

Study of the Economic and Rehabilitative
Aspects of Prison Industry:
Vol. II - Literature Review

J-LEAA-033-75

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FORWARD

This review of the published literature on prison industries was conducted to support the principal technical tasks undertaken by ECON, Inc., in compliance with LEAA Contract Number J-LEAA-033-75 entitled, A Study of The Economic and Rehabilitation Aspects of Prison Industry. As such, the literature review focuses upon published works relating to seven topics emphasized in the prison industry study: job market survey, inmate manpower survey, prison industry products and services, rehabilitative programs, economics of prison industries, crime statistics and post-release statistics and victimization. The interested reader is advised that separate reports have been prepared on a survey of state prison industry statutes (Volume IV) and a bibliography of prison industry source material (Volume III).

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I. JOB MARKET SURVEY

A. Employment Statistics

There are no regularly reported employment data for the ex-offender population, although several federally-sponsored reports document the employment situation for ex-offenders in given locales and/or at specific points in time. These will be reviewed in the section on constraints on employment of ex-offenders which follows. This section briefly describes the forms and sources of regularly collected employment data which are applicable to a consistent survey of various job markets. Special attention is given to state employment statistics, as the job market analysis for the prison industry study must describe labor market conditions facing inmates released from a particular state's correctional system, most of whom will remain in that state.

For the purposes of a job market survey, there are several sources of general employment statistics. The most prolific data are reported on the national level by the U. S. Department of Labor (DOL), in particular the Bureau of Labor Statistics (BLS) and the Manpower Administration, and by the U.S. Department of Commerce (DOC), via the Bureau of the Census in the Social and Economic Statistics Administration.

Most federally-published employment data are grouped by industry, in varying degrees of specificity. Both DOL and DOC categorize industry groups according to the definitions

given in the Standard Industrial Classification (SIC) Manual. The system operates in such a way that the definitions, coded numerically, become increasingly specific with the addition of successive digits. There are 20 very broad 2-digit major groups, approximately 150 3-digit groups, and 450 4-digit industries. This manual was updated in 1972. Most changes in definitions occurred at the 4-digit SIC level; anyone comparing data grouped according to the 1967 Manual with data grouped by the 1972 Manual definitions should be aware that some categories may no longer correspond to one another.

The BLS's annual publication Employment and Earnings, United States, shows national employment, hours and earnings, and labor turnover on a monthly basis by industry at the 3-digit and in some cases 4-digit SIC level. A companion volume, Employment and Earnings, States and Areas, provides similar information for all states, the District of Columbia, and 22 areas, usually Standard Metropolitan Statistical Areas (SMSAs). Data for all the industries currently published by each State Department of Labor are presented. Because federal law prohibits the publication of statistics that disclose information reported by individual companies, state and area employment and earnings data are typically aggregated at the 2-digit SIC level, thus diminishing the usefulness of these data for job market surveys.

Greater detail in wage and employment information is often available from BLS in the form of bulletins describing a

particular industry. In addition, BLS publishes Industry Wage Surveys for various industries, as well as Union Wage Reports. These documents can be helpful, although they do not cover every industry and are published irregularly in most cases.

Total employment and unemployment in 150 major labor market areas are reported monthly by the Manpower Administration in Area Trends in Employment and Unemployment. These figures, although not broken down by industry or occupation, permit comparison among various areas.

Every five years, the Bureau of the Census conducts a census of manufacturers in the United States. The latest census, 1972, is reported in three volumes: Summary Statistics, Industry Statistics, and Area Statistics. Summary Statistics shows comparative statistics for industries, states, and SMSAs on measures of the activity of manufacturing establishments-- employment, payrolls, inventories, capital expenditures, value added by manufacture, important materials consumed, etc. Industry Statistics consists of reports on 81 groups of industries and shows data on quantity and value of products shipped, materials consumed, and general statistics by geographic area, employment size, class of establishments, and degree of primary product class specialization. Area Statistics contains general statistics (number of establishments, employment, payrolls, value added by manufacture, and capital expenditures) for each state and the larger SMSAs and counties, by industry groups and important individual industries. The industry groups are

shown at the 3-digit and 4-digit SIC levels, except where publication would violate disclosure laws.

The Bureau of the Census also publishes County Business Patterns (CBP) annually. CBP shows employment and payroll statistics by county and by industry at the 3- and 4-digit SIC level.

At the state level, state departments of labor and departments of commerce are again the primary source of job market information. Routinely reported data include monthly employment, earnings, and hours worked, by major industry groups. To avoid disclosure violations, states usually publish these data at the 2-digit SIC level. However, the same data for a 3- or 4-digit SIC may be requested on an ad hoc basis if the state DOL (a) determines that disclosure is not a problem for that particular SIC, and (b) is willing to comply with the request. The state DOL may also be able to provide information on the number of firms reporting within a given SIC, so that the average size of establishments may be determined.

State DOL's also routinely publish employment projections for all occupations; these figures are based on the decennial census of the state's population. Occupational employment is projected for ten years; current projections, therefore, are based on the 1970 census and show 1980 employment levels. Occupation projections are often available for major labor market areas in a state.

In addition, the U. S. Bureau of Labor Statistics provides each state DOL with an "Industry-Occupation Matrix" which shows the distribution of employment in occupations within each industry. The level of industry detail shown is dependent on the number of employees in industry subgroups; i.e., if there are insignificant numbers of employees in certain 3- or 4-digit SIC's, the I-O matrix will aggregate data at the 2-digit level for that industry.

Another source of state employment data is the Unemployment Insurance (UI) Service, which collects information on all covered employment. UI data also are subject to disclosure restrictions.

The U. S. Department of Commerce publishes Detailed Characteristics for each state, based on the decennial census of the population. These are available from the state DOC, and report employment by socioeconomic characteristics (e.g., race, age, sex), as well as by limited industry and occupation categories, for the state and major SMSA's.

In conclusion, employment statistics to support a job market survey are available at the national and state level, but are rarely compiled in a manner useful for planners in correctional industries. The U. S. DOL Manpower Administration, recognizing that local labor market information needs are not being met by State Employment Security Agencies, funded an experimental pilot area program to identify and meet local labor market information needs in three areas: Baltimore, Indianapolis, and Miami. This project (reported by Ultrasystems, Inc.

in 1974)¹ focused upon identifying steps which can and should be undertaken immediately. Interestingly, many of the project's findings and recommendations suggest only "that existing guidelines and regulations be implemented and steps that have been taken on paper also be taken in fact".

B. Federal and State Constraints on the Employment of Ex-Offenders

With evidence that employment is correlated with post-release success, there has been much attention given to employment barriers faced by ex-offenders. The Manpower Administration of the U.S. Department of Labor has been particularly active in funding research and experimental programs aimed at clarifying and ameliorating constraints on the employment of ex-offenders.

Literature on employment barriers tends to be more qualitative than quantitative, generally describing the form such constraints take. For example, Freedman and Pappas discuss the full range of employment restrictions in a 1967 paper submitted to the President's Commission on Law Enforcement and Administration of Justice.² These barriers include: employer attitudes, union attitudes, hiring policies for public service, bonding restrictions, occupational licensing requirements, and

¹Ultrasystems, Inc., An Experimental Pilot Area Program to Identify and Meet Critical Local Labor Market Information Needs, Final Report. Newport Beach, California, November 1974.

²Freedman, Marcia and Nick Pappas, The Training and Employment of Offenders. Columbia University and Bureau of Naval Personnel, Corrections Division, Washington, D.C., 1967.

security clearance requirements. A more recent paper prepared for the U. S. Department of Labor by Neal Miller (1975) documents the extent to which the constraints listed above constitute artificial barriers to employment of ex-offenders (artificial barriers are defined as employment requirements which are unrelated to an applicant's ability and aptitude for satisfactory job performance).³ Miller goes on to recommend possible solutions and to suggest a strategy for DOL's role in the removal of artificial barriers to employment.

Of the various restrictions in the employment of ex-offenders, most attention has focused on public service employment, occupational licensing, and bonding assistance, these areas being viewed as potentially most responsive to changes in statutes or national policy directives.

To provide assistance in effecting such changes, the American Bar Association, funded by a contract from the Manpower Administration, established the National Clearinghouse on Offender Employment Restrictions. In 1972, the Clearinghouse completed a study of state laws which restrict the entrance of former felons into various occupations and professions.⁴ These prohibitions generally take the form of (1) provisions which specifically refer to criminal offenses as grounds for denying

³Miller, Neal, Artificial Barriers to the Employment of Criminal Offenders. U.S. Department of Labor, Washington, D.C., May 1975.

⁴Hunt, James W., James E. Bowers and Neal Miller, Laws, Licenses and the Offender's Right to Work. National Clearinghouse on Offender Employment Restrictions, American Bar Association, Washington, D.C., 1973.

a license, (2) provisions which phrase restrictions or requirements in such a manner as to give licensing agencies wide discretion in refusing a license to an applicant, and (3) provisions which bar licensing because of offenses involving "moral turpitude". The Clearinghouse report on state licensing laws documents the type of restricting provisions in each state for approximately 300 occupations. In 1972, only three states had enacted legislation to alleviate the situation; by 1974, however, more than half of the states had considered such legislation, and new statutory provisions were passed in ten additional states. The Clearinghouse report describes methods by which arbitrary licensing restrictions may be removed or modified.

The effect of a criminal record on employment by state and local public agencies has been reported by Herbert S. Miller at the Georgetown University Law Center, Institute of Criminal Law and Procedure. In this study,⁵ Miller reports the civil service statutes for each state relating to employment of persons with a criminal record, and lists the types of information requested by government employers from law enforcement agencies regarding job applicants (e.g., fingerprints or photo requested and referred to local police or FBI). The responses received from a nationwide survey of state, county,

⁵ Miller, Herbert S., The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies. Institute of Criminal Law and Procedure, Georgetown University Law Center, Washington, D.C., February 1972.

city, police, and corrections agencies indicated that the practice of asking for criminal record data about job applicants is widespread. Sixteen states were listed as having statutory provisions restricting or excluding from government employment any person who has a criminal record or who has been guilty of "notorious" or "disgraceful" conduct, and 21 states have statutory provisions which condition public employment on such factors as "character," "reputation," or "personality."

Guidelines for Federal employment of ex-offenders are published by the U. S. Civil Service Commission in a brochure entitled "Employment of the Rehabilitated Offender in the Federal Service." Suitability factors considered by the Civil Service Commission include: nature and seriousness of the crime; circumstances under which it occurred; how long ago it occurred; age of the person when the offense was committed; whether the offense was an isolated or repeated violation; social conditions which may have contributed to the offense; evidence of rehabilitation; and the kind of position for which the person is applying.

Recognizing that state and federal statutes have often been applied to create unreasonable restraints on the employment opportunities of the ex-offender, several reports have been prepared to elucidate strategies to remove statutory restrictions on offender job opportunities. An overview of possible legislative approaches, with relevant case histories, is given

by Tepper and Feinstein.⁶ The National Clearinghouse on Offender Employment Restrictions has published several handbooks outlining methods for alleviating offender employment restrictions.⁷ Procedures described include pardon, automatic restoration of rights, restoration of rights upon application, expungement and sealing statutes, arrest records statutes, reasonable relationship statutes, attorney general opinion, and governor executive order.

The U. S. Department of Labor has been instrumental in providing bonding assistance to ex-offenders, thus helping to overcome a significant employment barrier. Experience with occupational training of offenders under the Manpower Development and Training Act of 1962 demonstrated that training alone was no guarantee of subsequent job placement. It was evident that the unavailability of fidelity bonding coverage adds a significant barrier to the employment of otherwise qualified ex-offenders. In 1966, experimental and demonstration projects in ten sites were undertaken to provide fidelity bonding coverage for MDTA prisoner training program graduates. DOL officials responsible for those R&D projects concluded that

⁶Tepper, J., and H. Feinstein, "Attacking Barriers to Employment: The Former Offender's Dilemma," in The Prisoners' Rights Sourcebook, Clark, Boardman Company, New York, 1973.

⁷Cf., National Clearinghouse on Offender Employment Restrictions, American Bar Association. Removing Offender Employment Restrictions - 2nd Edition. Washington, D.C., January 1973.

the availability of bonding was indeed helping in job placement success, and the projects were expanded to additional sites. In 1971, the program went national, making bonding available through each of the Employment Service's local offices. An analysis of the Federal Bonding Program performed for DOL in 1975 by Contract Research Corporation reports the history of the program in detail.⁸ More quantitative research on the results of the program appears in a series of reports by the Experimental Manpower Laboratory for Corrections (EMLC).⁹ While the actual number of bonds provided has been lower than expected, the EMLC researchers found that in many cases employers were satisfied by the fact that an applicant was bondable, and did not require that the applicant actually secure a bond.

⁸ Contract Research Corporation, Analysis of the Federal Bonding Program: History of the Federal Bonding Program. Washington, D.C., June 1975.

⁹ Cf. Rehabilitative Research Foundation, The Experimental Manpower Laboratory for Corrections: Phase I. Elmore, Alabama, September 1970.

II. INMATE MANPOWER CHARACTERISTICS

A. Offender Manpower Training Programs

1. Federal

The concept of providing manpower service delivery to offenders originated within the awakening consciousness of "manpower problems" in the United States which resulted in a series of legislative acts by the Congress in the early sixties. The Manpower Development and Training Act of 1962 (MDTA) became the center of a developing manpower program.

Initially, offenders were not considered to be part of the target population for manpower programs. In March 1966, the Office of Policy and Program Planning of the Manpower Administration produced a position paper which outlined the need for manpower services to offenders and became one of several documents supporting amendments to the MDTA. The Office of Research and Development of the Manpower Administration proposed that a pilot program of institutional training be initiated on an "experimental" basis within the regular operating programs; this was authorized in a 1966 amendment to the MDTA, becoming Section 251.

The Division of MDT Institutional Programs of the U. S. Employment Service, which administered regular manpower programs, initiated a series of projects in various states under the mandate of the Section 251 amendment. Projects were eventually funded in 40 states. Some of the early experimental

and demonstration projects were subsequently expanded into additional sites or adopted nationwide, as in the Bonding Assistance Demonstration Project.

Section 251 was limited to three years at the time of its enactment. From 1970 to 1973, programs started under it were permitted to continue under Section 202 of the MDTA, which covered regular institutional programs. They continued to be administered nationally until 1973, when the program was decentralized. Under this decentralization, offender program initiators had to seek state-apportioned MDTA funds. This practice continues with the Comprehensive Education and Training Act of 1973 (CETA), which succeeded the MDTA. Title III of the CETA includes offenders in the target population to be served.

There are many descriptions of manpower programs in corrections, including overviews of all programs as well as reports of particular projects.

A study by Roberta Rovner-Pieczenik summarizes and synthesizes the conclusions reached by those projects funded by the Office of Research and Development, U.S. DOL Manpower Administration, during the period 1963-1973.¹ As well as providing a brief description of some 32 projects, this report includes sections on the history of the projects, issues

¹ Rovner-Pieczenik, Roberta, A Review of Manpower Research and Development Projects in the Correctional Field (1963-1973). Manpower Research Monograph No. 28, Manpower Administration, U.S. Department of Labor, Washington, D.C., 1973.

related to assessing project success, an overview of the typical project participant, issues related to providing the offender a job skill, problems of placing and maintaining the offender in employment, and program development and assessment. Some of the specific topics discussed in these sections are: a shift in emphasis from skill training within an institution to community-based projects focused on job development and placement; the role that recidivism should play in assessing the effectiveness of a manpower program; the importance of prevocational training, as well as training in social skills and work habits; incentives which have been effective in motivating maximal performance; barriers to employment of offenders; job development and placement; employer attitudes; and the necessity for shaping a comprehensive system of services. Although this report is somewhat dated, primarily because as the current operational status of many of the projects has changed, it provides an excellent summary of the range of manpower programs for offenders; moreover, the experience of this first decade of projects is particularly valuable for program planners today.

Another paper on manpower policies and programs for offenders was prepared by Robert Taggart III.² This report, originally prepared as a background paper for consideration by the National Manpower Policy Task Force in drafting a policy statement, describes several approaches to providing manpower

² Taggart, Robert, III, The Prison of Unemployment: Manpower Programs for Offenders. John Hopkins University Press, Baltimore, 1972.

services to offenders. In reviewing 25 projects funded under Section 251 in 1968-1969, Taggart noted that the prison projects had little, if any, impact on employability. Examination of the factors associated with the success of participants revealed that supportive services, rather than training, were associated with individual success. As for experience in prison industries, Taggart cites evidence by Pownall³ that participants in federal prison industries are more likely to be unemployed upon release than those who worked in unskilled maintenance tasks. Of employed releasees with prison industry experience, only 15 percent found a related first job.

In discussing work release, Taggart suggests that the local employment service provide job development, placement, and counseling, and that links be established with prisons to coordinate work release with vocational training. DOL is funding a Model Ex-Offender Program (MEP) to determine whether the local employment service can assist ex-offenders. The fact that most ex-offenders never used the employment service (having a bad impression of it, being reluctant to reveal their record to employers, or simply lacking knowledge) was mentioned as one of several reasons for skepticism regarding the MEP projects. Taggart also reports results of a research study which showed that the Vocational Rehabilitation Program had, if anything, a negative impact on post-release employment and recidivism.

³ Pownall, George A., Employment Problems of Released Prisoners. Report prepared for The Manpower Administration, U.S. Department of Labor, Kent, Ohio, 1971.

After outlining the general lack of success of various manpower programs for offenders, Taggart discusses ways of removing barriers to employment, and mentions the positive results of the Bonding Assistance Program. He concludes by arguing for public employment efforts for offenders, and suggests that a possible source of such jobs is the correctional system itself. This concept of new careers in corrections for ex-offenders has been pursued at length in the report of a seminar convened by the Joint Commission on Correctional Manpower and Training (Washington, D.C., March 1968).

Finally, a pamphlet published by the Manpower Administration in 1973, Correctional Manpower Programs, describes (then) current efforts of DOL in the correctional manpower area. The major projects are identified briefly below:

Federal Bonding Program - Started as a demonstration project in 1965, this MDTA program offers fidelity bonding coverage to offenders who cannot obtain it commercially. (See Section I-B.)

Employment Service Models for Ex-Offenders (Model Ex-Offender Program) - In order to concentrate Employment Service (ES) resources on bringing offenders into contact with job and training opportunities, ES models were developed to: "create a corrections desk in each state office as well as in the state's largest urban area; station specialized counselors, job developers, and community aides in correctional institutions and in local ES offices; and hire former inmates to help other

offenders make the adjustment to outside life." The focus has been on continuing service to inmates before and after release to help them get and stay on their jobs. Original sites for this program were Arizona, Georgia, Massachusetts, Oklahoma, and Pennsylvania. The program has since been expanded to involve state CETA prime sponsors. MEP began operating in August 1975.

Pretrial Intervention - The pretrial intervention program, originally funded as a demonstration project by DOL, and now sponsored by both DOL and LEAA, has a three-fold goal: to help accused offenders get back into worthwhile, productive life-styles; to give the criminal justice system more flexibility and effectiveness as a rehabilitation mechanism; and to reduce the rates--and consequent costs--of recidivism in the community. Project staff screen accused defendants prior to their court hearings. If an eligible defendant wants to enter the program, the staff member--with the approval of the prosecuting attorney--makes a recommendation to the judge in arraignment court for a continuance of the case to permit the defendant to participate in the program, usually for 90 days. While in the program, the participant is given counseling, information on job and training opportunities, and supportive services. Educational services, including preparation for the high school equivalency examination, remedial reading and job-test coaching, are also available. Job interviews are set up and the

participant is followed up and evaluated, even after job placement is made. When the continuance period is over, the project counselor may recommend one of the following actions: dismissal of charges based on satisfactory participation and demonstrated self-improvement; extension of the continuance; or return of the defendant to normal court processing, without prejudice, because of unsatisfactory performance.

State Comprehensive Offender Manpower Programs - In any state, the Employment Service cannot provide all the manpower and supportive services that its offender population might need. Thus, comprehensive state models were started to bring together other agencies, private groups, and the Department of Labor programs in an umbrella-type approach. Under the initial planning grants from the Department of Labor, eight states (Florida, Illinois, Maryland, Michigan, New Jersey, North Carolina, South Carolina, and Texas) are to: identify the manpower and related services needed by all groups in the correctional population; determine the best methods of delivering these services; obtain commitments from all public and private agencies within the state to provide needed services; and work out the interagency agreements necessary to operate a comprehensive program. After a review of the plan, the Department of Labor agrees to fund certain portions of the state program. Other manpower programs are available as components of the state models. Some of the benefits that could be realized from

this approach are: fuller utilization of work training and release laws in conjunction with vocational training projects; involvement of state officials, especially as vocational training is decentralized; and modification of state personnel systems to allow hiring ex-offenders and other workers without credentials but with required skills.

