing examiners within this system.

Automatic periodic consideration of parole for qualifying offenders is provided for in the Code of Virginia:

> The Probation and Parole Board shall review the case of each prisoner as he becomes eligible for parole and at least annually thereafter until he is released on parole or otherwise. The Board may in addition thereto review the case of any prisoner eligible for parole at any other time when it is of the opinion that such should be done.[2]

There are no statutes requiring the presence of an offender at a parole grant hearing or allowing the offender to be represented by counsel.

The subpoints dealing with agency assistance to the offender in developing a plan for his parole and the use of a written statement explaining decisions denying parole are not covered in statutes, but are included in Probation and Parole Board

guidelines. The specific policies are discussed in Standard 12.3, "Parole Grant Hearings."

Virginia has no statutory provisions complying with the remainder of the recommendations associated with the granting of parole found in this standard.

Section 53-257 deals with the specified conditions to be followed while an offender is on parole:

> Each parolee while on parole shall comply with such terms and conditions as may be prescribed by the Board. When any prisoner is released on parole, the Board shall furnish such parolee, and the probation and parole officer having supervision of such parolee, a copy of the terms and conditions of the parole and any changes which may from time to time be made therein.

Subpoints 1 and 2 under parole revocation hearings have been discussed in Standard 12.4, "Revocation Hearings," but the general statutory guidelines should be noted:

> Whenever any parolee is arrested and recommitted as herein - before provided, the Board shall consider the case and act with reference thereto as soon as it may be conveniently possible. The Board in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed or as may be prescribed in addition thereto or in lieu thereof.[3]

Finally, the Code of Virginia sets forth legislation in Section 53-255 prohibiting the Probation and Parole Board from fixing the length of an offender's parole to exceed the "maximum term established by law as punishment for the offense or offenses of which the prisoner was convicted."

Alternative Standards

The American Wardens' Association has recommended the following modification of this standard dealing with parole legislation:

Modify. Judicial review is an infringement on the authority of the executive branch of government. An attorney should be allowed to represent a man at an administrative hearing only at the man's own expense. Parole agent should have the authority to hold any parolee in confinement pending a hearing.[4]

Footnotes

[1]Code of Virginia, Sec. 53-251 (1), (2), (3), (1972).

[2]Ibid., Sec. 53-252.

[3]Ibid., Sec. 53-262.

[4]"Review of National Advisory Commission on Criminal Justice Standards and Goals," Standards Committee of the American Wardens' Association, Draft August 1974, p. 11.

Standard 16.16

Pardon Legislation

Each State by 1975 should enact legislation detailing the procedures (1) governing the application by an offender for the exercise of the pardon powers, and (2) for exercise of the pardon powers.

Analysis

The exercise of pardon power is vested in the Governor and is detailed in Chapter 10, Title 53 of the Code of Virginia. Thus, Virginia already has in existence legislation detailing the procedures concerning the exercise of the pardon powers.

Alternative Standards

None.

Standard 16.17

Collateral Consequences of a Criminal Conviction

Each State should enact by 1975 legislation repealing all mandatory provisions depriving persons convicted of criminal offenses of civil rights or other attributes of citizenship. Such legislation should include:

1. Repeal of all existing provisions by which a person convicted of any criminal offense suffers civil death, corruption of blood, loss of civil rights, or forfeiture of estate or property.

2. Repeal of all restrictions on the ability of a person convicted of a criminal offense to hold and transfer property, enter into contracts, sue and be sued, and hold offices of private trust.

3. Repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government.

4. Repeal of all statutory provisions prohibiting the employment of ex-offenders by State and local governmental agencies.

Statutory provisions may be retained or enacted that:

1. Restrict or prohibit the right to hold public office during actual confinement.

2. Forfeit public office upon confinement.

3. Restrict the right to serve on juries during actual confinement.

4. Authorize a procedure for the denial of a license or governmental privilege to selected criminal offenders when there is a direct relationship between the offense committed or the characteristics of the offender and the license or privilege sought.

The legislation also should:

1. Authorize a procedure for an ex-offender to have his conviction expunged from the record.

2. Require the restoration of civil rights upon the expiration of sentence.

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Analysis

The State of Virginia currently has extensive legislation regarding the collateral consequences of a criminal conviction. The civil disabilities suffered by a felon in Virginia fall into three basic categories: 1) political disabilities, 2) licensing and occupational disabilities, and 3) domestic rights disabilities.[1]

Under the area of political disabilities, convicted felons are disqualified from the holding of any elective office,[2] and disenfranchised of the right to vote by provisions of the Virginia Constitution.[3] In addition, a forfeiture of any office, profit, or trust under the Constitution of Virginia, whether elective or appointive, is required upon conviction of a felony, and this provision may not be avoided by a pardon.[4] Finally, individuals convicted of the crimes of bribery, perjury, embezzlement of public funds, treason, a felony, or petty larceny may not serve as jurors.[5] The Virginia Constitution provides that the governor may through the use of clemency powers remove these political disabilities, with the exception of the forfeiture of office provisions, which are collateral to a conviction of criminal behavior.[6]

The second major area of disability is that of the licensing and occupational regulation function conducted by the Commonwealth in exercise of the state police power. Under Virginia statutes, the Alcoholic Beverage Control Board may suspend, revoke, or refuse to license the manufacture, distribution, and sale of alcoholic beverages if the applicant or licensee has been convicted of a felony or misdemeanor involving moral turpitude.[7] This action is civil in nature, thus preventing removal from

this disability through the Governor's clemency and pardon power. The motor vehicle portions of the Code likewise harbor disqualifying disabilities for criminal behavior. An individual convicted of making a false affidavit to the Division of Motor Vehicles, or a false statement in an application for an operator's or chauffeur's license, or a crime punishable as a felony under the motor vehicle laws, or a felony in which a motor vehicle is used, may not for a period of one year from the date of conviction obtain a permit. An additional period of three years may be added in cases of manslaughter committed with a motor vehicle when financial responsibility by the offender is unable to be proved.[8]

These penalties, like the ABC restrictions above, are also civil in nature and unaffected by pardon. Finally, the regulation and licensing of certain occupations and professions by the Commonwealth forms an additional area where criminal behavior serves as a disqualification. Professional regulation is conducted in Virginia by a variety of appointed boards which oversee each category and formulate rules and procedures as necessary for the protection of the consuming public and the integrity of the occupation. In addition, the Code frequently contains statutory requirements for qualification to enter or be removed from a given profession. A common qualification for professional entry in the Commonwealth is "good moral character," as evidenced by having not been convicted of a felony offense. Each of the twenty-two regulated occupations contains such a provision. Also, each has a statutory provision which requires

surrender of license upon conviction of a felony.[9]

As with the previous two license provisions, here again, occupational disability represents a civil and not a criminal disability, and is not subject to pardon. For the Commonwealth to comply and implement the NAC recommendation as it affects these civil penalties would require a very extensive revision of the Code of Virginia by the General Assembly.

The third major area of disability and restriction of offenders lies in the realm of domestic rights. Under Virginia statutes an individual whose spouse has been sentenced to confinement in a penitentiary, whether in their state or in another, has grounds for divorce. The rights of marriage are not restored by a subsequent pardon as clemency.[10] In addition, the spouse of an individual convicted of an infamous offense (treason, felony, or crimen falsi) may secure divorce on the basis of that conviction if there was no knowledge of it prior to the marriage.[11] A divorce may also be procured on the basis of a continuous two-year separation of the spouses without cohabitation, regardless of fault.[12] As with the previous two areas, extensive code revision by the General Assembly would be required to implement the NAC recommendations in the domestic relations field.

In addition to the disabilities suffered in these three major areas, several other miscellaneous restrictions are written into Virginia statute. At least two Virginia localities, Norfolk and Virginia Beach, require a felon not under supervision of the laws of this state, or who has not completed a period

of probation without revocation, or who has not received a pardon, and enters their boundaries with the intention of remaining longer than twenty-four hours, to register with the chief of police within twelve hours of entry and give certain information, be photographed and fingerprinted.[13] Finally, the fact of conviction of a felony, a misdemeanor involving moral turpitude, or an offense involving the witness's character for veracity may be introduced in a trial to impeach the testimony of a felon witness.[14]

After conviction an offender's record may be expunged by executive clemency and there are no existing requirements for restoration of civil rights upon the expiration of sentence.

Alternative Standards

None.