Comprehensive Offender Program Effort (COPE) - The ES models and state Comprehensive Offender Manpower Programs paved the way for COPE--originally a cooperative approach to solving offenders' problems by the U.S. Departments of Labor, Justice (Law Enforcement Assistance Administration), and Health, Education, and Welfare. HEW has now dropped out. In 1972, most of the states began to identify the numbers of people in various stages of their criminal justice system (pretrial, probation, incarceration, parole and release) and their needs. Available programs were reviewed to determine which needs were being serviced, where gaps existed, and how resources might be redirected to close those gaps. LEAA and DOL are reviewing the state plans to determine to what extent they can assist the states in providing all services required to meet their correctional needs.

Finally, two additional sources of recommendations for correctional manpower planning are a report on training and employment of offenders (by Freedman and Pappas [1967]), and the Staff Report of the Joint Commission on Correctional Manpower and Training (1969).⁴ Freedman and Pappas, writing

⁴Joint Commission on Correctional Manpower and Training, Staff Report: Manpower and Training in Correctional Institutions. Washington, D.C., December 1969.

before widespread implementation of Section 251, suggested that more attention be paid to basic literacy programs for inmates, that realistic wages be paid to inmates in prison industries and training allowances be paid to those participating in planned experimental training, and that programs of training within the institution be coordinated with community-based activities to insure placement or continuity of training.

The Joint Commission on Correctional Manpower and Training delineated a number of goals for manpower and correctional industries programs, centering on developing the economic competence of offenders. Primary emphasis was placed on preserving or developing work skills and in finding, holding, and advancing in a job. The roles of correctional industries for the inmates, for the administration, and for the community were detailed.

2. State and Local Manpower Training Programs

State and local manpower programs for offenders take many forms and vary enormously in scope and efficacy. They may be funded by federal agencies such as the Department of Labor, the Law Enforcement Assistance Administration, or the Department of Health, Education, and Welfare; they may receive state matching grants, as in CETA Title III programs; they may be independently funded; they may be administered by federal, state, or local agents; they may be limited to offender clients exclusively or be included in a wider manpower delivery system.

Such programs are far too numerous to attempt a comprehensive review here. One source of program information is the Department of Labor periodical, Manpower, now called Worklife. Among other project descriptions in the prison industry study library are: Project HIRE, in Minneapolis-St. Paul; the Coalition Employment Service Project in Hartford; inmate training programs at the Sierra Conservation Center in California and in the Michigan Department of Corrections; a reconnaissance of California correctional manpower programs, supported work programs in New York, Washington state, and Connecticut; work-release in North Carolina; and a description of ex-offender employment programs in New York, prepared by the New York City Manpower Planning Council.

3. Private Sector

Resources of the National Association of Businessmen have been applied to the Job Opportunities in the Business Sector (JOBS) program. Originated in January 1968, the program was the outgrowth of earlier efforts of the Manpower Administration to induce companies in five cities to bid on contracts to hire first and train later. Aimed at expanding employment for disadvantaged workers in general, NAB-JOBS has included ex-offenders in this target population. As of March 1974, over 2,000 offenders had been placed. An account of early evaluations of the NAB-JOBS program appears in a report by Charles A. Myers.⁵ Myers also discusses the role of

Myers, Charles A., The Role of the Private Sector in Manpower Development. The John Hopkins Press, Baltimore, 1971.

Union-sponsored apprenticeship programs, which are more common in the building and construction trades than in manufacturing.

Under a contract with DOL, the Human Resources Development Institute (HRDI) of the AFL-CIO is seeking to place ex-offenders in union jobs. In practice, the efforts of HRDI have been hampered in some locales by conflicts with the State Employment Service.

In some states, the Bureau of Apprenticeship and Training of the state DOL (sometimes referred to as the Apprentice Training Division) has established union-approved apprentice programs within correctional institutions. In Connecticut, for example, inmate trainees carry over their hours of training when they leave the institution, and report to a field representative of the Apprentice Training Division for job placement assistance upon release.

B. Employment of Offenders

The evidence that artificial barriers to employment opportunities exist for ex-offenders has been presented in Section I-B. Many jobs in private industry require licensing or bonding; de facto practices of employment agencies, unions, and private employers (e.g., requests for information about criminal records) may further restrict employability. In the public

sector, the federal government will hire ex-offenders on a case-by-case basis, if the agency in question presents a strong brief and if the applicant undergoes extensive screening by the U. S. Civil Service Commission. At the state and local level, most jurisdictions are at least partially restricted from hiring persons with criminal records.

A general finding has been that few employers have formal policies explicitly prohibiting the hiring of ex-offenders. However, if there are relatively few jobs which are absolutely closed to ex-offenders, there are many jobs for which a criminal record proves to be a severe handicap. Moreover, it has been suggested that the incidence of restriction against hiring ex-offenders falls disproportionately on relatively good jobs, e.g., civil service or licensed trades (cf. Philip Cook, in an undated report, "The Effect of Legitimate Opportunities on the Probability of Parolee Recidivism").

On the other hand, at least two studies of post-release employment problems show results which suggest that discrimination against ex-offenders has little to do with their actual employability. In one, Glaser reported that of 145 parolees who were questioned about a period of unemployment only nine percent ascribed their failure to work to their criminal records.⁶

⁶ Glaser, Daniel, The Effectiveness of a Prison and Parole System. Bobbs-Merrill, Indianapolis, 1966.

In the other study, George Pownall summarizes his data as follows: "The vast majority of releasees did not report discrimination because of a criminal record in obtaining and maintaining employment."⁷

In attempting to explain this alleged unimportance of actual discrimination against ex-offenders, Philip Cook maintains that there are at least three contributing effects: a large number of ex-offenders are able to conceal their records successfully; most jobs having formal restrictions against ex-offenders are relatively skilled, highly paid occupations which have other requirements (e.g., education, work experience) which are in themselves sufficient to bar ex-offenders from employment; and many of the jobs for which ex-offenders are eligible are so undesirable that employers cannot afford to discriminate in hiring decisions.

Although Cook was unable to offer conclusive evidence that ex-offenders' records do not affect their employability, his analysis of the labor market behavior and parole outcome of 325 offenders released from Massachusetts penitentiaries in 1959 demonstrates a significant correlation between job-holding behavior and recidivism. He reports that steady job-holding behavior is related to parole success, but notes that frequent job-changing increases the observed likelihood that a parolee

⁷Op. cit., Pownall, p. 192.

will recidivate. This implies that job retention (a proxy for job satisfaction) is a more important goal than steady employment.

The claim that employment problems are a major correlate of crime is supported by a number of statistical studies. Glaser and Rice have found that property crimes by adults vary directly with the level of unemployment.⁸ Fleisher has reported similar findings.⁹ Although a positive correlation between unemployment and crime does not imply cause and effect, evidence suggests that job placement and retention are significant factors in parole success. The employment challenge for ex-offenders is exacerbated by the fact that offenders are drawn disproportionately from the ranks of the hard-core disadvantaged.¹⁰

The following paragraphs briefly review some of the existing literature on employer attitudes and placement programs.

1. Public Sector

The federal government, in the words of the President's Task Force on Prisoner Rehabilitation,¹¹ "let down its bans

⁸ Glaser D., et al., "Crime, Age, and Unemployment", in American Sociological Review, 24 October 1959.

⁹ Fleisher, "The Effect of Unemployment on Delinquent Behavior", in Journal of Political Economics 61, 1963.

¹⁰ Taggart, Op. Cit.

¹¹ President's Task Force on Prisoner Rehabilitation, The Criminal Offender - What Should be Done?, Washington, D.C., April 1970.

somewhat a few years ago; it will now hire ex-offenders on an individual basis...." An information pamphlet published by the U. S. Civil Service Commission outlines the criteria an ex-offender must meet in order to show evidence of "rehabilitation", a prior condition for federal employment.¹²

Herbert S. Miller's report documents restrictions on employment of ex-offenders at state and local levels, where most public employment is located.¹³

The general posture of the public sector regarding employment of ex-offenders may be summarized as indirectly supportive. Public funds are applied in many ways to encourage the employment of ex-offenders in the private sector; however, public service employment of ex-offenders has been negligible. It has been proposed that public employment offers the greatest potential for ex-offenders.¹⁴ "New Careers" within the correctional system itself have been suggested.

¹² U.S. Civil Service Commission, Employment of the Rehabilitated Offender in the Federal Service. BRE-29. Washington, D.C., May 1973

¹³ Miller, Herbert S., The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies. Institute of Criminal Law and Procedure, Georgetown University Law Center, Washington D.C., February 1972.

¹⁴ Joint Commission on Correctional Manpower and training op. cit.

2. Private Sector

Many studies have been performed of employer attitudes toward hiring ex-offenders; typically, employers report a more favorable attitude than is credible, given the unemployment rates of ex-offenders.

Most studies of employer attitudes consist of opinion surveys of private industry employers in specific geographic areas. W. D. Cooper, reports the results of a survey of employers of inmates on work-release from North Carolina prisons.¹⁵ Ninety-two percent of the employers sampled stated that they would be more likely to hire a former prisoner if he spent his time on work-release than if he had been under constant supervision. It is not clear from the survey results whether this preference for ex-offenders with work-release experience (versus ex-offenders with none) relates only to experience working in the same firm or a very similar firm, or whether the act of participating in work-release at all is the critical factor.

The Minnesota Division of Adult Corrections conducted a survey in 1966 to determine employer attitudes. Of the nearly 4,000 firms in the sample, only 25 percent responded with usable returns. Thirty percent of these firms reported no

¹⁵ Cooper, W. D., "Employers and Employees in the Work Release Program in North Carolina," in Crime and Delinquency, October 1970, p. 427.

restrictions, either formal or informal, against hiring ex-offenders who were otherwise qualified for the job. Thirty-six percent indicated a general reluctance to hire ex-offenders, although no formal prohibition existed. Another 28 percent reported no formal policy, only informal restrictions for certain specific positions. This survey found that construction, engineering-mining and transportation-warehousing were the least restrictive industries.

A more recent (1973) employer study, conducted by the Metropolitan Council of the St. Paul-Minneapolis area, had an equally poor response rate (743 firms of more than 5,000 in the original sample).¹⁶ Most of the firms responding had fewer than 25 employees. Some of the results reported by the Metropolitan Council are: (1) almost two-thirds of the responding firms do not ask questions regarding a criminal record on their employment application; (2) surprisingly, companies that did ask about arrest and conviction records tended to employ a higher percentage of known ex-offenders than companies not asking such questions; (3) the most common reason (72 percent) given for not currently employing ex-offenders was "no known applicants"; (4) the percentage of companies employing ex-offenders increased with size of the firm, and the larger firms tended to be in manufacturing or construction.

¹⁶ Metropolitan Council, Offender Job Training and Placement Study. St. Paul/Minneapolis, September 1973.

A sample of 100 businesses in Alabama was investigated by McKee and others in 1970¹⁷ to determine attitudes toward hiring ex-offenders. While only five percent categorically refused to hire offenders, most expressed reservations (see Table II.1 below) which would indirectly eliminate most ex-offenders from consideration.

On a more optimistic note, Freedman and Pappas have cited cases where negative employer attitudes have been ameliorated by establishing better communication between corrections personnel and industry. The United Prison Association of Massachusetts asserts that a more favorable employment cli-

Table II.1 Employers' Reasons for Not Hiring Ex-Offenders	
Barrier	Percent
Lack of bonding	26.8
No previous experience in hiring ex-offenders	37.2
Lack of good attitude toward work & authority	43.4
Employers require personal interview	44.2
Employers prefer not to hire those committing specific crimes, such as armed robbery or narcotics violations	53.0
Long sentences served in prison	54.5
Employers prefer not to hire older ex-offenders	54.6
Lack of basic educational skills	65.1
Will not advance money for tools, licenses	65.5
Prefer not to hire recidivists	74.5
Prefer not to hire ex-offenders who have not been involved in rehabilitation program	76.5

¹⁷ McKee, John, et al., Barriers to the Employment of Released Male Offenders, Elmore, Alabama Rehabilitation Research Foundation, 1970.

mate was engendered through conferences which broke down communication and information barriers. A comparable effort in Washington reported similar success.

3. Union Attitudes

There is no evidence of restrictive clauses specifically excluding ex-offenders from union membership. However, it should be noted that local labor unions are relatively autonomous, and that equal opportunity arrangements between the federal government and national unions can be subverted at the local level.

There are certain practices within union organizations which can operate to the detriment of offenders. For example, in craft unions, membership is a prerequisite to employment. Freedman and Pappas point out that a union member who is incarcerated may lose his membership if he cannot attend union meetings (or pay fines for non-attendance) and keep up dues payments--outcomes which are virtually inevitable.

Freedman and Pappas go on to report that positive results have been obtained when there have been cooperative efforts between corrections and unions. Their report cites an article by Leo Perlis which asserts that the employment situation for ex-offenders has been improved by the development of trade advisory boards and other labor-corrections liaison groups.¹⁸

¹⁸ Freedman, Marcia and Nick Pappas, The Training and Employment of Offenders. Columbia University and Bureau of Naval Personnel, Corrections Division, Washington, D.C., 1967.

Further, many states have established union-approved apprentice training programs within correctional institutions. In Connecticut, approximately 20 apprentice training programs have been set up at Somers Correctional Institution. Inmates participating in these programs receive job placement assistance from the Apprentice Training Division, Connecticut DOL, when they are released.

Finally, the job referral efforts of the AFL-CIO through its Human Resources Development Institute indicate a concern with the employment of ex-offenders on the part of union leadership.

4. Placement Efforts

Pownall's 1969 report on the employment problems of inmates released from federal prisons indicates that over 54 percent did not have a job arranged prior to release. Of all releasees who were able to secure post-release employment (pre-arranged or not), 79 percent secured their first job through family, friends, former employer, or their own efforts. Eighty-one percent secured their most recent job in this manner as did 85 percent of the group who held their job for the longest time. In short, an ex-offender typically cannot or does not make use of formal placement agencies. For example, Pownall reports that only five to ten percent of the federal releasees surveyed received aid from the Employment Service in finding a first job, and that almost none turned to it for assistance later in their careers.

These figures are borne out by a Battelle study on vocational preparation. It found that of the inmates surveyed, only 20 percent indicated that special job programs or institution staff assisted them in job placements. The majority obtained their jobs through friends, relatives or previous employers.¹⁹

Taggart, cites the results of an evaluation study of MDTA training conducted by Abt Associates.²⁰ It was found that, in spite of guidelines for MDTA prison programs specifically delegating responsibility for job placement and other support services to the Employment Service, only a third of the trainees were helped by active ES effort, and another seven percent by a combination of ES and MDTA staff efforts; ten percent received no placement services whatsoever, 19 percent received standard ES referral assistance, and the rest were helped by MDTA staff or other agencies. Taggart suggests that Employment Service staff on the whole are unwilling to take on new functions, and may be reluctant to give an impression of favoring ex-offenders.

The efforts of the U. S. Department of Labor to expand ES job development and placement assistance for ex-offenders through the Model Ex-Offender Program may improve the ability

¹⁹ Taggart, op. cit.

²⁰ Levy, G., R. Abram, D. LaDow, Final Report on Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey, Battelle-Columbus Laboratories, Columbus, Ohio, 1975.

of local employment services to aid ex-offenders. One large obstacle to be overcome is a nearly universal dissatisfaction with and distrust of the Employment Service on the part of releasees. Gerald Gundersen, reports that 75 percent of a sample of ex-offenders had never used the ES, and that almost all expressed dissatisfaction with its red tape and depersonalized service.²¹

It is frequently the case that job development and placement activities are connected with particular manpower programs. Nearly all the reports on manpower programs for offenders include some description of placement activity and relative success. While efforts and success rates vary considerably, projects providing their own placement services seem to have considerably better success than the Employment Service.²² However, occasionally manpower programs find themselves competing with one another for a particular job opening, or an initially cooperative employer may be disgruntled by repeated solicitations from a number of similar programs. One consistent finding is that job placement alone is usually not sufficient to insure post-release success; a wide variety of other support services are needed to aid the ex-offender in his transition to work.²³

²¹ Gundersen, Gerald, Evaluation Study of the Model Ex-Offender Program, DSE Report No. 15, June 1971, pp. 35-39.

²² Rovner-Piecznik, op. cit., p. 62.

²³ Ibid., pp. 68-71.

The State of California Department of Corrections has taken an active role in upgrading its manpower training programs, particularly job placement services. The Department of Corrections contracted with a private consulting firm (Pacifica Resources Corporation) to develop a Central Office Placement Project--a comprehensive job development system for inmate trainees. The Pacifica Resources' report,²⁴ detailed suggested responsibilities and performance standards for job development staff. Performance standards for this project are high: an 80 percent placement rate (within 30 days of release) in permanent, full-time employment which pays at least 20 percent more than trainees' previous employment and which has advancement potential.

Another program which involved considerable job placement activities was Operation Pathfinder conducted by Mentec Corporation. The basic purpose of this study was to list the effects of Social Reinforcement Techniques on the work behavior of ex-offenders and other hard core unemployed. Part of this project was the development of jobs for both the experimental and control groups. Assistance in finding employment was secured from community groups, including the Merchant and Manufacturers Association and Contact, a consolidation of the ex-offender job placement efforts of four correction agencies in Los Angeles County, California. They also received the support

²⁴ Pacifica Resources Corporation, Job Placement Procedures for California Department of Corrections, San Francisco, California, February 1974.

that job placement and other supportive services are needed during the first few months after release from prison. In addition, they found the nature of job development and placement services varied considerably among the various projects.²⁷ The report states that, although 50 percent of the trainees were associated with projects which had some form of job development and placement services, there were serious problems with the quantity and quality of these services, and the majority of trainees who found work usually did so through their own efforts.

In Illinois the Model Ex-Offender Program (MEP) objective is to provide a statewide employment delivery system for ex-offenders utilizing to the maximum extent possible currently available local resources. In addition to this program the state operates other programs such as Challenge and DARE. In a one year period (October 1974 through September 1975) over 1000 placements were made.²⁸ In fact, during the first quarter of the MEP project actual placements were 28 percent higher than projected. This growth continues, and in May 1976, 140 successful placements were completed by DARE alone.

²⁷ Abt Associates, Inc., An Evaluation of MDTA Training in Correctional Institutions, Final Report Summary, May 1971.

²⁸ Personal communication with Edward Muth, Illinois Department of Corrections, June 1976.

Illinois has identified several job placement problems:²⁹

- lack of effective communication between the person who develops the job and the person who interviews the client, resulting in inappropriate placements,
- few follow-up services for both employers and employees.

The report also discusses other types of placement models, such as the use of vouchers to enable offenders to purchase job placement services, a Control Data Corporation self-placement model, and a model which offers a reward to anyone who identifies a potential job for ex-offenders.

Another Mentec study which evaluated employment under MDTA training programs made several placement-related recommendations. The major findings included: data gathered during the evaluation indicated a placement rate at the time of completion of training between 32.5 and 37.5 percent; considerable variations in levels of program effectiveness were found; the relevance of the program to labor market requirements was found to be low; and the objectives and practices of employment orientation and prevocational training components should be further examined.³⁰

²⁹ Report on the Manpower Needs of the Law Offender in Illinois. Prepared by the Law Offenders Task Force of the Governor's Advisory Committee on Manpower, August 1974.

³⁰ Mentec Corporation, Evaluation of the Relevance and Quality of Preparation for Employment Under the MDTA Institutional Training Program, Los Angeles, California, 1971.

Other placement services for ex-offenders, such as the Alameda County Ex-Offender Skills Bank in Oakland and Employ-Ex (run by an ex-offender) in Denver, are described in Offender Employment Review, a periodical published by the National Clearinghouse on Offender Employment Restrictions.

III PRISON INDUSTRY PRODUCTS AND SERVICES

A. Federal Prison Industries

Federal Prison Industries (F.P.I.) was established in 1934 to provide training and employment for prisoners confined in federal correctional institutions.¹

The acts of Congress authorizing establishment of the corporation are contained in 18 U.S.C. Sections 1421-4128. The law required F.P.I. to: (1) operate a diversified program of industrial production to offer the least possible competition to industry and labor; (2) restrict the sales of goods and articles manufactured in the industries' shops to departments and agencies of the United States government; and (3) provide a program of industrial and vocational training so that inmates returning to society may be able to become economically self-sustaining and productive citizens.²

In 1975, the F.P.I. had sales of \$68.8 million, showed a profit of \$8.9 million, and provided employment for over 25 percent of all confined federal offenders.³ The F.P.I.

¹ Federal Prison Industries, Inc., Board of Directors, Annual Report 1970.