Footnotes

[1]Sam Wilson, Civil Disabilities of Felony Conviction (Richmond: Division of Justice and Crime Prevention, 1973), pp. 1-7.

[2]Virginia Constitution, Art. 11, Sec. 5.

[3]Virginia Constitution, Art. 11, Sec. 1; Code of Virginia, Sec. 24.1-42 (Supp. 1973).
Also; Virginia Constitution, Art. 11, Sec. 2; Code of Virginia, Sec. 24.1-26 (Supp. 1973).

[4]Virginia Constitution, Art. 11, Sec. 5; Code of Virginia, Sec. 2.1-36 (1966).

[5]Code of Virginia, Sec. 8-175 (2) (1957).

[6]Virginia Constitution, Art. 5, Sec. 12.

[7]Code of Virginia, Sec. 4-25 (Supp. 1973); Sec. 4-37 (1) (c) (1973); Sec. 4-98.9 (1973); Sec. 4-114 (1) (c); Sec. 4-105 (1) (b) (1973); Sec. 4-98.9 (1973).

[8]Ibid., Sec. 46.1-362 (a) (1) (ii) (1972); Sec. 46.1-362 (a) (1) (iii) (1972); Sec. 1-362 (a) (1) (i), (b) (1972).

[9]Wilson, op. cit., p. 6, Footnotes.

[10]Code of Virginia, Sec. 20-91 (3) (Supp. 1972).

[11]Ibid., Sec. 20-91 (ii) (Supp. 1973).

[12]Ibid.

[13]Norfolk City Code, Art. III, Sec. 36-30 (Supp. 1969); Virginia Beach Code, Ch. 15, Sec. 1 (1965).

[14]Wilson, op. cit., p. 9; see McLane v. Commonwealth, 202 Va. 197, 116 SE 2d 274 (1960).

B I B L I O G R A P H Y

Adult Probation and Parole in Virginia: An Appraisal of the Second Ten Years. New York: National Council on Crime and Delinquency, 1965.

"Alternatives." New York: National Task Force on Higher Education and Criminal Justice, June-July, 1974.

American Association of Law Libraries, Special Committee on Law Library Services to Prisoners. Guidelines for Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators. College Park, Md.: American Correctional Association, Circa 1972.

American Bar Association Commission on Correctional Facilities and Services. Compendium of Model Correctional Legislation and Standards. Chicago: American Bar Association, 1972.

Annual Report 1972-1973: Virginia Department of Welfare and Institutions. Richmond: Virginia Department of Welfare and Institutions, 1973.

Annual Statistical Report of Felons and Misdemeanants Committed to the State Penal System During the Year Ending June 30, 1972 and Felons Confined in the Penal System on June 30, 1972. Richmond: Virginia Department of Welfare and Institutions, 1973.

Association of State Correctional Administrators. Rationale and Reasoning Behind the Ratings on the Standards and Goals Study. February, 1974.

Blueprint for Action in Virginia Corrections. Richmond: Virginia Department of Welfare and Institutions, January, 1974.

Budget Exhibit for Virginia Probation and Parole Board Code 730. Richmond: Virginia Department of Welfare and Institutions, 1974.

Bureau of Juvenile Probation and Detention, Division of Youth Services. Detention Survey Report: Peninsula Planning District City of Hampton, James City County, City of Newport News, City of Williamsburg, York County. Richmond: Virginia Department of Welfare and Institutions, 1971.

Children's Cases Disposed of by the Juvenile Courts for the Fiscal Year Ended June 30, 1972. Richmond: Virginia Department of Welfare and Institutions, Bureau of Research and Reporting, 1973.

Commitments to County and City Jails and City Jail Farms, Year Ended June 30, 1972. Richmond: Virginia Department of Welfare and Institutions, 1972.

Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Standards and Goals with Standards for Criminal Justice of the American Bar Association. Washington, D.C.: American Bar Association, 1974.

Comprehensive Data System Action Plan. Richmond: Virginia Division of Justice and Crime Prevention, June, 1974.

Comprehensive Long Range Master Plan for Juvenile and Youthful Offender Justice Systems in the Commonwealth of Virginia. Chicago: John Howard Association, February, 1974.

Comprehensive Long Range Master Plan for the Adult Criminal Justice System in the Commonwealth of Virginia. Chicago: John Howard Association, April, 1974.