² Ibid., p. 2.

³ Federal Prison Industries, Inc., Board of Directors, Annual Report 1975, p. 1.

operates in 24 of the penal institutions run by the federal government.⁴ Its largest operations are at Atlanta, Leavenworth, Lewisburg, McNeil Island, and Terre Haute. These accounted for 73 percent of the total sales volume of the corporation.⁵ The F.P.I. also offers 121 vocational courses to its inmates with the major areas covered being auto mechanics, masonry, auto body, sheet metal and key punch operators, and operates 22 large metropolitan centers to aid its ex-inmates in finding suitable employment.⁶

B. State Prison Industries

State prison industries are found in all states except Alaska and Arkansas.⁷

Traditionally, state prison industries have been restricted to the manufacture of such products as license plates, office furniture, playground equipment, metal highway signs, printed materials, name plates, identification badges, clothing, metal and wood products, etc., and to such tasks as book-binding and furniture refinishing.⁸

⁴ Ibid., p. 12.

⁵ Annual Report 1970, p. 4.

⁶ Ibid., p. 6.

⁷ Directory of State and Federal Industries, 1974-75, Correctional Industries Association.

⁸ Eglit, H., Survey of State Correctional Facilities, 1972. Also see Directory of State and Federal Industries and Correctional Industries State Use Sales 1960-1970, John Wald Company, Inc., 1970.

Table III.1 shows all U.S. jurisdictions and the various prison industries in those jurisdictions.⁹

TABLE III.1 - PRISON INDUSTRIES IN 48 STATES* AND THE DISTRICT OF COLUMBIA													
INDUSTRIES	AL	AZ	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN
GENERAL MANUFACTURING	Auto License (Tag)	X	X	X	X			X	X	X		X	
	Signs		X			X			X		X	X	X
	Metal Working			X								X	
	Metal Furniture						X	X				X	
	Wood Furniture/Repair and Refinishing		X	X		X	X	X	X		X	X	X
	Concrete/Brick Products	X						X	X			X	X
GARMENTS	Clothing	X	X	X	X	X		X	X	X		X	X
	Mattress	X	X		X				X			X	X
	Knitting			X								X	
	Weaving			X								X	
	Shoes			X								X	X
FOOD	Agriculture			X		X		X				X	
	Canning	X	X					X	X				X
	Butchering			X	X			X					X
	Feed												
	Dairy Products			X		X							
SERVICE INDUSTRIES	Dental Lab							X					
	Printing		X	X	X		X		X	X			X
	Data Processing					X		X					
	Bookbinding			X						X			
	Laundry/Dry Cleaning			X		X		X					
	Auto Repair					X							
MISC.	Soap & Detergent			X	X							X	X
	Paint												X
	Tobacco Products			X				X				X	
	Paper Products			X									X
	Misc. Others			X		X		X	X			X	X
TOTAL:	5	7	17	6	9	1	6	12	9	2	3	14	13
*Alaska and Arkansas have no prison industries.													

⁹ Miller, Herbert S., The Role of Prison Industries Now and in the Future: A Planning Study, Georgetown University Law Center, Institute of Criminal Law and Procedure, Washington, D.C., 1975, pp. 17-20.

TABLE III.1 - PRISON INDUSTRIES IN 48 STATES
AND THE DISTRICT OF COLUMBIA (CONTINUED)

INDUSTRIES	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NB
GENERAL MANUFACTURING													
Auto License (Tag)	X	X		X	X	X	X	X			X	X	X
Signs	X	X		X	X	X	X	X			X		X
Metal Working	X		X				X	X					X
Metal Furniture											X		
Wood Furniture/Repair and Refinishing	X	X	X		X		X	X			X		X
Concrete/Brick Products		X				X					X		
GARMENTS													
Clothing	X	X	X	X			X	X			X		X
Mattress	X						X						X
Knitting	X												
Weaving	X						X	X					
Shoes	X						X	X			X		
FOOD													
Agriculture									X				
Canning		X		X									
Butchering				X									
Feed												X	
Dairy Products												X	X
SERVICE INDUSTRIES													
Dental Lab				X									
Printing						X			X	X	X	X	X
Data Processing			X		X								
Bookbinding	X										X		
Laundry/Dry Cleaning								X			X		X
Auto Repair												X	
MISC.													
Soap & Detergent	X	X	X	X				X			X		X
Paint		X											
Tobacco Products	X						X	X			X		
Paper Products													X
Misc. Others	X			X				X	X		X	X	
TOTAL:	13	8	5	8	4	4	9	11	3	1	13	6	11

TABLE III.1 - PRISON INDUSTRIES IN 48 STATES
AND THE DISTRICT OF COLUMBIA (CONTINUED)

INDUSTRIES	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI
GENERAL MANUFACTURING												
Auto License (Tag)	X	X	X	X			X	X	X		X	X
Signs			X	X	X	X		X	X			X
Metal Working					X	X				X	X	
Metal Furniture			X	X	X							
Wood Furniture/Repair and Refinishing		X		X	X				X	X	X	
Concrete/Brick Products		X						X				
GARMENTS												
Clothing			X		X	X		X	X		X	
Mattress			X		X	X		X			X	
Knitting			X		X						X	
Weaving												
Shoes			X					X				
FOOD												
Agriculture			X									
Canning								X			X	
Butchering												
Feed											X	
Dairy Products												
SERVICE INDUSTRIES												
Dental Lab					X	X						X
Printing		X	X		X			X				X
Data Processing											X	
Bookbinding								X				
Laundry/Dry Cleaning					X	X				X		X
Auto Repair					X	X				X		
MISC.												
Soap & Detergent			X			X		X			X	X
Paint												
Tobacco Products					X						X	
Paper Products					X	X					X	X
Misc. Others			X		X	X					X	X
TOTAL:	1	4	11	4	13	9	1	10	4	4	12	7

TABLE III.1 - PRISON INDUSTRIES IN 48 STATES
AND THE DISTRICT OF COLUMBIA (CONTINUED)

INDUSTRIES		SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TOTAL ALL STATES
GENERAL MANUFACTURING	Auto License (Tag)	X	X		X	X	X	X	X	X	X	X	37
	Signs	X			X	X	X	X	X	X	X	X	30
	Metal Working	X		X					X		X		15
	Metal Furniture								X				8
	Wood Furniture/Repair and Refinishing	X		X	X	X		X	X	X	X		32
	Concrete/Brick Prods:			X	X					X			13
GARMENTS	Clothing	X		X	X			X			X	X	30
	Mattress				X				X				16
	Knitting				X			X					6
	Weaving				X			X					7
	Shoes		X	X	X			X					13
FOOD	Agriculture		X										7
	Canning	X			X	X							12
	Butchering					X							6
	Feed							X					3
	Dairy Products		X			X			X				7
SERVICE INDUSTRIES	Dental Lab				X								6
	Printing			X	X	X	X				X		24
	Data Processing												5
	Bookbinding	X						X			X		8
	Laundry/Dry Cleaning	X						X			X		13
Auto Repair												5	
MISC.	Soap & Detergent			X	X					X			19
	Paint									X			3
	Tobacco Products												7
	Paper Products												5
	Misc. Others		XX	X	X		X		X				23
TOTAL:		8	6	8	12	7	4	10	8	6	8	3	360

The principles by which the traditional state prison industry operates can be stated in general terms:¹⁰

1. Generally backed by legislative action.
2. No prison-made goods can be sold on the open market.
 - a. Exceptions¹¹
 - (i) Minnesota--farm machinery and cordage sold on the open market.
 - (ii) Arizona--with approval of the Department of Corrections.
 - (iii) Maine--open to the general public.
 - (iv) Massachusetts--open to the general public.
 - (v) Montana--in case of emergency with approval of the board. Sell agriculture products and livestock on the open market.
 - (vi) South Dakota--permitted to sell to public
3. Quality products, especially designed for state, county and municipal needs shall be the products of such a program.
4. The products and industries shall be so diversified as to avoid affecting substantially any one business in the state.
5. The constructive employment of inmates is a positive disciplinary measure in conditioning the inmates in constructive habits towards the day of release.
6. Products of prison industries shall represent real savings to the consumer--the tax supported institutions--and thus, will positively and ultimately benefit the taxpayer.

¹⁰ State Use Prison Industries, John Wald Company, Inc., March 7, 1958.

¹¹ Op. cit., Directory of State and Federal Industries 1974-75.

These principles represent an ideal view of the traditional state system. However many problems are faced in implementing these principles. The problems facing state systems parallel those found on the federal level. These include: (1) fulfilling idle inmate time seems to win out over rehabilitation as the rationale behind the existence of the system;¹² (2) obsolete equipment and poorly motivated workers who are inadequately trained; (3) high turnover of the inmates working in the prison industries system; and (4) generally poor quality control of the goods produced.

One state which has been studying the problem and has developed a model prison industries plan is South Carolina. A brief outline of their model follows in the Appendix.

C. Federal Statutory Limitations

Restrictions on the use of prison labor and the sale of prison-made goods are found in both federal and state statutes, and in the constitutions of a number of states. Among these prohibitory laws, federal statutes and a Presidential executive order have had the most significant effect, although state statutory and constitutional proscriptions have also had an impact upon the employment status of prisoners.¹³

¹² For an example of such a system see the Florida Prison Industries Program in: Ernest Means, Prison Industries and Rehabilitation Programs: Studies in Government No. 25, Institute of Government Research, Florida State University, Tallahassee, 1959.

¹³ Jensen, Walter, Jr., Edward Mazze and Neal Miller, "Legal Reform of Prison Industries: New Opportunities for Marketing Managers," in American Business Law Journal, Vol. 12, No. 2, Fall 1974.

Basic applicable federal statutes are: Title 49 U.S.C. §60, commonly known as the Hawes-Cooper Act (1929), which divests prison-made goods of interstate character; the Ashurst-Somers Act of 1935, as amended and codified in Title 18 U.S.C., §1761 and §1762, which prohibits the interstate transportation of state prison-made goods with certain exceptions, and requires that any such goods validly transported be plainly marked as convict-made; and Executive Order #11755, issued by President Nixon on December 29, 1973, which alters and supercedes that issued by President Roosevelt in 1905, Order No. 325A.

Federally prohibitory legislation and the executive order can be categorized as follows: (1) Goods manufactured by prison labor cannot be sold or distributed in interstate commerce,¹⁴ if the state of destination, by statute or

¹⁴Whoever transports or imports "any goods, wares or merchandise manufactured, produced or mined...by convicts or prisoners.....shall be fined not more than \$1,000 or imprisoned not more than one year or, both." Agricultural commodities, parts for farm machinery, and commodities manufactured for the use of the federal government, states and political subdivisions thereof are excluded. Goods manufactured by prisoners on parole or probation are excluded from the proscriptions of this statute, 18 U.S.C. §1761 (1948). The constitutionality of this statute was upheld in Kentucky Whip and Collar Co. v. Illinois Central Railway Company, 299 U.S. 334 (1937).

constitutional provision, forbids their importation.¹⁵

(2) Prison labor cannot ordinarily be used to fulfill federal government contracts.¹⁶ (3) Inmate labor cannot be used as an integral part of highway¹⁷ or airport¹⁸ construction unless the offenders employed in such projects are on parole or probation. (4) The Postmaster General is forbidden by law to purchase supplies and equipment manufactured by inmate labor for use in the postal service.¹⁹ (5) With

¹⁵ In effect, convict-made goods are subjected to the laws of the state to which they are transported by divesting these goods of their interstate character, the Hawes-Cooper Act, 49 U.S.C. §60 (1929). Congress has such authority over interstate commerce, State v. Whitfield, 216 Wis. 577, 257 N.W. 601 (1934).

¹⁶ The Walsh-Healey Act forbids the case of convict labor by contractors in the "manufacture...production or furnishing of any...materials, supplies, articles or equipment" used in government contracts where the amount thereof exceeds \$10,000., 41 U.S.C. §35-45 (1936). The act does not apply to industry in general but rather to contractors who voluntarily compete to obtain government business, Endicott Johnson v. Perkins, 317 U.S. 501 (1943) and it does not apply to contracts for war materials, 40 op. Att'y Gen. 207 (1942).

¹⁷ 23 U.S.C. §114 (S) (1958).

¹⁸ 49 U.S.C. §1722 (r) (1970).

¹⁹ 39 U.S.C. §2010 (1960); 39 U.S.C. §2201 (1970).

the exception of products manufactured by prisoners on parole or probation, all packages which contain goods produced by prison labor, if distributed through interstate commerce, must be clearly labelled as prison-made goods.²⁰ (6) Prison-made goods are exempted from a wide range of products purchased pursuant to federal government procedure policies intended to encourage the employment of the blind and other handicapped persons.²¹ (7) Foreign-made goods cannot be imported into the United States if they were manufactured by forced labor or by penal sanctions.²² (8) A Presidential executive order forbids the use of prison labor in all contracts made by or on behalf of the United States government.²³ (9) The Social Security Act defines employment to exclude inmates in a federal penal institution from coverage as employees of a state.²⁴ Federal agencies are required to purchase prison-made goods from federal penal institutions for governmental use when the prices are comparable to those available on the free market.²⁵

²⁰ 18 U.S.C. §1762 (1948).

²¹ 41 U.S.C. §48 (1971).

²² 19 U.S.C. §1307 (1930).

²³ Executive Order No. 325A (1905).

²⁴ 42 U.S.C. §410 (1950).

²⁵ 18 U.S.C. §4124 (1951) and 18 U.S.C. §4161 (1970);
40 op. Att'y Gen. 207 (1942).

D. State Statutory Limitations

State restrictions on the sale and distribution of prison-made goods and on the employment of prison labor usually take the form of constitutional or statutory prohibitions designed to limit the sale of such products so that competition with privately manufactured goods and commodities can be minimized. Table III.2 shows the results of a prison industry statute search done by ECON, Inc. in seven states. State statutory restrictions follow diverse patterns, but in general they: (1) require that the origin of prison-made goods be clearly marked or labelled, (2) impose a duty on persons who buy and sell goods of prison origin to obtain a license to do business, (3) prescribe a special tax or duty for prison-made goods, (4) allow goods manufactured in penal institutions and commodities grown on prison farms to be sold to that state's institutions, agencies and governmental bodies, and (5) restrict the entry of prison-made goods from other states, while permitting the sale and use of goods made in local correctional or penal institutions.²⁶ Statutes of the latter type have been declared to be an unconstitutional burden on interstate commerce. In enacting such prohibitory legislation, states typically relied on the police power, maintaining that the sale of prison-made goods and commodities in competition with goods manufactured by the free

²⁶ Miller, Neal and Walter Jensen, Jr., Reform of Federal Prison Industries: New Opportunities for Public Offenders, 1974, pp. 8-9.

TABLE III.2 Summarizes a Study of Prison Industry Statutes
Done by ECON, Inc. in Seven States*

	Colorado	Connecticut	Georgia	Illinois	Minnesota	Pennsylvania	Washington
1. Work to be done for state's benefit	X	X	X	X		X	X
2. Contracts with other departments for labor allowed		X	X		X	X	
3. Contracts with private parties for labor forbidden			X	X	X	X	X
4. Agricultural labor permitted	X	X	X	X	X	X	X
5. Road work permitted	X		X	X	X	X	
6. Work requiring skilled labor forbidden						X	X
7. Industrial training named as goal	X		X	X	X		X
8. Funding by proceeds of sales	X	X	X		X	X	X
9. Transfer of profits allowed	X	X	X				X
10. State departments required to buy prison-made goods	X	X		X			X
11. Anti-evasion provisions so department cannot avoid purchasing							X
12. Sale on open market prohibited	X	X	X	X		X	X
Exceptions:							
a. surplus				X		X	X
b. handicrafts		X	X	X			X
c. agricultural by-products		X	X				X
13. Products required to be branded					X	X	X
14. Catalogue of products required to be distributed	X	X		X			X
15. Money wages allowed as compensation	X	X	X	X	X	X	X
16. Good-time credit allowed as compensation	X	X		X		X	
17. Compensation may be paid to family	X	X			X	X	X
18. Work release programs		X	X	X	X		X

Because state legislative provisions do not expressly address the subject does not necessarily mean that a particular policy is not adhered to by prison administrators or other state officials. A blank space within the chart, therefore, does not suggest the converse of the corresponding statement is true.

* Data gathered by ECON, Inc., while the table format is an adaptation of table appearing in Prison Industries Planning Study: The Role of Prison Industries Now and in the Future. (Final Report.) Georgetown University Law Center, Institute of Criminal Law and Procedure.

sector of the economy unlawfully infringed upon the health, safety or general welfare of its citizens.²⁷

With few exceptions the states have restrictions prohibiting the sale of prison-made goods on the open market in free and open competition with goods manufactured in the private sector. Massachusetts has only recently repealed its state prohibitions.²⁸

In 1973, the Minnesota legislature enacted a statute which authorizes the establishment of private industry on the grounds of state correctional institutions for the manufacture and processing of products, goods and merchandise.²⁹ Factories established pursuant to this statute are regarded by law as private corporations, and all products manufactured are exempted from other state provisions which forbid the sale of goods produced in whole or in part by inmate labor.³⁰ Inmates conditionally released by the state adult corrections commission and the youth conservation commission for purposes of employment in private industry or to participate in community vocational programs³¹ and parolees³² may be employed.

²⁷ Kentucky Whip and Collar Co. v. Illinois Central Railroad Co., 299 U.S. 334 (1937).

²⁸ Massachusetts Gen. Laws, Correctional Reform Act, Sen. No. 1330 (1972).

²⁹ Minn. Stat., ch. 145, S.F. No. 197 (1973).

³⁰ Minn. Stat., §243, 86 (1967).

³¹ Minn. Stat., §241, 26 (1971).

³² Offenders designated "parolees" are persons within the review of 49 U.S.C. §60 (1929).

The recently modified correctional code in Illinois permits non-profit corporations to purchase prison-made goods, but retains its general prohibitions against others purchasing inmate-made goods.³³ With these exceptions, states generally do not permit the sale of prison-made goods to outside purchasers, but rather restrict their sale of the use of state agencies and institutions.

E. Product Decisions

Little has been done either in product development or in expanding the scope of markets for the finished products. Orders often are special orders which are made to the particular specifications of the buyer--most frequently to institutional agencies and the armed forces.³⁴

In many prison industries, one or two individuals handle the entire marketing operation for several large manufacturing facilities which severely limits the possibility of developing new products for old or new customers.³⁵ Legal constraints also operate to limit entry into new product lines which would enable the industry to generate sufficient volume to make their operations both efficient and profitable.

³³ Crushed limestone and lime dust for agricultural and horticultural purposes can, however, be purchased by the general public, Council on the Diagnosis and Evaluation of Criminal Defendants, Illinois Unified Code of Corrections (St. Paul, Minnesota: West Publishing Company, 1972) 1003-12-7.

³⁴ Jensen, Walter Jr., Edward Mazze and Neal Miller, Op. Cit., p. 178.

³⁵ Ibid., pp. 178-179.

The principles behind product decisions are based on the following:³⁶

1. The nature of the prison population and those available for industrial employment.
2. The relationship of an industry to the potential markets created by the tax supported institutions and agencies.
3. The type of products of good quality that can be produced by the industry and the type of inmate labor available.
4. The relationship of the industry to the free industries in the area. (In order that training will be meaningful in potential gainful employment after inmate release).
5. The economics of self-liquidation and expansion of the industry and its operation.

Product decisions are often affected by legal constraints and limited in scope by a desire or edict not to compete with private industry.³⁷

In most states the prison industries are required to sell their goods only to state and local governmental agencies. In South Carolina, each state or local agency is required by law to submit annually to the prison industries system a list of goods which it anticipates will be needed during the following fiscal year. This is done to enable the prison

³⁶ State Use Prison Industries, John R. Wald Company, Inc. March 7, 1958.

³⁷ Jensen, Walter Jr., Edward Mazze and Neal Miller, op. cit., p. 178.

industry system to plan its production in terms of the quantities and range of products which will be ordered. However, a recent study by the South Carolina Department of Corrections³⁸ found that few agencies adhered to this practice and instead, ordered what was needed without any advance notice to the state prison industries. Although the policy made sense in theoretical terms, it was found that over 50 percent of the municipalities in South Carolina have populations of under 1000 and are too small to have central purchasing agencies which would be needed to follow the state regulations.

A more aggressive and progressive approach is being taken in the state of New York where a survey was conducted to anticipate future jobs in a specific geographic area. Product decisions were then made on the basis of training the inmates for jobs which are anticipated upon their release rather than producing the traditional goods of a typical state prison industry.³⁹

In 1960, a study was done for Federal Prison Industries, Inc., by Peat, Marwick, Mitchell and Co. entitled "New

³⁸ South Carolina Department of Corrections, The Correctional Industries Feasibility Study, Market Research Phase: Phase One, The Business Audit. Columbia, South Carolina 1974.