Comprehensive Plan 1973. Cockeysville, Md.: Executive Department, Governor's Commission on Law Enforcement and the Administration of Justice, 1972.

1973 Corrections and Related Laws. Richmond: Virginia Department of Welfare and Institutions, 1973.

A Courageous Commitment to Concerned Care -- DW & I Corrections '73. Richmond: Virginia Department of Welfare and Institutions, 1973.

Criminal Justice Plan 1974. Volumes I and II. Richmond: Virginia Division of Justice and Crime Prevention, 1974.

Department of Corrections Division Guidelines. Richmond: Virginia Department of Corrections, 1972-1974.

Division of Youth Services. "Court Services Intake for Virginia Juvenile and Domestic Relations District Courts." Richmond: Virginia Department of Welfare and Institutions, May, 1974.

Division of Youth Services. Proposed Minimum Standards for Secure Detention Homes Affiliated with Division of Youth Services - Department of Corrections, Sixth Draft. Richmond: Virginia Department of Corrections, September, 1974.

Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation. Madison: Wisconsin Council on Criminal Justice, July, 1972.

First Report on Corrections -- December, 1973: Virginia State Penitentiary. Richmond: Virginia State Crime Commission, 1973.

Florida Division of Corrections. Response to National Standards and Goals for Corrections. Tallahassee: Department of Health and Rehabilitative Services, February, 1974.

Fox, Vernon. Introduction to Corrections. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972.

Gaudio, A.C. "Differential Case Load/Differential Investigative Load Project - A Team Management Approach-Phase I." Richmond: Virginia Department of Welfare and Institutions, undated.

Glaser, Daniel and Vincent O'Leary. Personal Characteristics and Parole Outcome. Washington, D.C.: U. S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, undated.

Gottfredson, Don M., Marcus G. Neithercut, Peter S. Venezia, and Ernst A. Wenk. A National Uniform Parole Reporting System. Davis, California: National Council on Crime and Delinquency Research Center, December, 1970.

Gottfredson, Don M., Leslie T. Wildins, Peter B. Hoffman, and Susan M. Singer. Parole Decision-Making: The Utilization of Experience in Parole Decision-Making -- A Progress Report. Washington, D.C.: Government Printing Office, 1973.

Greenburg, Bennet. Recommendations to Improve Utilization and Maintenance of Inmate Records. Richmond: Virginia Department of Corrections, August, 1974.

Guide for Minimum Standards in the Design and Construction of Jail Facilities. Richmond: Virginia Department of Welfare and Institutions, 1970.

Handbook for New Juvenile Court Judges. Reno, Nevada: National Juvenile Court Foundation and the National Council of Juvenile Court Judges, 1972.

Institute on Interpretation to the Public of the Correctional Program in Virginia. Richmond: School of Social Work, Virginia Commonwealth University, undated.

Interstate Compact on Juveniles: Chapter 452. Richmond: Virginia Department of Welfare and Institutions, 1970.

Johnson, Daniel F. and Dr. E. Scott Geller. Operational Manual Contingency Management Programs: Mecklenburg Pilot Program Building 1 and Building 2. Richmond: Virginia Department of Welfare and Institutions, September, 1973.

"Justice for Juveniles in America: The Neglected Problem." Public Affairs Forum. Volume III, No. 5, March, 1974.

"Juvenile Detention Home Staff Series." Revised. Richmond: Virginia Department of Welfare and Institutions, April, 1972.

Kelley, Michael. "Social Science Evaluation and Criminal Justice Policy-Making: The Case of Pre-Trial Release." Prepared for delivery at the 1973 Annual Meeting of the American Political Science Association, Jung Hotel, New Orleans, Louisiana, September 4-8.

Korin, Andrew S. Improving Corrections Personnel through Community Colleges. Washington, D.C.: American Bar Association, August, 1973.

Law Enforcement Assistance Administration and the National Institute of Law Enforcement and Criminal Justice. Reintegration of the Offender into the Community. Washington, D.C.: Government Printing Office, 1972.

Law Enforcement in Virginia. Volume I. Richmond: Virginia Division of Justice and Crime Prevention, September, 1973.

Manual of Correctional Facilities and Services. Richmond: Virginia Department of Welfare and Institutions, 1972.

Maximum Custody Correctional Institution. Richmond: Virginia Department of Welfare and Institutions, 1969.

Medium Custody Correctional Institution. Richmond: Virginia Department of Welfare and Institutions, 1969.

Minimum Operational Standards. Richmond: Virginia Department of Corrections, July, 1974.

Minimum Standards for Group Homes Operated, Financed or Affiliated with Department of Corrections - Division of Youth Services. Richmond: Virginia Department of Corrections, August, 1974.

Morrissey v. Brewer, 92 S. CT. 2593(1972).

National Criminal Justice Information and Statistics Service. Local Jails: A report Presenting Data for Individual County and City Jails from the 1970 National Jail Census. Washington, D.C.: Government Printing Office, January, 1973.

National Jail Association. Report of the National Jail Association on the Recommendation for the National Advisory Commission on Criminal Justice. Draft. August, 1974.

Parker, William. Parole: Origins, Development, Current Practices and Statutes. Washington, D.C.: American Correctional Association, May, 1972.

Parole and Probation Study: Final Report, NYSIIS. Albany: Bureau of Systems Development, New York State Identification and Intelligence System, December, 1970.

Pennsylvania Joint Council on the Criminal Justice System, Committee for Criminal Justice Standards and Goals. Improving Pennsylvania's Criminal Justice System Through Upgraded Standards and Goals. Harrisonburg: Governor's Justice Commission, 1974.

Pivon, Herman and Abraham Alcabes. Probation/Parole. Volume I. Washington, D.C.: U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, Office of Juvenile Delinquency and Youth Development, 1970.

Planning and Designing for Juvenile Justice. Washington, D.C.: U.S. Law Enforcement Assistance Administration, 1972.

Policy Statements and Model Acts. Hackensack, N.J.: National Council on Crime and Delinquency, May, 1974.

The Presentencing Investigation Report, Pub. No. 103. Washington, D.C.: Administrative Office of the U.S. Courts, 1965.

President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society. Washington, D.C.: Government Printing Office, 1967.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: Corrections. Washington, D.C.: Government Printing Office, 1967.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: Juvenile Delinquency and Youth Crime. Washington, D.C.: Government Printing Office, 1967.

Program Planning Committee. Looking Ahead: Virginia Corrections. Richmond: Virginia Department of Welfare and Institutions, 1971.

Project Planning Task Force Manual Preparation Team. Manual for Juvenile Court Services Standards Project: The Plan for the Project. Richmond: Virginia Department of Welfare and Institutions, 1972.

Proposed 1980 Standards and Goals. Draft. Salem, Oregon: Oregon Law Enforcement Council, April, 1974.

Ralston, William H., Jr. "Intake: Informal Disposition on Adversary Proceedings." Crime and Delinquency, April, 1971.

Reallocation Study Committee. A Feasibility Study for the Virginia Division of Corrections. Richmond: Virginia Department of Welfare and Institutions, 1969.

Reception and Medical Center. Richmond: Virginia Department of Welfare and Institutions, 1969.

Report of Children Committed to the Department of Welfare and Institutions, Year Ended June 30, 1970. Richmond: Virginia Department of Welfare and Institutions, 1970.

Report of Escapes, Fiscal Year Ended June 30, 1971. Richmond: Virginia Department of Welfare and Institutions, 1971.

Report of Probation Supervision Workload for the Fiscal Years Ending June 30, 1970-1971-1972. Richmond: Virginia Department of Welfare and Institutions, 1972.

Report of Recidivists Committed to the Virginia State Penal System. Richmond: Virginia Department of Welfare and Institutions, 1972.

Resource Guide for Delinquency Prevention Programs. Richmond: Virginia Department of Welfare and Institutions, May, 1973.

Rules and Regulations for Inmate Discipline and Classification Within the Institutions. Richmond: Virginia Department of Welfare and Institutions, 1970.

Rules and Regulations for the Administration of Local Jails and Lockups. Richmond: Virginia Department of Welfare and Institutions, 1970.

Rules Committee for the Virginia Regional Juvenile and Domestic Relations Judges Association. Uniform Rules of Court for Virginia Regional Juvenile and Domestic Relations Courts. Charlottesville: The Michie Company, 1970.