³⁹ Final Report of the Electronic and Fiberglass Training and Manufacturing Programs at the Albion Correctional Facility, E.D.O. Corporation, July 1975.

and Complementary Products and Services for Federal Prison Industries, Inc." It was an assessment of current products and services, and a look at possible new and related products and services. It developed a methodology for future use to evaluate and upgrade, on a continual basis, the skill development opportunities for inmates participating in the prison industries program. It also developed criteria for assessing new products and services and a methodology for guiding future product and service surveys.

F. Marketing

On both the state and federal levels, marketing systems of prison industries' goods tend to be quite primitive compared to the modern operations and techniques employed by private industry. From the prison manager's perspective, the marketing options are restricted to the distribution of a limited number of products.⁴⁰ Deliveries are often late and the quality of the goods produced tends to be uneven.⁴¹ In most cases, prison industries produce catalogs to inform customers and potential customers of its products, but modern promotional and advertising schemes are almost nonexistent.⁴² In addition, existing catalogs are seldom revised

⁴⁰Jensen, Walter Jr., Edward Mazze and Neal Miller, op. cit., p. 178.

⁴¹South Carolina Department of Corrections, op. cit.

⁴²Jensen, Walter, Jr., Edward Mazze and Neal Miller, op. cit., p. 178.

and products seldom changed, dropped or redesigned. Unlike private industry, there are few salesmen to travel to potential customers and promote business.

In 1973, a bill was introduced into Congress which would reform the traditional Federal Prison Industries' system.⁴³ Titles 1 and 2 of the Federal Criminal Justice System Reorganization Act proposed to authorize Federal Prison Industries' authorities to establish working relationships with businesses, corporations or other private groups to establish factories or projects within the federal prisons or nearby for the purpose of employing and training offenders.

Prisoners would have been trained in the manufacture of products which would then be marketed in open competition with the products made by private industry. This would have also entailed removing or modifying existing legal restrictions on the sale of prison-made products and the use of prison labor in competition with free market labor. Prisoners would have been paid the same wages as free labor and similarly would pay all state, federal and local taxes as well as contributions to social security. In addition, 10 percent of an inmate's wages would have been set aside in a special fund to reimburse the victims of crime. While such federal legislation has, and is, being discussed, it is doubtful such legislation will be passed in the near future.

⁴³S 2160-2164, 93rd. Congress, 1st Session, 1973.

1. Prices

Section 4124 of Title 18 of the United States Code requires all federal departments to purchase from Federal Prison Industries at prices not to exceed current market prices. This requirement guarantees a relatively stable market and enables Federal Prison Industries to more effectively plan its production and regulate its ordering practices and volume.⁴⁴ The pricing policies often reflect the fixed costs of obsolescent machinery and equipment, materials and extremely low wage levels and, therefore, are not designed to compete with free market products and labor.⁴⁵

State prices are generally at the wholesale level, to remain competitive with commercial sources, or cost plus a percentage. In some cases, state prison industries have had to discontinue certain product lines because their outdated machinery and low productive labor pool had increased their costs to such a point that they were no longer in a competitive position with private industry.⁴⁶

⁴⁴ Lawson, Robert, Personal Communication (General Manager), California Correctional Industries, Sacramento, June 12, 1975.

⁴⁵ op. cit., Jensen, Walter, Jr., Edward Mazze and Neal Miller, pp. 178-79.

⁴⁶ op. cit., Rodli, Gilbert, Massachusetts Penal Study System, John R. Wald Co., May 9, 1955, and South Carolina Department of Corrections.

2. Products

Federal Prison Industries produce products of a traditional prison industry system. In 1975, the products were divided into seven divisions: automated data processing, electronics, graphics, metals, shoe and brush, textiles, and wood and plastics.⁴⁷

The products produced by state prison industries are similar to those produced by Federal Prison Industries, and lists can be found in either the Prison Industrial Association Directory or Correctional Industries State Use Sales, by John R. Wald, Co., Inc.

3. Outlets

Federal Prison Industries tend to be more profitable than their state counterparts in that they are authorized to make competitive bids on federal government contracts and are able to fulfill them in whole or in part. Thus, they have a larger outlet for their products. However, legal constraints operate to prevent them from moving into many new product lines which would make their operations more efficient and profitable.⁴⁸

State outlets are limited for the most part to state and local governments, nonprofit corporations, schools

⁴⁷ Federal Prison Industries, Annual Report 1975, pp. 6-7.

⁴⁸ op. cit., Jensen, Walter Jr., Edward Mazze and Neal Miller, p. 178.

and like institutions. Occasionally, a state may have a showroom open to the public for the sale of craft items made by inmates. Only in Minnesota, Arizona, Maine, Massachusetts, Montana and South Dakota can some or all prison-made products be sold to the public.

G. State Use

The state use system, which is the most prevalent policy in use in this country today with respect to the employment of prison labor, had its origins in New York about 1842.⁴⁹ It developed in response to labor practices that many persons, manufacturers and labor groups deemed to be unfair competition. With the industrial revolution expanding the use of industrial machinery and creating a demand for new sources of labor, and with the advent of the Auburn penal system, which provided full-time work during the day and confinement at night, the Auburn system soon became the dominant correctional theme in the United States. However, the financial successes of the Auburn system generated complaints from free workers that the use of convict labor resulted in unemployment and created an unfair source of competition. Such complaints resulted in prohibitory legislation in New York and this formed the basis for the state-use system. Restrictive laws reduced the percentage of persons employed in productive labor from 75 percent in 1885 to 44 percent in 1940.⁵⁰

⁴⁹ Op. cit., Neal Miller and Walter Jensen, Jr., p. 3.

⁵⁰ Ibid., p. 4.

This forms the history of the current legal impediments to employment of ex-offenders in private industry and to the use of prison-made goods and convict labor.

IV. REHABILITATION PROGRAMS

A. Recidivism Studies

Robert Martinson's article¹ in The Public Interest has focused a great deal of attention on the relationship between recidivism as a measure of success or failure and the effectiveness of correctional treatment. However, the study of ex-offenders "back-sliding" into crime has been a focal concern of correctional administrators and criminologists for some time. Entire schools of thought have developed around this issue, and recidivism and recidivists have been studied and subjected to nearly every complex statistical method. And yet, there is considerable disagreement over the validity of many of the recidivism studies which have been done, and even over the meaning of the term itself. For instance, Wilkins has stated that, "In matters that relate to recidivism there appear to be many figures but very few facts."² He goes on to say that many recidivism studies suffer from serious sampling errors and "generally fail to meet critical tests" of their validity. In reviewing early recidivism studies conducted in the 1920s and 1930s, he found that nearly all have serious methodological drawbacks. For instance, Wend (1936)

¹Martinson, Robert, "What Works - Questions and Answers About Prison Reform", The Public Interest, Spring 1974, pp. 22-54.

²Wilkins, L., Evaluation of Penal Measures, Random House, New York, 1969.

studied 394 recidivist offenders and constructed a typology based on his sample. His data, however, was obtained from offenders in a penal institution. Wilkins scores Wend's study³ on this point, because, viewing the prison in an input-output continuum, he points out that the recidivist has a much greater probability of being included in a prison-based sample due to the usually longer amount of time which he serves. Similarly, Glaser cautions against predicting future failure from the frequency of past failures of men now in prison because recidivists generally receive longer sentences, accumulate in prison, and becomes a higher percentage of men in prison at any given time.⁴ In reviewing more recent studies conducted by the British Home Office and Kogi, Wilkins notes that the probability of "committing more offenses increases as the number of previous offenses increases."⁵ He also noted that this relationship varies with age, so that the older an ex-offender becomes the less likely he is to recidivate.

Intrigued by the generally accepted belief that two-thirds of released offenders eventually are returned to prison, Glaser attempted to discover where this figure came from. He found the two-thirds figure was usually based on two false assumptions: (1) that the prediction of future failure could be based on the record of prior imprisonment among men

³ Ibid.

⁴ Glaser, Daniel, The Effectiveness of a Prison and Parole System, The Bobbs-Merrill Co. Inc., Indianapolis, 1964, p. 4

⁵ Op. cit., Wilkins, p. 54.

currently in prisons (the input-output continuum mentioned by Wilkins); and (2) that generalizations about an entire prison system could be based on the few prisons in which recidivistic offenders are heavily concentrated.

After reviewing the results of thirteen follow-up studies of inmates released from American prisons (county, state, and federal facilities) Glaser developed the following hypothesis:⁶

"In the first two to five years after release, only about a third of all the men released from an entire prison system are returned to prison, but this proportion tends to be higher:

a) when probation is used extensively, so that only the worst men go to prison.

b) when parole is used extensively, so that many poor risks are released.

c) when a large proportion of parolees are returned to prison when they have violated parole regulations....

d) when there is an over-all high crime rate in the community to which prisoners are released...."

Glaser found that the factors which most highly predict the probability of an offender returning to prison are the very factors over which correctional programs have no control: age, nature of offense, and prior criminal record. He found that the younger a person is when first arrested,

⁶Glaser, op. cit., p. 10.

the more likely he is to return to crime. Concomitantly, the older a man is when released from prison, the less likely he is to return to crime and if he does violate the law, it is more likely to be a misdemeanor than a felony.⁷

Relating the nature of offense to future failure is difficult because criminals often mix their offenses. In general, however, Glaser found that auto theft, burglary, and larceny are high, robbery is moderate, and homicide is low in terms of recidivism.⁸

The extent of an offender's prior criminal record is highly predictive of the probability of his adding to it.⁹ Of course, after a time an increase in prior offenses means an increase in age and the curve will fall off accordingly.

Numerous studies have also concentrated on the relationship between recidivism and the effectiveness of probation as a penal measure. Sparks found that in "virtually every study of the after-conduct of offenders placed on probation the majority are not reconvicted within the chosen follow-up period."¹⁰ As one example, he cites the findings

⁷ Ibid., pp. 18-30.

⁸ Ibid., pp. 23-26.

⁹ Ibid., p. 27.

¹⁰ Sparks, R.F., "The Effectiveness of Probation," in Leon Radzinowicz and Marvin Wolfgang's (eds.) The Criminal in Confinement, Vol. 3, Basic Books, Inc., New York, 1971. p. 211.

of R.W. England's study of 490 probationers in Pennsylvania.¹¹ England found that 82.3 percent of his sample were not reconvicted within a period of 6 to 12 years after completion of probation. It would, of course, be a major error to draw conclusions as to the effectiveness of probation vs. imprisonment based solely on studies of the reconviction rates of probationers because of the different type of offender who is placed on probation. Once again, Wilkins' input-output notion comes into play. However, criminologists have used recidivism studies as a means to gauge the effectiveness of one form of treatment in relation to another form of treatment. Hood reviews a number of such studies conducted both in the United States and in England.¹² The key question in such studies is: What form of treatment is most effective in reducing the chances that an offender will be reconvicted? Despite the numerous difficulties inherent in the use of recidivism to compare the effectiveness of probation vs. imprisonment, a number of such studies have been performed. Wilkins found no significant difference in the reconviction rates of a group of 31 offenders placed on probation and a

¹¹ England, Ralph, "A Study of Postprobation Recidivism Among Five Hundred Federal Offenders", in Federal Probation, Vol. 19, No. 3, 1965. pp. 14-16.

¹² Hood, Richard, "Some Research Results and Problems" in Leon Radzinowicy and Marion Wolfgang, op. cit., p. 163.

group of 31 individually matched controls dealt with in other ways (mostly prison and Borstal).¹³ One of the most extensive comparative studies of probation vs. imprisonment conducted in this country was done by Babst and Mannering in Wisconsin.¹⁴ The purpose of the study was to "compare probation and parole violation rates of similar types of offenders as a major first step toward learning which program is associated with the lower amount of subsequent criminal activity." Base expectancy analysis was used as a means of controlling violation risk variables between the two groups, which were followed for a period of two years. Most of the men included in the study were property offenders. The three factors found to be most predictive of violation rates for both probationers and parolees were: number of prior felony convictions, type of offense, and marital status at time of commitment. They found that judges tended to place offenders with low violation rates on probation and those with high past violation rates in prison. In general, Babst and Mannering found that for first offenders the violation rates for parolees

¹³ Wilkins, Leslie, "A Small Comparative Study of the Results of Probation", in British Journal of Delinquency, Vol. VIII, p. 201.

¹⁴ Babst, Dean, and John Mannering, "Probation Versus Imprisonment for Similar Types of Offenders", in Journal of Research in Crime and Delinquency, Vol. 2, July 1965, pp. 61-64.

was higher than for probationers. Violation rates for offenders with one previous felony conviction were similar for both groups. And finally, violation rates for repeat offenders were higher for probationers than for parolees.

Considerable dissatisfaction has been expressed with recidivism rates as an index of post-penal success or failure. One of the most commonly stated reasons for disgruntlement has been that the rate itself does not account for the enormous variations in success and failure. If a man has been imprisoned twice for robbery during the course of which he assaulted his victim, and he returns once again for robbery, but with no assaultive behavior, isn't this an improvement? By the same token if a man leaves prison only to retreat into the alcoholic subculture of a skid row, but never is reconvicted, is this truly a success? Criminologists have recognized this qualitative drawback in recidivism statistics for some time, but it wasn't until Glaser that any serious attempt was made to differentiate the variations which can exist in success and failure.¹⁵ Glaser constructed a typology (and supported it with case-histories) of success/failure which took into account the "zigzag path" which ex-offenders often lead in relation to criminal activity. Irwin also constructed a typology

¹⁵ Glaser, op. cit., pp. 31-58

which aimed at making a more qualitative assessment of success or failure than the bare recidivism rate.¹⁶ Irwin's typology¹⁷ qualifies success by the degree of goal achievement and failure by the mode of return, "agency precipitated or court precipitated." His typology is based on the belief that the criminal very often changes his life, but does not become a "square"--i.e., he does not take on conventional values.

Wilkins notes that "studies of recidivists are not studies of the effects of treatment, although there may be some relationship between the two."¹⁸ Nonetheless, recidivism rates are generally accepted as indicators of the success/failure of correctional "treatment" programs. And they probably will continue to be as long as the public expects correctional programs to change the offender's behavior for the better. The most recent example of this relationship is Martinson's survey of 231 treatment programs conducted between 1945 and 1967.¹⁹ In general, he found that no program evaluated in the studies he surveyed had any appreciable affect in reducing recidivism. Martinson's work has attracted a great deal of attention and has drawn considerable fire from correctional administrators because it did not include most of the community-based programs which came into being after 1967.

¹⁶ Irwin, John, The Felon, Prentice Hall, Englewood Cliffs, 1970, pp. 175-204.

¹⁷ Irwin, John, op. cit., pp. 178-179.

¹⁸ Wilkins, Leslie, 1969, op. cit., p. 44.

¹⁹ Martinson, op. cit.

The 1973 National Advisory Commission on Criminal Justice Standards and Goals²⁰ cautioned that three main factors should be considered in developing recidivism statistics: the nature of the events to be counted, categorization of behaviors and degrees of seriousness to be included, and duration of the follow-up period. Standards and Goals states that recidivism should be measured by reconvictions, and that the follow-up period for study should be three years after the offender's departure from correctional supervision. The N.A.C. cautions that recidivism can tell us only about correctional failures, and that it is fallacious to assume that the "success" of nonrecidivists can be attributed solely to their involvement in correctional treatment.

B. Treatment Programs

Individual and group psychotherapy, psychodrama, guided-group interaction, milieu therapy, drug counseling, behavior modification (both of the token economy and aversion therapy models), client-centered therapy - these are only a few examples of treatment programs available to prisoners in local, state, and federal correctional institutions.

All of these programs (and their various offshoots) have at least three common characteristics:

²⁰ National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Law Enforcement Assistance Administration, Washington, D.C., 1973, p. 512.

1. All can trace their correctional origins to the three services which have usually been available to prisoners - medical, religious, and educational.
2. All champion the ideal of "individual responsibility for criminal behavior."
3. All emphasize the importance of each offender gaining awareness of his/her problems and becoming motivated to change the behavior or conditions which led to the development of those problems.

In this country, treatment programs have developed closely on the heels of humanitarian reforms in prisons. However, many correctional researchers have gone to great lengths to make the distinction between humane treatment of prisoners and formal treatment programs. For example, McKorkle and Korn say that: "It is the tragedy of modern correction that the impulse to help has been confused with treatment, and seems to require defense as treatment."²¹ These authors go on to explain the danger of equating humanitarianism with treatment by putting forth the question: "What if humane treatment fails to rehabilitate, shall it then be abandoned?"

The introduction of social, vocational, and academic educational services into the prison has caused further confusion along similar lines. Most correctional administrators consider these services to be part of their overall treatment program.

²¹ McKorkle, George, and Richard Korn, "Resocialization Within Prison Walls", The Annals of the American Academy of Political and Social Science, Vol. 293, May 1954, pp. 88-98.

However, many researchers make a distinction between them and formal treatment programs. For instance, Gibbons reports that:

... such activities as educational or vocational training are not treatment ... They represent adjuncts to therapy which may aid in the resocialization of the offender when accompanied by some kind of treatment. For example, vocational training could be a useful adjunct to the treatment of certain kinds of offenders, provided that these persons were also led to modify their earlier attitudes of the form 'only slobs work'. But in this case, the term "treatment" should be restricted to those endeavors specifically directed to the goal of controlled change or attitude modification.²²

What does constitute a treatment program? There seems to be as many definitions of what constitutes treatment as there are researchers who are writing on the subject. Most definitions, however, fall into line with those offered by Campbell²³ and Gibbons²⁴. The former defines treatment programs as "all those activities which maintain a specific systematic effort directed toward correcting the offender." Gibbons defines treatment as "explicit tactics or procedures deliberately undertaken to change those conditions thought

²²Gibbons, Donald, Changing the Lawbreaker, Prentice Hall, Englewood Cliffs, 1975.

²³Campbell, Charles, "Principles and Prerequisites for Treatment of Committed Offenders," in Leonard Hippchen (ed.) Correctional Classification and Treatment, the W. H. Anderson Co., Cincinnati, 1975, p. 117.

²⁴Gibbons, Donald, op. cit.

to be responsible for the violator's misbehavior."²⁵

Most correctional administrators agree that classification in its earliest stages in American penology was modeled on the Irish prison system which promulgated progressively more secure stages of confinement to meet the severity of the crime and the characteristics of the criminal. However, it has evolved through the years into an administrative/treatment process which (in the ideal) diagnoses the individual's needs, maps out a treatment plan, and delivers the services or treatment resources to the prisoner.

The first modern classification system in the United States was developed in New Jersey as a result of recommendations made by the Prison Inquiry Commission of 1917. It was heavily influenced by the mass testing which became popular after World War I. Since then, more sophisticated classification systems have been experimented with and implemented on both the state and federal levels. For example, California pioneered the use of the I-Level system and in 1969 the Federal Bureau of Prisons inaugurated a system of case management (RAPS) which can be computerized.

For many years American criminologists concentrated on developing general theories which would explain the cause (or causes) of crime and delinquency. However, in the early sixties

²⁵ Ibid.

there was a decided shift in attention to the development of theories which would account for specific forms of criminal activity.²⁶ There are an almost infinite number of ways in which criminals can be categorized. One of the seminal works in this specific area was performed by Gibbons when he matched nine specific delinquent typologies and fifteen adult criminal behavior typologies with recommended treatment programs.²⁷

Any classification system is only as good as the subjective judgment of its employees and the availability of the services and resources which they recommend. It is a tremendous irony that for many years our prison systems possessed the capability to diagnose and store mounds of information on each prisoner and to recommend treatment plans based on that information, but then could only send them out into road gangs or tag plants.

Of course, this is not to say that therapeutic treatment programs have not been available to some prisoners, for treatment programs of nearly every variety have been experimented with in correctional settings. For example, different forms of psychotherapy--individual, group, and client-centered--have been employed in prisons. For many years psychotherapeutic techniques of different sorts represented the ultimate in prison treatment intervention (in terms of status--not allocated resources). The emphasis on

²⁶ Ibid.

²⁷ Ibid.

the importance of psychotherapy was partially a reflection of the dominance of the "medical model" as a treatment ideology in American corrections. Nowhere was the linkage between the medical model and psychotherapeutic counseling more evident than in California, a state which pioneered in the development of a number of treatment programs. Writing in 1963, Richard McGee said:

Closing in on the correctional problem, we have sought to transform the warehouses left us by our predecessors into something resembling hospitals.

Our objective should be to treat men and women who were sent to prison for what ails them and send them back to the streets when they are cured, just as hospital patients are.²⁸

A second major category of treatment programs which became popular in correctional settings, and which subsequently were the aim of a good deal of research were those programs based on milieu management. Interest in this approach was stimulated by the growth of "treatment oriented" institutions and the expansion of therapeutic communities for mental patients. Basically, milieu management refers to a treatment program in which all of the parts which together make up the entire environment are considered and integrated into the treatment/rehabilitation process.

²⁸ McGee, Richard, "Organizational Structure of State and Local Correctional Service", Public Administration Review, Vol. 31, No. 6, p. 616.

A number of programs which fall into this category have been experimented with in prisons. Perhaps the most widely publicized has been the Highfields project in New Jersey. The designers of this project had a specific causation-treatment framework within which they operated. They saw the main cause of delinquency as being a combination of peer group pressure and community disorganization. Consequently, they employed the influence of the peer group, through guided group interaction, to change a boy's self-image from delinquent to nondelinquent. This group process was performed in the context of a total living-working environment.²⁹ A number of therapeutic communities also developed in prisons for adult criminals. Elliot Studt chronicled the development of C-UNIT in a California maximum security prison.³⁰ Unlike many therapeutic communities, C-UNIT "did not define the community as an extension of group therapy ... it conceived of the prison community as a political association within which an emergent rule of law would become an instrument for achieving individual and group welfare." In this sense, then, the community's resources would be marshalled to aid in problem solving and the development of general social competence (resocialization) in each prison rather than as aids in the analysis of interperson difficulties.

²⁹Weeks, Ashley, Youthful Offenders at Highfields, University of Michigan Press, Ann Arbor, 1958.

³⁰Studt, Elliot, C-Unit, Russell Sage Foundation, New York, 1968.

Synanon is another style of therapeutic community which influenced the development of many milieu management programs in prisons during the latter half of the sixties. Most such programs were aimed at reducing the usage of either alcohol or dangerous drugs by their prisoners.

The third and final category of treatment programs--behavior modification--have also been the most controversial. Token economy programs such as those used in the "Readjustment Unit" at Yardville Correction Center in New Jersey and the National Training School for Boys have been used fairly extensively with delinquents. However, it is not these programs specifically which have been the focus of so much criticism. Rather it is the behavior modification programs employing electric shock, drug therapy, or surgery which have been the cause of much public protest. Connecticut's program for repeat child molesters (currently shut down), for example, has been the object of a lawsuit by the ACLU. This program uses electric shock and hypnotism as the basis for aversion conditioning. On the federal level, both LEAA and the Federal Bureau of Prisons have ceased funding behavior modification programs.

A number of researchers have focused on institutional impediments to the operation of treatment programs in prisons. Most cite the combination of the prisons' social organization and the existence of the inmate subculture (and its "code") as the dominant factors impeding the success of treatment programs.

A final statement should briefly mention the relationship between treatment programs and the indeterminate sentence.

The two have grown hand-in-hand, and until recently, they were seen as being important factors not only in controlling inmate behavior while in prison, but also in reducing recidivism. Recently, however, this dual system of social control has received a great deal of criticism (Struggle for Justice³¹ and David Fogel)³² for being both hypocritical and unjust. This concern has led to a rediscovery of the flat-time sentence.³³

C. Education

The article "Education for Work: A Full Employment Strategy" by Eleanor Gilpatrick³⁴ provides a theoretical backdrop for the literature on educational programs. The Gilpatrick article criticizes traditional secondary and higher education for not supplying people with laterally and vertically transferable vocational skills and for producing a social and economic split between the "relevantly educated and the empty degree holders." Gilpatrick calls for an educational system which is "sufficiently flexible to allow for lifetime transferability of work preparation and for various patterns of movement in and out of work and education." Gilpatrick implicitly challenges the customary

³¹American Friends Service Committee, Struggle For Justice, Hill & Wang, New York, 1971.

³²Fogel, David, We are the Living Proof, The W.H. Anderson Co., Cincinnati, 1975.

³³Ibid.

³⁴Gilpatrick, Eleanor, "Education for Work: A Full Employment Strategy", The Annals, Vol. 418, March, 1975, p. 147.

choice made in prison (and society) between school and vocational training. This article challenges an entire educational and occupational system.

Glaser's chapter on "Education in Prison" in The Effectiveness of a Prison and Parole System statistically substantiates Gilpatrick's assertions. He shows that prisoners involved in the usual type of prison education for the usual duration demonstrate higher than average post-release recidivism rates. Those with longer lengths of schooling and potentially those receiving educational and vocational training promise more post-release success.

The Glaser chapter also considers motivation and how to increase it, the corruptibility of prison education, the relationship between crime and levels of educational attainment, and the utilization of education in post-release employment. Of particular note is Glaser's data which shows that crime is related to deficiencies in education but not intelligence, and therefore, that school retardation results from lack of motivation. Glaser includes some operating examples of better educational programs. He proposes some ways to increase student motivation to learn and, therefore, the school's success, by changing the prison school's structure, method, and incentives.

³⁵ Glaser, Daniel, Op. cit.

Goldfarb and Singer, in their section on education in After Conviction,³⁶ focus on inmate educational needs (characterized by illiteracy levels), problems of educational programs within the institutional setting (due to conflicts with other prison purposes and competition with other tasks for inmate time), and different formats now being used in educational programs (individual tutors, programmed learning devices, college level courses, etc.). This article mentions several promising experiments at basic, intermediate, and college levels. It also distinguishes between a prison that is a state-accredited school and one which hires state-accredited teachers. The former is preferred, as it can grant diplomas and more easily receive state and federal supplementary funding. The interim report from the New Jersey Commission on Vocational Education in Correctional Institutions (published before the Goldfarb/Singer book) followed the same thinking.³⁷ The New Jersey Commission suggested its correctional institutions become a school district under the State Department of Education. Other proposals included in this report are the appointment of an Educational Director in the Division of Correction and Parole, increased offerings at all levels, greater

³⁶ Goldfarb, Ronald, and Linda Singer, After Conviction, Simon & Schuster, New York, 1973.

³⁷ Commission on Vocational Education in Correctional Institutions in New Jersey, Vocational Education, November 1971.

availability of reading material, and the upgrading and diversification of the educators. Currently, the N.J. Correctional Institutions are a school district with their own director.

The report of the MDTA Project at the Sierra Conservation Center in California is basically an in-house report. This project stressed reading and math skills as a prerequisite to vocational training (reminiscent of the Gilpatrick Theory). An audio-visual format was used to increase teacher-student individual interactions in problem areas, provide for immediately observable rates of individual achievement, and replace or supplement traditional reading material.

A short article on Washington's institutional programs cites the availability of basic literacy, high school, and Associate Arts degree programs.³⁸ Also, several penal institutions have worked out cooperative arrangements with local colleges so that teachers may teach at the prison and/or inmates may attend the college. The article, however, presents no assessment of program utility and attendance rates.

Gilpatrick's insistence upon the integration of education and work, and of verbal and mathematical skills with employment, is a well-taken point of departure for education programs in prison. However, there appears to be a lack of documentation illustrating the coupling of inmate educational needs with responsive educational programs. Glaser makes the point that prisons provide a unique setting for motivating formerly uninterested

³⁸ Schuman, Robert, "Washington's Institutions: Rehabilitation Stressed in Programs, New Units", American Journal of Corrections, Vol. 34, No. 6, November/December, 1972.

students. It seems that prisons enjoy a unique opportunity for experimenting with new methods and materials to meet the educational needs of inmates, many of whom were not reached by the public school format.

D. Work Release

A work release program refers to a program operated by a correctional authority where select inmates are released from confinement for specified hours of the day to pursue normal employment in the outside world. Such a program can encompass activities other than work (e.g.; education, vocational training, etc.) but its typical purpose is for employment.

Some variant of a work release arrangement has been in existence almost since the earliest days of prisons in this country. It was rather common in earlier times for female offenders to be placed with families as domestics as part of their sentences. This practice continues today to some extent, especially with juvenile females.

New Hampshire is probably the place where the present-day model for work release programs was first attempted. Sometime around 1900, a New Hampshire sheriff released some misdemeanants to work during the day; they would return to the jail at night and on weekends. The response to this initiative, from both inmates and the general public, was highly favorable.

In 1913, the Wisconsin legislature enacted the Huber Law which paved the way for county-operated work release

programs for misdemeanants that for the first time had legislative approval. The Wisconsin counties were rather slow to act on this new authorization, however, and it was really not until World War II, with its serious labor shortages, that large-scale work release programs were implemented. The next significant expansion of work release authorization occurred in 1957, when the North Carolina legislature enacted a law extending work release eligibility to felons as well as to misdemeanants. By 1965, 24 states had some form of work release legislation, although only Maryland joined North Carolina in extending eligibility to felons. Also, in 1965, Congress passed the Federal Prisoner Rehabilitation Act which, among other things, instituted work release programs in the federal prisons. Many state legislatures took up the issue soon after the federal initiative, so that in 1968, 27 of the 34 states by then authorizing work release in prisons, included all state inmates, felons and misdemeanants, in their eligibility guidelines.

Proponents of work release programs most often cite two types of advantages that such programs have over other institutional programs: the economic benefits to society, and the psychological effects on the inmate. The work releasee earns wages in the private sector and turns some portions of these wages back to the prison thus paying part of his incarceration cost. Real world work responsibilities which the inmate must accept to successfully participate in a work

release program, provide the work releasee with the necessary atmosphere for skill acquisition and work-conducive attitude formation--goals that most correctional employees feel are essential if an inmate is to be successfully employed after release. As presently operated, institutional work programs are not able to meet either of these goals very successfully.

The creation of a work release program carries with it, however, a number of problems not normally encountered in the operation of a typical correctional institution. In a very general sense, the half-free status of work release participants can to some extent neutralize, or at least modify, some of the traditional controls a prison administration can exercise over its inmates. Related to this, the introduction of a third party (the employer) into the administrator-inmate relationship calls for some degree of accommodation between the prison and the employer; this is a relatively new problem, given that administrator and employer have traditionally been the same person in the typical prison setting. Other problems which surface in the creation of a work release program are the definition of eligibility criteria, the question of inmate housing facilities, and the securing of outside world jobs for participants.

While state legislation generally establishes the broad eligibility criteria (felons, misdemeanants or both) for work release, it is in the state correctional authority's administrative regulations that true eligibility definitions are established;

it is in this latter set of rules that the conflict between rehabilitative intent and institutional maintenance concerns most visibly surfaces. Eligibility for work release is generally constrained by two factors: type of offense and portion of sentence yet to be served.

States most often exclude from work release those offenders whose offenses indicate "high assaultive potential". Although "high assaultive potential" is variously defined in different states, the intent is generally to exclude those serving time for murder, manslaughter, assault, and other crimes of a violent nature. The second largest group to be excluded are inmates convicted for sexual offenses, especially rape and child molesting. This group is followed by those serving time for drug-related offenses. A fourth group that is almost universally excluded is composed of those labelled "escape risks". The result of these exclusions is to eliminate about one-third of an institution's population from eligibility for work release on the basis of offense. Federal regulations specifically exclude inmates affiliated with organized crime activities, and any others whose presence in the community would engender "adverse public reaction." The second major eligibility constraint involves sentence length. Most work release regulations restrict eligibility to only those inmates who have served a fixed percentage of their sentences, or to those who have a specified period of time remaining to be served (usually one year).

Another problem concerns the provision of inmate housing facilities. There is a difference of opinion whether work release participants should be housed with the general population, and if not, if they can be housed adequately (from a programmatic viewpoint) in the institution at all. Some states have included statutes in their work release legislation requiring separate housing facilities for participants. Many correctional administrators cite the problems of participant-transported contraband being brought into the general population by work releasees, as well as the pressures put on work releasees to run errands on the outside for the general population, as sufficient justification for separate housing facilities. A different set of problems is created by the isolation of many state and federal prisons from major employment centers. It is difficult to find any jobs near the prison at all, let alone jobs sufficiently attractive that inmates would want to retain them and abandon their prearrest residence (generally an urban area). Adequate transportation facilities from the prison to employment centers are also problematic. All of these problems have led prison administrators to explore the use of local jails, half-way houses, and other supervised facilities outside the institution as potential housing facilities for work release participants.

The problem of finding outside jobs for work release participants is probably the most significant difficulty

in day-to-day operation of a work release program. When work release was restricted to misdemeanants, the intention was for the offender to maintain his prearrest job for the entire term of his sentence, if possible, and thus the sentence itself was to a work release program. Work release has also been used as a preconviction bail requirement when the accused has steady employment. It is in its third form, as a prerelease phase-in for felons, that the problem of locating employment is most severe. The majority of work release jobs for felons are found through the efforts of the state correctional agency, rather than by inmates themselves; these jobs tend to be characterized by high turnover rates, often due to seasonal and cyclical employment patterns, and by relatively low salary rates.

Various surveys of work release participants' job performance generally indicate that employers perceive no significant difference between work release and free world employees' job performance; the vast majority tend to be rated as satisfactory. Surveys of work releasees also indicate that only a small percentage of these inmates retain their work release job after their ultimate release from prison; this finding tends to blunt the impact of the phase-in rationale for work release programs. Generally, the location and the type of work assigned constitute the largest impediments to job retention; inmates would prefer to find employment of their own choosing in a geographical area nearer

their original residence -- factors which work release programs are ill-suited to accommodate. Work release participants also tend to believe that they can find higher salaried jobs through their own initiative, and thus abandon work release jobs at their release to seek higher wages.

E. Inmate Self-Concept and Motivation

The literature on inmate self-concept and motivation consists of three categories: (1) articles by inmates about the inmate experience, (2) articles by practitioners and academics on inmates' reaction to "treatment" or "correction," and (3) articles by practitioners and academics on how to motivate inmates to participate in treatment programs.

Anger, alienation, and frustration due to feelings of powerlessness underlie the writings by inmates Sostre and Wallace. These inmates present themselves as victims, as political prisoners caught in a racist, unjust system. They recognize increased political awareness as the wave of the future for prison populations. Sostre³⁹ explicitly endorses violence as a change tactic. Wallace⁴⁰ points to the system's disrespect for the rights of blacks and poor people as the target for change.

³⁹Sostre, Michael, "The New Prisoner" in Michael Herman and Marilyn Haft, editors, The Prisoners' Rights Sourcebook, Clark, Boardman Co., New York, 1973.

⁴⁰Wallace, Donald, "An Indictment by an Inmate", in Herman and Haft, op. cit.

Irwin,⁴¹ a former inmate and now an academic, picks up on the inmates' resentment which he claims results from the penal system's hypocrisy in endorsing conflicting goals and presenting manipulative programs as therapeutic. He says inmates respond by manipulating the system for their own ends. In this circumstance, and particularly since experts have voiced skepticism about the efficacy of the rehabilitative model and techniques, an inmate is prone to respond to rehabilitation programs "as clever strategies for stripping him of his constitutionally guaranteed rights." Irwin concludes that punishment consists of anything coercive (including required programs), punishment must be separated from treatment, and punishment must be for acts and not for status.

Mathieson proposes, in Inmates' Perception of Treatment, that inmates perceive treatment in three ways.⁴² One inmate may hold all of these at different times during incarceration, or different inmates may hold to one continuously. The perceptions are: (1) claim that only he/she can help him/herself and then challenge the established norms and values (2) claim that the self is determined by uncontrollable, exterior forces and expect somatic, medical treatment to cure the

⁴¹Irwin, John, "Adaptation to Being Corrected: Corrections from the Convict's Perspective", in Daniel Glaser, editor, Handbook of Criminology, Rand McNally Publishing Co., Chicago, 1974.

⁴²Mathieson, Thomas, "The Inmate's Perception of Treatment," in Leon Radzinowicz and Marion Wolfgang, editors, The Criminal in Confinement, Basic Books, Inc., New York, 1971.

problem (3) claim that the self is determined by uncontrollable, exterior forces and expect psychiatrists to accomplish miracle cures. In essence, inmates demand all or nothing from the treatment staff.

The three articles on how to stimulate and maximize inmate motivation make three different suggestions. Williams and Fish suggest inmates earn their release by receiving payments for participating in programs.⁴³ Dillon claims that treatment cannot begin before an offender achieves a degree of stability.⁴⁴ The article by Murton and Baurach reaches the following conclusion after reviewing the experience of four prison administrators: that the ability of a person to be self-determining rests on his/her experience in meaningful decision-making capacities. To this end, inmate-initiated councils or self-governments with meaningful jurisdiction over areas of interest (especially discipline) are endorsed as invaluable tools for competent administration and successful rehabilitation.⁴⁵ The inmate writings provide a portrait of a growing segment of prison populations, as evidenced by the

⁴³ Williams, Vergil and Mary Fish, "Rehabilitation and Economic Self-Interest," Crime and Delinquency, Vol. 17, No. 4, October 1971, p. 406.

⁴⁴ Dillon, Stephen, "Examining Role of Maximum Security in Rehabilitation Process," American Journal of Correction, Vol. 37, No. 1, p. 27.

⁴⁵ Murton, Tom, and Phyllis Baurach, "Shared Decision-Making in Prison Management: A Survey of Demonstrations."

writings of Jackson, Davis, and others. The second group of articles illuminates the conflicting expectations and motivations of inmates to be reckoned with by program organizers and administrators. In this group the Irwin article seems more informative and helpful than the Mathieson one. The third group of articles suggest ways of motivating inmates to participate in rehabilitative offerings. The Murton and Baurach article, distilled and combined with the Irwin article, offers some perceptions and suggestions which should facilitate program design and management.

F. Probation - Parole

The National Advisory Commission has identified two major factors which are crucial to the enhancement of any probation system:

The development of a system for determining which offenders should receive a sentence of probation.

The development of a system that enables offenders to receive the support and services they need so that ultimately they can live independently in a socially acceptable way.

These two factors are directly related to the two main functions of the probation officer: conducting the pre-sentence investigation and writing the report; and the supervision of probationers in the community.

The continuing controversy over what is the appropriate organizational framework for probation centers around two main issues: whether it should be a part of the judicial or executive branch of government; and whether it should be administered by the state or local government.



CONTINUED

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In the past, services provided to probationers have been heavily influenced by the casework approach promulgated by Mary Richmond. In the 1930s, 40s and 50s, casework in probation became equated with a therapeutic relationship with the probationer. This emphasis on casework has led to a concomitant concern with the size of probation caseloads.

The Attorney General's Survey of Release Procedures gave what has come to be the classic definition of parole: "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."⁴⁶

The credit for the development of the parole concept is generally given to Alexander Maconochie and Walter Crofton. The former integrated the indeterminate sentence with a "mark" system which enabled the prisoner to progress through five states, each carrying an increasing degree of responsibility. Crofton, the director of Ireland's prison system, built on Maconochie's model, adding parole conditions such as monthly reporting. The beginning of parole in the United States is identified with the Elmira Reformatory and the rise of the

⁴⁶ Attorney General's Survey of Release Procedures, Washington: Government Printing Office, 1939), Vol. IV, p.4.

indeterminate sentence. Parole laws and practices developed quite haphazardly in the United States. In 1837, Massachusetts became the first state to enact legislation authorizing parole. By 1922, forty-five states had passed such legislation, and in 1945 Mississippi became the last state to enact parole legislation.

Today, most offenders released from state and federal correctional institutions re-enter the community on parole status. In 1970, the latest year for which complete data are available, almost 83,000 prisoners left correctional institutions - 72 percent of them were released on parole status.⁴⁷ The number of prisoners released on parole status varies greatly from state-to-state. For example, in 1964 nearly 100 percent of the prisoners released from New Hampshire's and Washington's prisons left on parole status. In the same year, only about 9 percent of the prisoners released from South Carolina's prisons re-entered the community on parole status.⁴⁸ Perhaps the largest gap in parole service exists on the county level where very few prisoners are released on parole status.

Parole boards and services are organized around two predominant models: the institutional model and the independent model. The institutional model is dominant in the juvenile area

⁴⁷ National Prisoner Statistics: Prisoners in State and Federal Institutions for Adult Felons, 1970, Washington, Federal Bureau of Prisons, 1970, p. 43.

⁴⁸ The President's Commission on Law Enforcement and Administration of Justice, Task Force on Corrections, 1967, Washington, U. S. Government Printing Office, p. 61.

and the independent model is dominant in the adult area. Both reflect two diametrically opposed views concerning parole decision-making. The institutional model is based on the assumption that the prison staff knows the offender best, has been working with him/her, and therefore, is most sensitive to the optimum time for release.