Rules for Local Jails. Draft. Richmond: Virginia Department of Corrections, August, 1974.

Services in the Seventies to Virginia's Delinquent Children and their Families. Richmond: Virginia Department of Welfare and Institutions, undated.

Shaver, Jim. "Virginia's Juvenile System Looks to the Future," The Roanoke Times. Sunday, July 28, 1974.

Sheridan, William H. Standards for Juvenile and Family Courts. Washington, D.C.: U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Services, Children's Bureau, 1968.

Standards and Goals: First Conference Notes. Augusta, Maine: Maine Law Enforcement Planning and Assistance Agency, April, 1974.

Standards and Guides for the Detention of Children and Youth. New York: National Council on Crime and Delinquency, 1961.

Standards Committee of the American Wardens' Association. Review of the National Advisory Commission on Criminal Justice Standards and Goals. Draft. August, 1974.

Standards Relating to Probation. Chicago: American Bar Association, Project on Standards for Criminal Justice, February, 1970.

State Board of Welfare and Institutions. Minimum Standards for Probation and Related Court Services in Juvenile and Domestic Relations District Courts. Richmond: Commonwealth of Virginia, June, 1973.

State of the States on Crime and Justice: An Analysis of State Administration of the Safe Streets Act. Frankfort, Kentucky: National Conference of State Criminal Justice Planning Administrators, June, 1973.

Statewide Jail Standards and Inspection Systems Project. Jail Inspection and Standards Systems in Illinois and South Carolina: An Operational Profile Handbook. Washington, D.C.: American Bar Association, April, 1974.

Statewide Jail Standards and Inspection Systems Project. Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities. Washington, D.C.: American Bar Association, August, 1974.

Statistical Data on Persons Released from Parole by Discharge and Violation: Fiscal Year Ended June 30, 1971. Richmond: Virginia Department of Welfare and Institutions, 1971

"Virginia Correctional Industries." Richmond: Department of Welfare and Institutions, undated.

Virginia Juvenile and Domestic Relations Court. Handbook for Court Services. Richmond: Virginia Department of Welfare and Institutions, 1969.

Virginia Probation and Parole Board. General Parole Policy and Rules. Richmond: Virginia Department of Welfare and Institutions, June 1, 1967.

"Vocational Program." Richmond: Virginia Department of Welfare and Institutions, undated.

Vocino, Thomas. "An Agency-Institution Model: Service Learning in Virginia's Department of Corrections." Paper presented to the Second Virginia Conference on Internship, Charlottesville, University of Virginia, October 22, 1974.

Vocino, Thomas. An Inventory and Evaluation of Data Sources, Reporting, and Research in the Virginia Correctional System. Richmond: Virginia Division of Justice and Crime Prevention, August, 1973.

Vocino, Thomas. Virginia Jails: An Analysis and Compilation of Basic Statistics. Richmond: Virginia Division of Justice and Crime Prevention, 1973.

Wilson, Sam. Civil Disabilities of Felony Convictions. Richmond: Virginia Division of Justice and Crime Prevention, 1973.

APPENDIX I

INDIVIDUALS INTERVIEWED

Boldin, W. E., Acting Director, Division of Probation and Parole Services, Department of Corrections.

Brands, Glenn, Supervisor, Classification Section, Division of Adult Services, Department of Corrections.

Brennan, Bruce E., Education and Manpower Coordinator, Division of Justice and Crime Prevention.

Broughton, H. Paul, Director of Personnel, Department of Corrections.

Byrd, Raymond E., Administrative Assistant, Division of Adult Services, Department of Corrections.

Cox, J. D., Assistant Director, Administrative Services, Division of Adult Services, Department of Corrections.

Davis, Jack F., Director, Department of Corrections.

DePalma, Fred, Assistant Chief, Bureau of Staff Organization and Development, Division of Staff Services, Department of Corrections.

Dixon, Lynn, Research and Analysis Coordinator, Division of Justice and Crime Prevention.

Farrar, Wayne F., Public Information Officer, Department of Corrections.

Farris, Daniel, Community Correctional Coordinator, Division of Probation and Parole Services, Department of Corrections.

Foster, Tom, Chief, Bureau of Research and Planning, Division of Staff Services, Department of Corrections.