The independent model, on the other hand, attempts to guard against the tendency of the institutional parole authority to be swayed by institutional considerations. A third type that has gained considerable support in recent years is the consolidation model. The National Advisory Commission describes this organizational format as "emerging from the drive toward centralized administration, typically resulting in parole decisions being made by a central decision-making authority organizationally situated in an overall department of corrections but possessing independent powers."⁴⁹ The President's Commission on Law Enforcement and the Administration of Justice reported that by 1968, forty-one states had an independent parole board, seven states had a parole board which was within a larger state department, and in two states the parole board is regulated by the same group which regulates the prisons. In the juvenile field, the situation is quite different. The institutional model reigns supreme. This is the case in

⁴⁹ National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Washington, Government Printing Office, 1973, p. 396.

thirty-four out of the fifty states. In the other seventeen states, boards are, to varying degrees, independent of the juvenile institution itself.

In recent years, scholars, administrators, and the courts have focused a good deal of their attention on the parole decision-making process.

Parole boards have to make a variety of decisions; however, the basic decision to be made is: "When is the prisoner to be released and under what conditions?" Parole boards must rely on others for information about persons being considered for release. The sources of information on which they generally rely are four in number: Pre-sentence investigation reports, prison classification material, progress reports, and pre-release plans. Daniel Glaser and Vincent O'Leary maintain that there are three basic methods by which parole board members make a decision as to whether or not a person should be granted parole status. The three methods are: the intuitive conclusion, the systematic rating, and the statistical prediction.⁵⁰ The first method listed is basically a "best guess". The systematic rating approach assigns positive and negative weights to different factors associated with the prisoner's personal situation and the community into which he is to be released. Statistical prediction as a method of parole

⁵⁰ Daniel Glaser and Vincent O'Leary, "The Assessment of Risk," in The Future of Parole, edited by D.J. West, London, Gerald Duckworth and Company, 1972, pp. 197-82.

decision-making was pioneered in 1928 by Ernest Burgess of the University of Chicago. Burgess divided a number of factors (such as offense, work record, alcohol addiction, etc.) into a number of different categories and discovered that certain categories had higher violation rates than did others.

Burgess gave each prisoner one point for each factor which appeared favorable, based on past examination of the categories. On the basis of the number of total points received, he assigned each man an "expectancy rate of violation." Many of the base expectancy scales used in the United States today are based on Burgess' model. Perhaps the most sophisticated of these scales is the California base expectancy score.

As noted earlier, the parole decision-making process has come under a great deal of attention from a number of different sources. The main focus of most of these critics has been the reduction of the vast discretionary power of the parole board. There is little doubt that a complex feedback relationship exists between inmate behavior, institutional equilibrium, and parole policy. Over-crowded institutions may, for example, result in subtle changes in parole policy. Peter Hoffman has recently found that parole decision-making by the United States Board of Parole is based on three factors: offense severity, parole prognosis, and institutional performance.⁵¹

⁵¹Peter Hoffman, Paroling Policy Feedback, Report No. 8, Davis, California, Parole Decision Making Project, N.C.C.D. Research Center, June 1973.

Parole itself has traditionally been wedded to the indeterminate sentencing system and as that system has come under increasing criticism so has parole. Some critics are in favor of eliminating any form of discretionary release after sentencing by the judge. James Q. Wilson, for example, would eliminate both probation and parole,⁵² while the "justice model" proposed by David Fogel calls for short, fixed sentences with no provision for parole.⁵³

Mutual Agreement Programming (MAP) which was sponsored by the Parole-Corrections Project of A.C.A. represents a median position between the "medical model" and the "justice model." Funded since 1971 by the U.S. Department of Labor, MAP includes the following elements:

A written, legally enforceable contract between the inmate, his institution, and the parole authority;

A target date which becomes the parole date if all contract provisions are met by the inmate;

Face-to-face negotiations between the inmate (often helped by an advocate), the institution, and the parole authority;

The involvement of an outside party, who independently determines whether the contract has been fulfilled;

⁵² Wilson, James Q., Thinking About Crime, New York, Basic Books, 1975.

⁵³ Fogel, David, We Are the Living Proof, Cincinnati, Anderson, 1975.

Contract provisions spelling out measurable goals for inmates in the areas of education, training, counseling, and institutional behavior, and a guarantee from the correctional system that programs and services to fulfill these goals will be available as needed.⁵⁴

M.A.P. is now available to certain prisoners in Maryland, Florida, Georgia, Massachusetts, Maine, Michigan, Minnesota, North Carolina, Wisconsin, and the District of Columbia.

G. Programs for Women

1970 National Prisoners' Statistics data show that there are approximately 16,000 adult women imprisoned in the United States. About 800 are in the three federal reformatories for women, 6,000 are in the state prisons, and 8,000 are in local jails.⁵⁵ Only twenty-six states (plus Puerto Rico and the District of Columbia) have separate female facilities. In the other twenty-four states, women are either housed in facilities that are under the control of male institutions or they are sent to neighboring states to be incarcerated.⁵⁶ Ruth Glick, Director of the LEAA-sponsored National Study of Women's Correctional

⁵⁴ Gettinger, Steve, "Parole Contracts: A New Way Out," Corrections Magazine, Vol. 2, No. 1, September/October, 1975, p. 4.

⁵⁵ U. S. Department of Justice, National Prisoner Statistics Bulletin, Washington, D.C., 1970.

⁵⁶ American Correctional Association, Directory of Correctional Institutions, College Park, Maryland, 1976.

Programs, has said, "It is interesting to note that at the time when some professionals in corrections are proclaiming that rehabilitation does not work, we are finding that for most female offenders rehabilitation has not been tried."⁵⁷

The reasons most frequently given for the lack of correctional programs for women are the small number of female prisoners, the consequent cost/benefit problems in programming resulting from the small number of clientele, and the feeling that female offenders represent less of a threat to society and, therefore, do not warrant the same financial expenditures as do men.

Whatever the reasons, women have recently begun to turn to the courts as one recourse against unequal correctional programming. In Dawson vs Carberry (#C-71-1916, N.C. Cal., filed 9/71), prisoners in San Francisco's jail sued in federal district court to gain access to a work-furlough program from which they had been excluded. In Mississippi, female prisoners used the courts to win the right to conjugal visits--a program which had been available to men in that state for years. In a landmark case, the federal district court in Barefield vs Leach (CIV. #102-82, D.N.M. decided December 19, 1974) held that women

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Glick, Ruth, quoted in "The Woman Offender Report," (National Resource Center on Women Offenders), Vol. 1 Report No. 3, July/August, 1975.

prisoners in New Mexico's state prison are entitled to equal treatment with male prisoners. The court did not say that female prisoners should have the same programs as men but that they should have parity of treatment. Small numbers of female prisoners were not seen as being a "valid excuse for lesser facilities or smaller allocation of funds."⁵⁸

Women who are sentenced to long terms in state prisons have generally been assigned to one of the following categories of correctional programs: (1) education, (2) prison industries, (3) vocational training. In September, 1975, the A.B.A. Commission on Correctional Facilities and Services Clearinghouse for Offender Literacy, conducted a nationwide survey of educational programs in women's prisons. Eighty-eight percent of the responding institutions offered adult basic education (A.B.E.) and high school equivalency courses, but only sixteen percent of the women incarcerated in those institutions were currently taking advantage of A.B.E. courses. The same survey found that at least fifteen percent of the current female prison population is "functionally illiterate." Two educational programs which have recently received some national attention are the Literacy Volunteers of America

⁵⁸ Ibid.

(which works with female prisoners at New York's Bedford Hills institution) and American Association of Community and Junior College' Offender Assistance Program (which works to develop cooperative relations between criminal justice agencies and colleges).

Prison industrial programs available to imprisoned women have usually been of the type which reinforce the woman's traditional role in the socio-economic structure. Arditi, et. al.,⁵⁹ found this to be true in their 1973 survey of prison industries. Like prison industries, vocational training programs in prisons have traditionally limited themselves to improving women's "household skills." There have, however, been a number of recent developments in this area. For example, several states have keypunch training available to female inmates (Niantic in Connecticut is one example.) At Maryland's Women's House of Detention (Jessup) the Baltimore Council AFL-CIO teaches welding, diesel mechanics, pipe-fitting, and carpentry in a program funded by H.U.D. Classes are taught by union workers and by mid-1973, 390 out of 550 people trained by the project had been placed in jobs.

Unemployment is one of the greatest single obstacles women offenders face, both prior to, and following their involvement with the law. A few programs have begun to focus

⁵⁹ Arditi, Richard, et. al., "The Sexual Segregation in American Prisons: Notes," in Yale Law Journal 1229-1273, November/May, 1973.

on this problem. Washington Opportunities for Women (W.O.W.) seeks to place female probationers in apprenticeship openings in non-traditional, well-paying occupations such as construction, meat-cutting, and Xerox repair. In addition to job training and placement, a host of job-related supportive services are also provided.

V. ECONOMICS OF PRISON INDUSTRIES

A. Comparison of Prison and Private Industry1. Competition

According to a 1972 survey,¹ of a total inmate population of 208,618 in the state correctional systems, only 8.3 percent of the prison population was employed in prison industry. Given the dynamics of admissions, releases and assignment changes, it is probable that approximately 25 percent may be exposed to prison industry work experience over the span of a year.

A report by Singer and Wright² estimates the potential competition to private business that might arise from an efficiently run prison industry, and concludes that it is negligible. The entire prison industry work force is approximately 1/10 to 2/10 of 1 percent of the national labor force, which is less than the typical monthly oscillation in the employment rate due to seasonal variations. These aggregate statistics, however, do not reflect the potential competitive threat to small businessmen given increased local prison industry activity. In fact, this may be an operating factor in

¹"The Role of Prison Industries Now and in the Future: A Planning Study," Georgetown University Law Center, Institute of Criminal Law and Procedure, August 1975.

²Singer, Neil M. and Virginia B. Wright, "Cost Analysis of Correctional Standards: Institutional-Based Programs and Parole," Correctional Economic Center of the American Bar Association, Volume 2, January 1976.

the current low percentage of the total state use product market now being serviced by prison industries.

2. Efficiency

The general concensus regarding prison industries operations is that, in general, they are inefficient, their technology is obsolete, and the skills they impart to workers often bear little relationship to the demands for trained personnel of the private industries of the outside world.³ A review of the productivity of California Correction Industries⁴ looks into the organizational structure of correctional industries in California and the various factors relevant to the profit/loss picture. The general observation is that correctional industries are not as efficiently run as private industries. The reasons are:

1. In order to provide training in job skills and useful employment, the industries are not automated. Hence efficiency is reduced.
2. Sections 5092 and 5093 of the Penal Code impose restrictions on the maximum allowable volume of correctional industry operations. Hence, economy of scale cannot be realized.

³ Levy, G. W., R. A. Abram, and D. LaDow, "Vocational Preparation in the U.S. Correctional Institutions: A 1974 Survey," prepared for the Department of Labor, Battelle Columbus Laboratories, Columbus, Ohio, March 1975.

⁴ "A Review of the Economic Efficiency of California Correction Industries - Report to the Assembly pursuant to House Resolution #130," Auditor General of the Legislative Analyst, State of California, Sacramento, January 7, 1971.

3. Due to lack of work skills, work habits and motivation, inmates, in general, are significantly less productive than their counterparts in private industry.
4. Due to rapid turnover of inmates, it is difficult to establish a steady work force.
5. Productivity in the industry is hampered by various demands of the penal setting in terms of required absence from work for visits, medical and personal needs, counselling, etc.
6. Due to lack of training and motivation among inmates, waste of raw materials is high.
7. Correctional industries cannot compete with private industries in hiring qualified supervisory personnel because of the following handicaps:
 - a. Salary level of supervisors in correctional industries is lower than that in private industries.
 - b. Applicants must have a personality that is compatible with the restrictive atmosphere of a correctional institution.
 - c. Because of high inmate turnover rate, supervisory personnel spend a major portion of their time training inmates which leaves little time for innovative effort.
8. The accounting system used in correctional industries is usually ineffective and ridden with inaccuracies, insofar as cost determination and financial statements are concerned.

Though exceptions do exist, this represents a typical picture. In addition, the typical inmate's work day may be as low as four hours.⁵ Volume of production does not increase because:

⁵England, Ralph W., Jr., "New Departure in Prison Labor," in Prison Journal, 41:21.

1. Administrators have no incentive to increase output, and
2. Investment in new capital equipment is not only an expensive proposition, but it also decreases the number of inmates to be employed for a specified level of output, and it increases the cost of training institutional staff in new production technologies.⁶

Such a short-sighted approach to prison industries inevitably results in economic loss.

3. Value of Adult Inmate Manpower

An estimate of the value of adult inmate manpower, most of which is under-utilized, has been made by Neil M. Singer.⁷ He calculates the potential annual earnings of all inmates exceed one billion dollars, where the potential earnings is the average earnings of similar people (i.e., similar schooling and skill levels) in society. Further, the government bears the cost of operating the institutions, which is probably another billion dollars. The report gives a rough calculation of the work of inmate labor and the amount of inmate labor wasted and concludes that the total loss from wasted adult inmate labor exceeds one billion dollars a year. This calculation, however, does not take into account the high rate of unemployment among offenders during the time they are free. Thus, the actual economic earnings lost by imprisonment is considerably less than the value mentioned by Singer.

⁶"A Quote on the Economic Status and Rehabilitative Value of California Correctional Industries," Assembly Office Research, California Legislature, Sacramento, February 1969.

⁷Singer, Neil M., "The Value of Adult Inmate Manpower," American Bar Association, Center for Correctional Economics, November 1973.

B. The Economic Approach to Crime

1. Economic Gain/Loss Concept

The recent interest in the economic approach to criminology began with the work of Gary S. Becker.⁸ Becker postulates that criminals are essentially simple, normal people who like others (i.e., non-criminals) are rational and their preferences subject to given constraints. They may, however, make mistakes in their calculation of the cost and benefit associated with leading the criminal life of their choice. But, in this regard, they are as normal as the worker who does not save in anticipation of layoffs. Hence, any attempt to treat criminals as abnormal or deviant is doomed to fail. Such an economic theory claims to dispense with special theories of anomie, psychological inadequacies or inheritance of special traits. The well-known social concepts of vengeance, deterrence, compensation and rehabilitation are expressed as a special outcome of the more general economic concept of social loss. This new consciousness for the economic gain/loss concept has led to recent moves toward liberalization of prison industry. Minnesota and Illinois have relaxed the traditional prohibition against the free market sale of prison-made goods.⁹ An offender is a consumer

⁸ Becker, Gary S., "Crime and Punishment: An Economic Approach," in Journal of Political Economy, March-April 1968.

⁹ Jensen, Walter, Jr., Edward Mazze, and Neal Miller, "Legal Reform of Prison Industries; New Opportunities for Marketing Managers," in American Business Law Journal, Vol. 12, No. 2, Fall 1974, pp. 173-181.

of resources,¹⁰ and the costs of dealing with an offender are enormous.

2. Higher Revenue and Greater Employment Opportunity

If the overall goals of prison industry are to simultaneously achieve higher revenue and greater employment opportunity for trained ex-offenders, a course of action should be chosen which strikes a reasonable balance between these potentially conflicting goals. Large scale productions are particularly suited for improving the revenue, because they cut down on the average cost of production. However, to improve the employment opportunities of ex-offenders, small and diversified operations are more suited. A suitable compromise may be offered by service industries such as equipment repair, painting, electrical work, keypunch, etc., and light manufacturing work, including woodwork, metal work, plastics and so forth. The incremental capital requirements for making these prison industries self-supporting on a nationwide basis has been estimated to be between 1.2 billion and 1.8 billion dollars.¹¹ However, this incremental capital cost for operating prison industries should not represent a drain on the budget of the Department of Corrections, because it is expected that the increased revenue produced will amortize the costs within a 5 to 10-year period.¹²

¹⁰ Richmond, Mark S., "Measuring the Cost of Correctional Services," in Crime and Delinquency, July 1972.

¹¹ Singer, Neil M. and Virginia B. Wright, op. cit.

3. Private Industry Involvement

One way to minimize the risk of unprofitable operations and at the same time upgrade the prison industry is to contract with private business to run the prison industry operation. This approach has been initiated by Minnesota, where private industries are allowed to establish their operation on the grounds of correctional institutions and to employ inmates to manufacture products for sale in private markets. Similar legislation, introduced by Senator Charles Percy as the "Offender Employment Training Act" would apply to federal prisons as well.¹³ Such contracts can be made attractive to private business through subsidized rental of production facilities within the prison (Lino Lakes facility at Minnesota charges a rent of \$1 per square foot per year), and low interest loans. The benefit to the inmate is higher wages, and the benefits to the institution are the subsistence charges that are withheld from inmates' paychecks.¹⁴ In Minnesota, a subsistence payment of \$1,452 is annually deducted from an inmate's wages as a reasonable cost incidental to confinement.

¹³ U.S. Congress, Senate, "Federal Criminal Justice System Reorganization Act," S.2161, 93rd Congress, first session, 1973.

¹⁴ Miller, Neal, and Walter Jensen, Jr., Reform of Federal Prison Industries: New Opportunities for Public Offenders, 1974, p. 16.

4. Inmate Wages

At this point, a question arises as to what fair wages for the inmates should be. There are two main schools of thought:

1. Favorable rates commensurate with the open market wage structure, and
2. Token gratuity payments.

The first school bases its argument on the fact that worker efficiency is highly related to reward and incentive. This, in turn, leads to an improved sense of work ethics which is vital for post-release performance. A study by Hans Kohl on the prison system in Yugoslavia indicates a decrease of efficiency with a decrease in pay. The second school puts forth the following arguments:¹⁵

1. Commensurate salary is at variance with the concept of punishment.
2. Higher wages for prison industry workers in relation to other inmates (e.g., inmates employed in maintenance) creates disparity within the institution
3. Productivity of prison industry is, in general, lower than in private business due to various legal constraints, high turnover of workers, low level of worker skill, obsolete production systems, etc.

In practice, it appears that the latter school of thought is more prevalent. According to a Congressional Research Service survey of prison industries in 1973, the average minimum wage rate in state institutions was \$0.44 per

¹⁵ Markley, W., "Statement Against the Paying of Minimal Wages to Inmates," in Correctional Industries Association Newsletter, May 1974.

hour. The average monthly earning was \$10.85 for men and \$10.10 for women.¹⁶ Detailed statistics on inmate participation in prison industries, the hourly wages and monthly earnings, the kind of work programs and types of products manufactured are compiled in this survey report. The lowest non-zero wage rate reported is \$.01 per hour in Idaho, Montana and Wyoming. These wage rates appear to be at variance with corrections standard 11.10 which specifies in part: "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 wages for work of the same type in the vicinity of the correctional facility."¹⁷

C. Cost/Benefit Analysis

1. Microeconomics

In order to reach the goals, specified above, reforms have to be implemented, and a course of action has to be determined in light of the overall economic impact on society. One of the ways to quantify this impact is to

¹⁶ Wolf, Jean D., "Inmate Employment Programs in Federal and State Correctional Institutions," Congressional Research Service, Education and Public Welfare Division, October 19, 1973.

¹⁷ "Corrections," National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 1973, p. 387.

apply the principles of microeconomics to the criminal justice system.¹⁸ According to Monkman, the criminal justice system can be likened to a production process whose inputs are offenders, staff, capital stock, etc., and the outputs are safer communities and rehabilitated offenders, and the production process consists of the way the criminal justice system combines its resources and affects the offender. The objective of the system should be to design the production process so as to maximize the outputs under a given budget constraint. The two outputs mentioned above are, however, conflicting. The community will be safest if all offenders are habitually under lockup, but such a total lockup is at odds with conventional standards of justice. An assumption is made that there exists an optimal limit of security consistent with the standards and goals of corrections. The task, then, is to maintain this optimal level and to obtain that combination of resources, as allowed by the budget constraints, which maximizes the economic benefit to be realized both within the institution as well as by the society through successful rehabilitation of ex-offenders. Benefits within the institution can be realized by:

1. Introducing the concept of scale economics,

¹⁸ Monkman, Gail S., "The Economics of Institutional Alternatives," Correctional Economics Center, American Bar Association, presented at American Correctional Association, 104th Congress, Houston, Texas, August 21, 1974.

2. Adjusting labor/capital and inmates/service ratios,
3. Using the private sector to deliver some service if found economical,
4. Avoiding duplication of services, etc.

To determine the cost and benefit associated with the various alternatives, the concepts of marginal cost and marginal benefit have to be introduced. If between two alternatives, the marginal benefit remains the same (i.e., the level of quality remains the same) the one with lower marginal cost should be undertaken. If between two alternatives, the marginal benefits are unequal, then that alternative with the highest benefit to cost ratio should be undertaken.

2. Prison Industry Expansion and Increasing Work Release

The general concept of cost/benefit analysis has also been applied to the criminal justice system by Tropman and Gohlke.¹⁹ This type of analysis is helpful in selecting the optimal course of action in reforming the system of corrections. The same concept has been applied by Singer in an economic evaluation of two different corrections work alternatives, prison industry expansion and an increase in work release. The first alternative suffers from the difficulty of introducing the society's incentive system without raising costs

¹⁹ Tropman, John E. and Karl H. Gohlke, "Cost/Benefit Analysis Toward Comprehensive Planning in the Criminal Justice System," in Crime and Delinquency, July 1973.

to unacceptably high levels. The expansion of prison industry through the introduction of private firms obviates this difficulty. However, it is unattractive to private industry because most sentences are too short to permit an inmate to become efficient in his skill. The second alternative appears to be more cost effective.

3. Capitalism

A study by Williams and Fish²⁰ suggests that the concept of capitalism can be used as a model for the design of a prison system in which the economic incentive self-interest can be used to rehabilitate inmates. According to this system an offender will be fined a set amount of money as a penalty for a crime. The inmate must earn, from activities within the prison system, all of the money needed for his release. The prison authorities would control the means by which inmates can acquire the set amount. This model allows a compromise between those who demand punishment and those who seek rehabilitation.

4. Post-Release Performance

Economic benefit can also accrue if the post-release performance of ex-offenders improves as a result of better work skills acquired in improved prison industries. However, there

²⁰ Williams, Vergil L. and Mary Fish, "Rehabilitation and Economic Self-Interest," in Crime and Delinquency, October 1971.

is no conclusive evidence as yet that work-experience improves post-release performance. In order to give a fair answer, one ought to look into the various factors that contribute to the committal of a crime. A study by Radzinowicz²¹ describes three prevalent thoughts regarding crime in relation to economic conditions:

1. Crime as interpreted in terms of the total social situation produced by capitalism,
2. Crime as a function of poverty, either absolute or relative, and
3. Crime stemming from affluence, especially in modern industrialized societies.

A broader perspective of the overall economic analysis of crime and its control is presented by Harold L. Votey, Jr. and Llad Phillips.²² This study suggests that the generation of crime is inversely related to the deterrent effects of punishment. If the expenditure for protection and deterrence is increased, the frequency and seriousness of crime and hence the social cost of crime decreases. The objective is to minimize the overall cost. The study concentrates on the economic crimes (i.e., larceny, burglary, auto theft, and robbery) committed by 18-19 year old males

²¹Radzinowicz, Leon, "Economic Pressures," in The Criminal in Society, Basic Books, New York, 1971.

²²Votey, Harold L., Jr. and Llad Phillips, "The Control of Criminal Activity: An Economic Analysis," in Handbook of Criminology (Daniel Glaser, editor), Rand McNally, 1974.

and shows that property crime committed by youth is related to economic opportunities. The labor force participation rate is a measure of economic opportunity, and a positive correlation exists between unemployment rate and property crime.

VI. STATISTICS

A. General Statistics1. Federal Reports

The best available statistics on crime in the United States are published by the Federal Bureau of Investigation as the UNIFORM CRIME REPORTS.¹ Since 1930, the UCR has reported the number of crimes known to the police in about 3,000 cities and towns. The bulletin was first published monthly, became a quarterly in 1932, was published semiannually during World War II and annually since 1959.

The police reports that compose the UCR are submitted on a voluntary basis; consequently not all communities are included. During calendar year 1973, crime reports were received from law enforcement agencies representing 97 percent of the United States population living in the standard metropolitan statistical areas, 90 percent of the population in other cities and 80 percent of the rural population. This combined coverage accounts for 93 percent of the total national population.²

Crime trends are based on the number of crimes known to the police. Trends are broken down by population group,

¹There are numerous discussions of the limitations of UCR. One of the best is Marvin Wolfgang, Uniform Crime Reports: A Critical Appraisal, U. of Pa. Law Review, III., 1963.

²Uniform Crime Reports, Federal Bureau of Investigation, Washington, D.C., 1973, pp. 50-56.

geographical location and offense. Those offenses "cleared by arrest" are computed by geographic location, age of offender and intermediate disposition of offender. Data on those arrested indicate age, sex, race, urban/rural/suburban distribution of offenders. Unfortunately, there are no data distinguishing the distribution of those arrested from those incarcerated.

Annually, a similar report is published for each state. Offense and arrest data are computed for each region and each county within the state. Typically there is a breakdown of the disposition of those formally charged (as opposed to those merely arrested). However, characteristics of the prison population are not usually detailed in the Uniform Crime Reports for the United States or for the individual states.

The Department of Justice publishes annual statistics, submitted voluntarily by the states, (in 1970, only 33 of the 50 states cooperated)³ on commitments to state and federal penal institutions in the United States, including details on population movement and characteristics of the inmate population. This publication, NATIONAL PRISONER STATISTICS, was originally titled Prisoners in State and Federal Prisons and Reformatories, and was published by the Bureau of the Census (until 1950), then the Federal Bureau of Prisons (1950-1970) until taken over by the Law Enforcement Assistance Administration (since 1971).

³ National Prisoner Statistics, LEAA, Washington, D.C., 1970, p. 2.

A systematic reporting of parole outcomes analyzed by offender attributes is the goal of the Uniform Parole Reports. This annual data, processed by the National Council on Crime and Delinquency Research Center, presents data on parole outcomes for virtually all 50 states. Published statistical tables relate types of offender to nine categories of post-release behavior for the first year of parole. These categories range from "no difficulty or sentence less than 90 days" through "recommitted to prison with new major conviction(s)."

The annual report of the Federal Bureau of Prisons, FEDERAL PRISONS (formerly Federal Offender), gives detailed statistical data on persons convicted of violation of federal laws.

Statistics on juvenile delinquency are published through the Children's Bureau of the Social Security Administration. Since 1945, they have been published irregularly in mimeographed form and in a special Children's Bureau Statistical Series. Since 1955, the bureau has attempted to cover a national sample representative of all juvenile courts.

In the Spring of 1970, LEAA and the U.S. Bureau of Census conducted a NATIONAL JAIL CENSUS, a report on the state of the Nation's local jails, the number and type of inmates, the number of jail employees, the operating costs, and the presence or absence of selected facilities for juveniles. It should be noted that this is not a regularly

published report. However, a follow-up survey of a representative sample of jails is in the planning stage.

2. State Reports

State statistical reports come in as many varieties as there are criminal justice agencies. Information that is reported regularly (e.g., in annual reports) varies widely from state-to-state, and year-to-year.

Several states, including California, Hawaii, Louisiana, Massachusetts, Michigan, Minnesota, New York, Pennsylvania, Rhode Island, South Dakota, and Texas, have central statistical bureaus which collect and publish statistical information drawn from reports made by a variety of local, county or state agencies. For example, New Jersey's Department of Institutions and Agencies published in its annual report statistics on (1) population admissions and releases, (2) treatment services, and (3) prison industry activities, in addition to qualitative data on inmate behavior and morale. There is also a discussion of prison personnel activities including staff development programs.

3. Project SEARCH⁴

In an attempt to unify the information collecting and reporting efforts that were performed in a variety of

⁴Project SEARCH, Technical Report No. 5, Implementing Statewide Criminal Justice Statistics Systems - The Model and Implementation Environment. SEARCH Group, Inc., Sacramento, 1972.

ways by a multitude of groups, LEAA funded "Project SEARCH" (System for Electronic Analysis and Retrieval of Criminal Histories). Later reorganized as Search Group, Inc., this project has developed a two-pronged model for a national comprehensive data system. The first of these was an information exchange program, Computerized Criminal History (CCH). The second was the development of new methods of accumulating criminal justice statistics called Offender Based Transaction Statistics (OBTS). This data system is under simultaneous development in several states, including Minnesota and Illinois. When fully implemented, the OBTS/CCH system will become a central source for criminal information nationwide, as well as providing a framework for comparable state statistical information.

B. Post-Release Statistics

1. Regularly Reported Data

Federal and state corrections agencies usually receive followup information from only one source: the parole officers. This source provides no information, however, on the many offenders who are released directly to the street, an estimated 34 percent of the 65,000 inmates released nationwide in 1972.⁵

The information collected on the 66 percent who are paroled varies greatly from state-to-state. Many states, such as Connecticut, Washington, and Minnesota, require only

⁵Uniform Parole Reports Newsletter, April 1974.

infraction reports (e.g., absconder, re-arrest), though the parolee usually meets monthly with his parole officer. Thus, the information collected rarely goes beyond the requirements of the NCCD Uniform Parole Reports, which deal only with levels of recidivism. In such an environment, one can seldom get answers to such simple questions as: "How many parolees are unemployed?," "What is the average time to failure on parole?," or "How long does the average parolee remain under supervision?".

Quarterly parole follow-up reports collected in Georgia are more complete than in most states. These reports include information about parolee address, co-habitants, employer and address, type of work, and the parole officers comments on "conduct, progress, and attitude."⁶ In addition, the Georgia Department of Labor collects annual information on the number of offenders using their services. Through computer records, which are keyed by social security number the department hopes to expand this effort to determine ex-offender income and needs for unemployment and welfare benefits.⁷ This approach would discover information on all releases, not just parolees.

⁶ Interstate Progress and Conduct Report, Georgia Department of Offender Rehabilitation, form CBS-18, 1975.

⁷ Personal Communication with Andrew Anderson, Georgia Department of Labor, October 1975.

Illinois' parole follow-up effort is an extensive one. Parole officers routinely turn in monthly progress sheets on over 4,000 parolees. The reports include sections that are processed by an optical reader into the Department of Corrections's computerized data files. Included in the information is the length and type of employment, gross wages, and other data.⁸

2. Special Studies

In addition to the often meager information routinely collected by the states, vast amounts of follow-up data exist in many research and program evaluation reports published each year. Unfortunately there is little study-to-study comparability in terms of client types, follow-up intervals, or information collected. A summary of many of these efforts has been done by Glaser,⁹ and more recently in a survey of evaluation studies by Lipton, Martinson, and Wilks.¹⁰ The latter text describes, but does not exhibit the post-release data.

⁸ Personal Communication with Edmund Muth, Director, Illinois Prison Industries, March 1976.

⁹ Glaser, Daniel, The Effectiveness of a Prison and Parole System, Bobbs-Merrill, Indianapolis, 1966.

¹⁰ Lipton, Martinson and Wilks, The Effectiveness of of Correctional Treatment - A Survey of Treatment Evaluation Studies, Praeger Publishers, Springfield, Massachusetts, 1975.

There are two studies of particular interest that were covered neither by Glaser nor Martinson. The first, a Hartford Courant article on recidivism, is interesting because the data collected on individuals spans ten years, covering individuals discharged, paroled, and released from parole. Also, the recidivism data includes careful reporting of offenses committed outside Connecticut, as well as within the state. This kind of detail is rare in post-release data.¹¹ The second study included 25 MDTA offender training programs, and was unusual for two reasons. First, a uniform set of data was collected from 25 separate programs located throughout the nation. Second, the post-release information collected was quite comprehensive, as shown in Figure A. These two studies serve as practical examples of post-release statistical information that far exceeds the current norm.¹²

C. Recidivism Statistics

As is true for post-release data in general, recidivism statistics are not uniformly reported. Both the definition of recidivism and the length of the time period for its measurement differ from report-to-report along with many other

¹¹ Cocherham, William, and Stanley Simon, "State's Prisons Fail to Deter or Help Most Criminals," Hartford Courant, Hartford, Connecticut, 1974.

¹² ABT Associates, Inc., "An Evaluation fo the Training Provided in Correctional Institutions Under the Manpower Development and Training Act, Section 251" Final Report, Vol. III, 1971.

Date of Release _____ Current Date _____
 (month) (year) (month) (year)

Are you now in prison?

- 1 ___ No
 2 ___ Yes, have returned to prison on a *parole violation*. The nature of the violation is: _____

3 ___ Yes, have returned to prison because of the following *new offense*: (check only one)

- | | |
|---|--------------------|
| 01 ___ Assault | 07 ___ Larceny |
| 02 ___ Automobile Theft | 08 ___ Robbery |
| 03 ___ Burglary | 09 ___ Sex crime |
| 04 ___ Drugs, Narcotics or Alcohol | 10 ___ Misdemeanor |
| 05 ___ Paper crime (fraud, forgery, etc.) | 11 ___ Other |
| 06 ___ Death (murder, manslaughter, etc.) | (Specify) _____ |

What is your current employment status

- 1 ___ Employed *full-time*
 2 ___ Employed *part-time* _____ hours per week.
 3 ___ Not working but looking for work
 4 ___ Not working and not looking for work for the following reason:
 a. ___ Illness b. ___ In school c. ___ Other (specify) _____

If you are employed *full or part time*,
 on what date did you start?

_____ (month) (year)

Was a job developed for you by the time of your release?

- 1 ___ No
 2 ___ Yes, and I took it.
 3 ___ Yes, but I did not take it.

How many weeks (total) have you worked since leaving prison?

- a. Number of weeks *full-time* _____
 b. Number of weeks *part-time* _____ at _____ hours per week

What is your current (or most recent) job? _____

- a. What is your current (or most recent) hourly wage? \$ _____
 b. What has been your total income since leaving prison? \$ _____
 (Include earnings during work release)

If you received MDTA training in prison, what part of it do you feel was *most* helpful? (check one only)

- ___ Basic Education ___ Counseling ___ Other (specify) _____
 ___ Vocational Training ___ Placement Help ___ None of any significant help.

Are you now receiving welfare or other public assistance payments? ___ yes ___ no

What is your current marital status?

- 1 ___ Never married
 2 ___ Married
 3 ___ Widow/Widower
 4 ___ Divorced/Legally Separated

How many dependents (besides yourself) do you now have?

- | | | |
|-------|-------|------------|
| ___ 0 | ___ 3 | ___ 6 |
| ___ 1 | ___ 4 | ___ over 6 |
| ___ 2 | ___ 5 | |

With whom do you live now?

- 1 ___ live alone 4 ___ at half-way house, church residence, Salvation Army, etc.
 2 ___ with family 5 ___ work release institution
 3 ___ with friends 6 ___ other (specify) _____

Are you now participating in community, religious, or group recreational activities?

- 1 ___ Yes, (please list) _____
 2 ___ No

Are you now involved in any rehabilitative group such as Alcoholics Anonymous, Synanon, etc.?

- 1 ___ Yes 2 ___ No

What has been your single *most* difficult problem since your release (Please check only one)?

- | | | |
|-------------------------|--------------------------|-------------------------------------|
| 1 ___ Family problems | 5 ___ Drugs | 9 ___ Parole restrictions |
| 2 ___ Housing | 6 ___ Companions | 10 ___ Other (please specify) _____ |
| 3 ___ Public Acceptance | 7 ___ Lack of money | |
| 4 ___ Drinking | 8 ___ Lack of employment | 11 ___ No major problems |

Figure A. Information Collected for All Participants at Intervals of Three and Six Months Following Release ¹³

factors that are often not explicitly addressed. As a result, recidivism rates reported in the literature vary widely. Glaser cites figures for ex-offenders returned to prison ranging from 24 percent to 44 percent for seven studies conducted over periods from 1943 to 1959.¹⁴

1. National Data

There are two principal national sources of recidivism data: the Uniform Crime Reports, printed annually by the FBI, and the Uniform Parole Reports, published by the National Council on Crime and Delinquency. Both organizations also provide major information on a state-by-state basis. These data indicate that large numbers of ex-offenders return to crime.

The FBI records indicate that during a 3-year follow-up period, recidivism (rearrest) rates ranged from 22 percent to 76 percent, as shown in Figure B. Burglary, robbery and auto theft had the highest rearrest rates, at 76 percent, 70 percent and 68 percent respectively. The Uniform Parole Reports for male felons show auto theft, forgery-larceny by check, and theft, burglary and unarmed robbery as most likely to recidivate (35, 30, 26, 26, 26 percent). The two reports rank recidivism crimes in roughly the same order, but the percentages are considerably different.

¹⁴ Glaser, Daniel, op. cit., p. 24.

PERCENT REPEATERS

BY TYPE OF CRIME IN 1972

PERSONS RELEASED IN 1972 AND
REARRESTED WITHIN 3 YEARS¹⁵

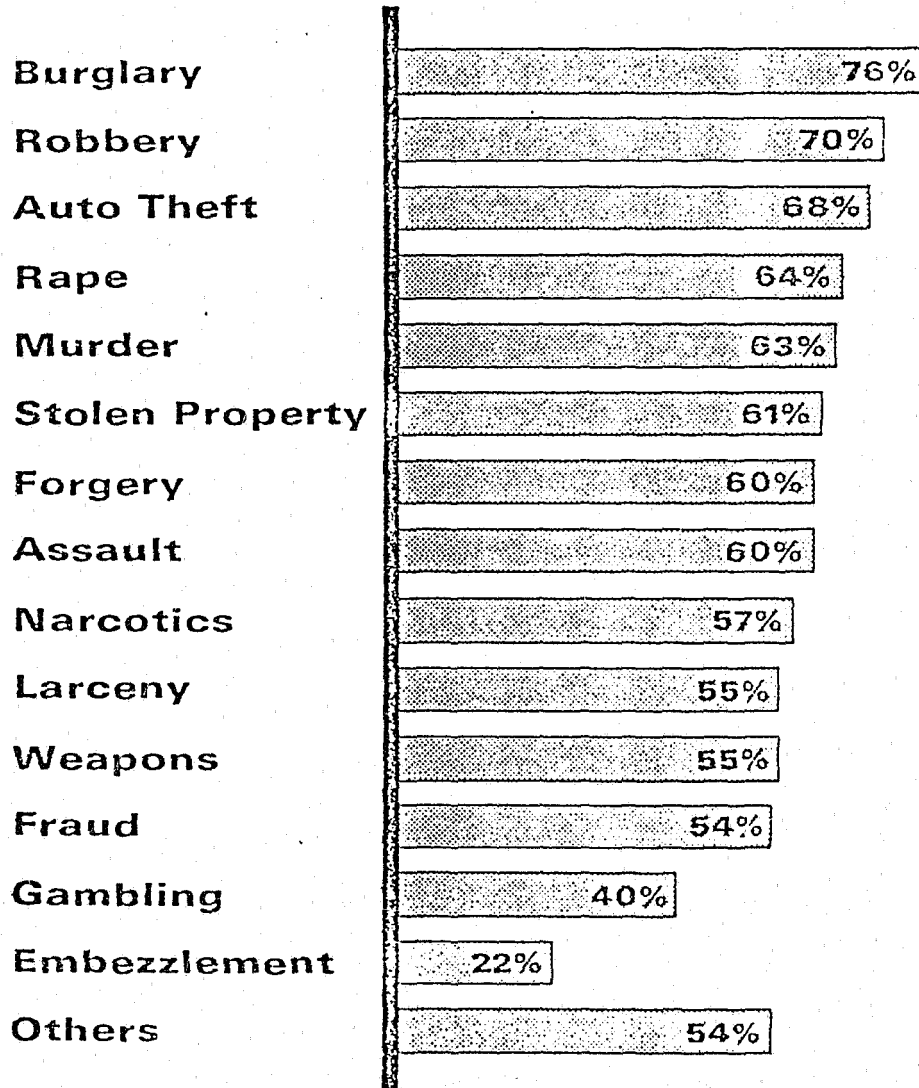


Figure B. Percent Repeaters

¹⁵

FBI Uniform Crime Reports 1974, p. 51.

2. Factors Associated with Recidivism Data

There are several factors which may help to explain the large difference in reported statistics, not uncommon among recidivism reports. First, the UCR defines non-recidivists as those who have not been arrested, while the UPR defines nonrecidivists as those who have "no difficulty or sentence less than 90 days" and are continued on Parole.¹⁶ Second, while studies have shown that recidivism increases considerably over the first three years of release, the UPR covers only a one year followup, as opposed to three years for the FBI Report.¹⁷ Third, the UPR Report examines recidivism for male felon parolees, while the FBI Statistics are not restricted to this group. Recidivism rates have been shown to vary with type of release, the highest rates for those serving their full sentence, followed by those paroled, and then by probationers. Also, states reporting data for UPR have little information on out-of-state arrests, which are substantial according to a study of recidivism by the Hartford Courant.¹⁸

¹⁶ NCCD Uniform Parole Reports, 1971.

¹⁷ Adams, Stuart, A Comparative Study of Recidivism Rates in Six Correctional Systems, Research Report No. 21, D.C. Department of Corrections, 1970.

¹⁸ Cockerham and Simon, op. cit.

In addition to the above considerations, several offender-related characteristics may affect recidivism rates. The Uniform Parole Reports list recidivism by type of offense, previous number of convictions, and history of drug or alcohol abuse. In order to simplify the categories of recidivism, and to compensate for variations in state reporting, three levels of recidivism have been defined, as shown in Figure C. The corresponding recidivism data is presented in Table VI-I.¹⁹ These data indicate that offenders committing economic crimes are more likely to recidivate, and that the number of previous commitments also has a strong relationship to recidivism. Surprisingly, the effect of a drug or alcohol abuse history on recidivism is not as apparent as one might expect.