Gaudio, A. C., Chief Probation and Parole Officer, District 10, now Director of Division of Probation and Parole Services, Department of Corrections.

Gibbs, C. W., Jails Superintendent, Bureau of Institutional Services, Division of Staff Services, Department of Corrections.

Hahn, W. N., Supervisor of Vocational Education, Rehabilitative School Authority, Virginia State Department of Education.

Hall, Lloyd T., Associate Staff Director, Division of Staff Services, Department of Corrections.

Hanks, Lola L., Juvenile Delinquency Specialist, Division of Justice and Crime Prevention.

Harris, Richard N., Director, Division of Justice and Crime Prevention.

Hayden, Sergeant Robert, Juvenile Division, City of Richmond Bureau of Police.

Hopper, James W., Assistant Attorney General assigned to the Legal Office, Division of Staff Services, Department of Corrections.

Jackson, Hunter P., Assistant Director, Institutional Operations, Division of Adult Services, Department of Corrections.

Janus, Murry, past President, Criminal Bar Association, Virginia State Bar.

Jordan, Ronald, Chief, Classification Section, Richmond City Jail.

Kempfer, Helen, Research Coordinator, Bureau of Research and Planning, Division of Staff Services, Department of Corrections.

Lewis, Joseph F., Assistant Director, Community Corrections, Division of Adult Services, Department of Corrections.

Mason, Robert P., Coordinator, Investigative Unit, Division of Staff Services, Department of Corrections.

Mooney, Jo, Director, Job Development Program, Division of Probation and Parole Services, Department of Corrections.

Mordhurst, Bob, Director, Richmond Offender Aid and Restoration.

iver, Richard M., Director, Division of Adult Services, Department of Corrections.

Pardue, Raymond, Coordinator of Group Homes, Division of Youth Services, Department of Corrections.

Parks, Kitty, Juvenile Probation and Detention District Supervisor, Division of Youth Services, Department of Corrections.

Parr, Herbert A., Director, Division of Staff Services, Department of Corrections.

Parrish, Leake W., Superintendent, State Industrial Farm for Women.

Perdue, N. W., Member, Virginia Probation and Parole Board.

Proctor, Carroll R., Deputy Director, Division of Adult Services, Department of Corrections.

Pulliam, Walter, Director, Community Correctional Center, Division of Probation and Parole Services, Department of Corrections.

Reed, Marvin, Chief, Bureau of Management Systems, Division of Staff Services, Department of Corrections.

Rice, A. L., Staff Member, Bureau of Research and Planning, Division of Staff Services, Department of Corrections.

Sewell, William G., Corrections and Juvenile Delinquency Coordinator, Division of Justice and Crime Prevention.

Shields, Pleasant C., Chairman, Virginia Probation and Parole Board.

Spirn, Stuart D., Courts Coordinator, Division of Justice and Crime Prevention.

Stephenson, William S., Adult Corrections Specialist, Division of Justice and Crime Prevention.

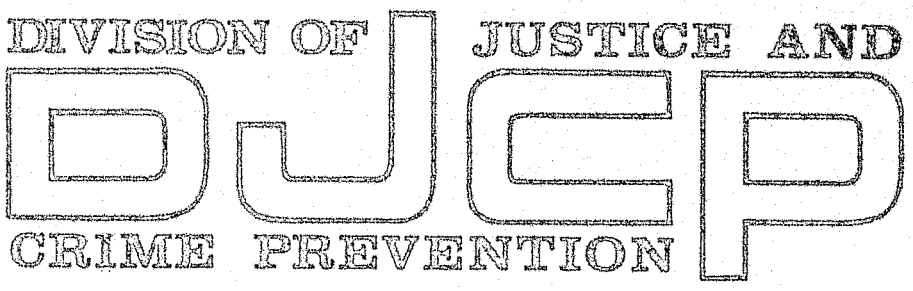
Tucker, Joseph N., Police Coordinator, Division of Justice and Crime Prevention.

Warden, C. E., Director, Rehabilitative School Authority, Virginia State Department of Education.

Weddington, W. E., Director, Division of Youth Services, Department of Corrections.

Woodson, James, Public Information Director, Virginia State Bar.

Zera, Frank, Assistant Chief, Bureau of Management Systems, Division of Staff Services, Department of Corrections.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