Luftig cites still other factors that may be correlated with recidivism, according to the literature he surveyed.²⁰ These include offender age, intelligence, race, marital status, age at first arrest, and length of sentence.

Dorothy Jaman's study of 217 California new admissions suggested that several institutional factors influence post-

¹⁹ NCCD, Uniform Parole Reports, 1971.

²⁰ Luftig, Jeffrey, "The Relationship Between Institutional Programs of Vocational Education and the Recidivism Reflected by Parolees of Minnesota Correctional Institutions for Men," Ph.D. Dissertation, University of Minnesota, 1975.

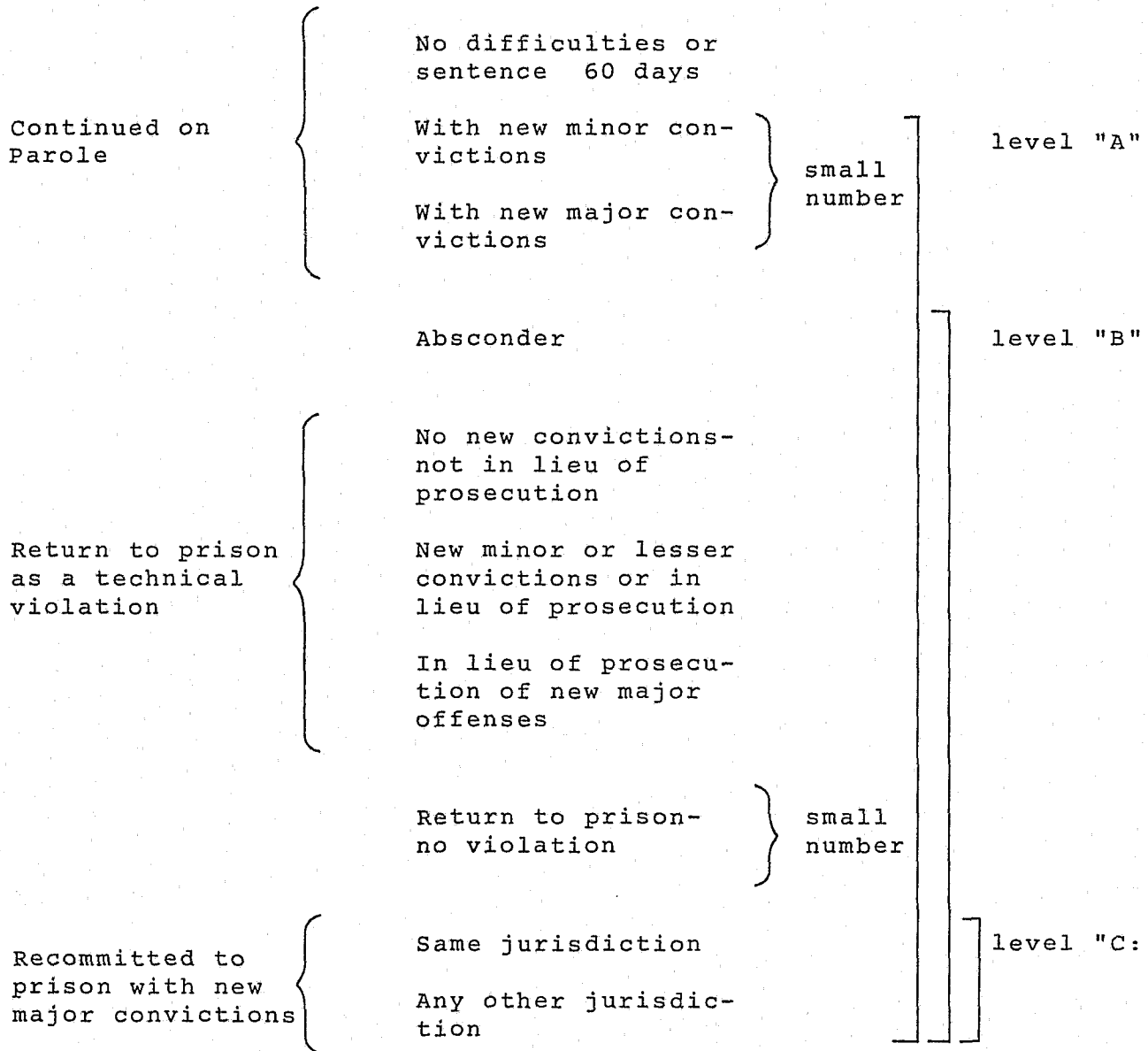


Figure C. NCCD Recidivism Typology

Table VI.1 First Year Recidivism and Related Factors*

		A	B	C
Prior Economic Offense (Burglary, Theft, Forgery)		28%	26%	6%
Prior Noneconomic Offense		19%	17%	3%
Prior Hard Core Offense (Homicide, Robbery, Burglary, Assault, Rape)		22%	20%	5%
Other Offense		25%	23%	3%
Prior Drug Abuse		26%	24%	6%
Nondrug Abuse		22%	29%	5%
Prior Alcohol Abuse		26%	24%	5%
Nonalcohol Abuse		21%	19%	5%
Previous Commitment	0	20%	18%	5%
	1	28%	26%	6%
	2	30%	28%	7%
	3	33%	30%	6%
	4	40%	37%	8%
	5	40%	36%	7%
	6	47%	44%	7%
	7+	42%	38%	5%

* NCCD, Uniform Parole Reports, 1971.

release behavior.²¹ A Nationwide study of 25-MDTA-251²² vocational education programs revealed a significant decrease in short-term (three and six months) recidivism for inmate trainees. Luftig provides additional evidence of this correlation between vocational education and lower recidivism as well as improved post-release employment experience in his study of a sample of parolees from prisons in Minnesota.²³ A summary of his findings is presented in Table VI.2. These very impressive statistics (which reveal a statistically significant positive impact on the .01 significance level on both employment and recidivism) are further enhanced by the fact that Dr. Luftig's statistical analysis of the characteristics of the inmates included in the study showed no statistically significant difference (at the .05 level) between the participant and nonparticipant groups on any of the following variables that he examined:

- Intelligence
- Race
- Marital/Living Status on Parole
- Previous Number of Incarcerations
- Type of Offense for Last Commitment Prior to Parole
- Length of Sentence for Last Commitment Prior to Parole
- Age at First Arrest

²¹ Jaman, Dorothy, "Behavior During the First Year in Prison, Report IV-As Related to Parole Outcome," California Department of Corrections, 1971.

²² ABT Associates, op. cit.

²³ Luftig, op. cit.

Table VI.2 Summary Results of a 1975 Study*--One Year Parole Follow-up of Minnesota's Vocational Education Programs

Recidivism Effects	P R I S O N S			
	Stillwater		St. Cloud	
	Partici- pants	Non- Partici- pants	Partici- pants	Non Partici- pants
Employment Effects	96	50	110	50
<u>Recidivism Effects</u>				
Arrested on Parole	33%	50%	37%	66%
Reincarcerated or Parole Revoked	24%	40%	24%	54%
<u>Employment Effects</u>				
Full-Time	72%	36%	65%	30%
Part-Time	9.4%	6%	14%	14%
Irregular	10.4%	30%	13%	18%
Unemployed	7.3%	28%	9%	38%

* Luftig, Jeffrey T., "The Relationship Between Institutional Programs Of Vocational Education And The Recidivism Reflected By Parolees Of Minnesota Correctional Institutions For Men." Ph.D. Thesis, University of Minnesota, Minneapolis, December 1975.

The Luftig sample, however, excluded program dropouts from the experimental group. This omission may tend to overstate the benefits accruing from the training programs.

3. Statistical Evaluation of Recidivism Data

Aside from the issues inherent in the acquisition of an appropriate data base, there are additional challenges attendant to the use of statistical measures of program effectiveness which are capable of detecting differences between the post-release performance of ex-offenders who participated in various programs compared to those who did not. Conventional program evaluation methodology generally is limited to the calculation of the percentages of "success" or "failure" as defined according to a specified criterion. There are two serious limitations associated with this methodology:

Firstly, there is the practical problem of the required sample size necessary for detecting differences in the true but unknown proportion of successes in the entire target populations for the participant and nonparticipant or control groups.

Secondly, there is the problem of incomplete information that is inherent in the use of dichotomous variables (success or failure) for measures of program effectiveness.

To illustrate the sample size problem associated with the use of proportions, Table VI.3 shows the relationship between required sample size and the absolute difference in the sample recidivism rates between the treatment and

Table VI.3 Sample Size Required to
Detect Treatment Effects

		Absolute Difference in Sample Recidivism Rates Needed to Determine Significant Effect		
		10%	5%	1%
% Confidence In Results	80%	82	1,328	8,218
	90%	136	542	13,530
	95%	192	770	19,208
	99%	332	1,328	33,180

nontreatment groups that is needed in order to identify a statistically significant program effect at various confidence levels. For example, the table indicates that for a fixed sample size of $n=136$, one would have to observe a difference of at least 10 percentage points in the sample recidivism rates of the treatment and nontreatment groups in order to reach the conclusion that there was a significant program effect at the 0.1 significance level. Given the same difference in success rates between the treatment and nontreatment groups, in order to reach the conclusion of a significant program effect at the 0.01 significance level, a sample size of 332 would be required.

The limitations inherent in the use of dichotomous variables for program effectiveness measures are many. As indicated earlier in Section IV-A, program effectiveness depends not only on the proportion of program failures but also the nature of program failures, e.g., new convictions versus parole revocations and whether or not these were for technical violations or criminal activity. In addition, it is important to take into account when the program failures occurred in terms of the duration of time from prison release. Given this type of information, the statistical techniques of failure rate analysis (used extensively in the engineering application of probability theory to equipment failure problems) can be used to measure ex-offender performance. The benefit of this type of analysis is that it allows one to differentiate between program effects, that

under conventional program analysis would be considered the same. This is illustrated in Figure D below:

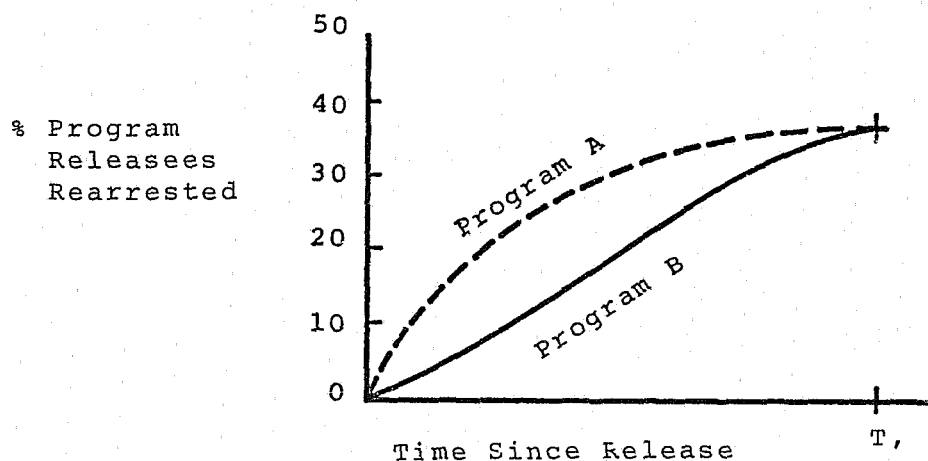


Figure D. Comparison of Recidivism Rates

Although the percentage of program releasees rearrested by time T is the same (viz 35 percent) under the two programs, program B is actually better than program A because during the time prior to T , a smaller percentage is rearrested under program B than under program A. Looked at in another way, the average time from release to rearrest is greater for program B which implies a longer period of success on the average for program B.

The techniques of failure rate analysis have already been used successfully on recidivism data by Harris to detect program differences which would not be judged statistically significant under conventional methods. Moreover, these techniques can be extended to examine other measures

of post-release performance, such as gross income and welfare receipts.²⁴

D. Post-Release Employment Statistics

In addition to the factors affecting recidivism described above, the post-release employment of the ex-offender has been shown to be correlated with parole success.^{25,26} Most offenders are poorly equipped to compete in the legitimate working world.²⁷ These observations are in harmony with the fact that nearly 90 percent of the crimes committed in 1974 were property crimes.²⁸ In addition, offenders committing these crimes are more likely to recidivate than others, indicating that efforts to change the offender's economic conditions have the potential to

²⁴ Harris, Carl M. and Stollmack, "Failure Rate Analysis Applied to Recidivism Data," in Operations Research, Vol. 22, No. 6, Operations Research Society of America, Baltimore: November/December 1974.

²⁵ Ibid.

²⁶ Cook, Philip, "The Correctional Carrot - Better Jobs for Parolees," in Policy Analysis, Vol. 1, No. 1, Regents of University of California, 1975.

²⁷ Glaser, op. cit.

²⁸ FBI, "Uniform Crime Reports," 1974.

reduce crime.²⁹ Unfortunately, national statistics are published neither by the FBI nor the NCCD which include cross-tabulations of employment success with any measures of recidivism.

Several programs attempting to improve the offender's job experience have collected statistics measuring this correlation. In Maryland, the LIFE Project supplied groups of ex-offenders with job placement services and/or financial aid,³⁰ while the State of Washington has sponsored a similar Adult Corrections Release Stipend Program.³¹ Illinois is currently operating a model ex-offender program to provide a variety of post-release services including job referrals.³² In New York City, Project Wildcat has developed jobs for ex-offenders through supported work.³³

²⁹ Ibid., and NCCD, "Uniform Parole Reports," 1971.

³⁰ Lenihan, Kenneth, "The LIFE Project, Some Preliminary Results, Design Questions, and Policy Issues," Washington, D.C., 1974.

³¹ Office of Research, "Adult Corrections Release Stipend Program," Report No. 4, Department of Social and Health Services, State of Washington, 1974.

³² Illinois MEP, "Quarterly Progress Report," No. 1, 1975.

³³ Vera Institute of Justice, "Wildcat: The First Two Years," New York, 1974.

These programs (along with others) have provided statistics relating to the impact of three factors on recidivism: job placement, stipends and gate money, and supported work.

1. Job Placement

Substantial job placement efforts alone cannot be expected to have long-range effects on employment, as the preliminary data from Project LIFE indicates. In this program, statistics on randomly selected control and experimental groups revealed that those eligible for intensive job placement services experienced higher employment only over a short initial period (less than 20 weeks).³⁴ This initial difference should not be treated as an insignificant one; the corresponding benefits should be measured and weighed against placement costs. Unfortunately, the preliminary results for the LIFE Project do not examine the correlation of job placement service and recidivism. It is also important to remember that the LIFE job placement effort was not teamed with any institutional vocational training program. This was not the case for the analysis of job placement for 25 MDTA programs.³⁵ Here the placement efforts were meager, but were supported by vocational training programs. Those having job development

³⁴ Lenihan, op. cit.

³⁵ ABT Associates, op. cit.

services available were more frequently employed, and a higher percentage held training related jobs. However, no reduction in reincarcerations was found.³⁶

Preliminary reports on the Illinois MEP Job Placement Program support the Project LIFE contention that job placement benefits accrue in the period immediately following placement. The first quarterly report indicates job retention rates of 86, 40, and 28 percent at the end of 5, 30, and 90 days, respectively.³⁷ It appears that increasing the job retention rate can prolong the benefits associated with job placement. This assumption is supported by the correlation found by Cook between recidivism and number of job changes.³⁸ Future information from this program, which placed approximately 600 ex-offenders in jobs during its initial two quarters,³⁹ will be quite thorough, due to a computerized information system being developed to monitor the program's success. These statistics will allow a comparison of job retention versus post-release success, to be used as a measure of effectiveness for job placement agencies.

³⁶Ibid., pp. 115 and 134-136.

³⁷Illinois MEP, op. cit.

³⁸Cook, op. cit.

³⁹Personal Communication with Edmund Muth, February 1976.

Unfortunately, too many of the available data sources lack the information needed to examine program cost effectiveness: program cost and economic data on ex-offender performance. This aspect of evaluation combined with recidivism data can yield more circumspect assessment of job placement programs. The MDTA report does provide information on average wages of trainees and costs per enrollee but no analyses have been performed to estimate the benefit-cost ratio of these programs.

2. Stipends and Gate Money

Studies have been conducted to examine the correlation of recidivism with the use of stipends and gate money, another approach to alleviating the economic hardships faced by the ex-offender. Project LIFE reports statistics on offenders receiving stipends (\$60/week for three months) that indicate substantial decreases in re-arrests for theft in comparison with a similar control group.⁴⁰ Further, these differences appear to persist after the initial three months, suggesting a change in lifestyle for some offenders. A similar study in Washington State provides data that is, however, less definitive for two reasons. Firstly, no control group was utilized. Secondly, the results are biased by the selection criteria for the stipend

⁴⁰ Lenihan, op. cit.

vs gate money options which prohibit those with definite offers of employment from receiving the stipends.⁴¹ In spite of this bias, the offenders receiving weekly stipends had lower recidivism rates (return to institution) than those receiving only gate money, until 16 weeks, when the majority (70 percent) of stipends had been discontinued. At this point, recidivism climbs more steeply, and eclipses that of those receiving gate money by the 20th week. By the end of one year, 12.9 percent of the stipend participants had returned to prison as opposed to 8.1 percent for gate money participants. Again, this effect may well be due to the biased selection process; statistical inference from these data is hazardous, if not impossible.

As was the case for most job placement programs cited earlier, no economic data was reported for the above income supplement programs. Thus, the data does not permit analysis of program cost effectiveness.

3. Supported Work

One of the few studies to collect statistics for cost-benefit analysis of a job placement program was the study of Project Wildcat's operations (see also Hola-

⁴¹Office of Research, "Adult Corrections Release Stipend Program," op. cit.

han).^{42,43} While the recidivism data (arrests) does not reveal significant differences between those jail inmates participating in the supported work program and a control group, the analysis of participant income, production, welfare receipts and crime costs were compared with similar data for the control group. The differences were then weighed against the program cost, determining a benefit-cost ratio of 1.01 in the first year of program operation.⁴⁴

The type of statistics required for benefit-cost analysis are lacking in most job placement project evaluations. Yet this kind of analysis should be the norm.

⁴²Vera Institute of Justice, op. cit.

⁴³Holahan, John F., "A Benefit-Cost Analysis of Project Crossroads," National Committee for Children & Youth, Washington, D.C., December 1970.

⁴⁴Vera Institute of Justice, op. cit., p. 125.

VII. VICTIMIZATION

Throughout the 1940s, 1950s, and early 1960s, attention devoted to victims of crime was mushrooming on several fronts. Thus, by the mid-1960s a number of forces pressing toward the creation of a victim perspective had come to the fore. Their cumulative effect was the development of the methodology required to generate the requisite information about the nature and extent of criminal victimization.

In theory, victims of crime have for centuries had available to them the civil remedy of a tort action against persons who have wronged them through the commission of a crime. In practice, however, this remedy is in most instances of little value. In many cases the offender is unknown; or where he is known, the victim often cannot afford the expense, in terms of money and time, of bringing a law suit against the offender.¹ In addition, since perpetrators of violent crimes are typically poor or financially destitute, a judgment against such offenders would be uncollectible. Moreover, if convicted and incarcerated, the incarceration merely serves to compound his destitute condition, since most inmates earn little, if any, money during

¹Wolfgang, Victim Compensation in Crimes of Personal Violence, 50 Minn. L. Rev. 223 (1965).

their confinement. The use of earnings from prison industry has been considered for victim restitution, but the earnings remain so small that existing statutes deal with compensation rather than restitution.

During the last two decades there has developed throughout the world, an increased interest in legislation to provide monetary indemnification to victims of crime, particularly crimes of violence.² This concern for the plight of crime victims is largely attributable to the writings of Margery Fry, an English penal reformer, who set forth her views in a book and a newspaper article published during the 1950s. She had originally been interested in the possibility of requiring that reparation be made by the criminal offender to his victim as part of the process of reforming or rehabilitating the offender.³ Due to the practical difficulties inherent in such an approach, she later became disenchanted with this idea and instead advocated that society should assume this obligation and compensate victims of crime as a matter of social welfare policy.⁴ All of the victim-

²See generally Compensation to Victims of Crimes of Personal Violence: An Examination of the Scope of the Problem: A Symposium, 50 Minn. L. Rev. 211 (1965).

³Fry, M., The Arms of the Law, 1951, p. 126.

⁴Fry, M. Justice for Victims, The Observer (London), July 7, and 8, 1957, Col. 2, reprinted in Compensation for Victims of Violence, 8 J. Pub. L., 191, 192-92 (1959).

indemnification plans adopted in New Zealand,⁵ Great Britain,⁶ and the United States⁷ have been designed primarily to provide compensation rather than reparation or restitution. The term compensation refers to payment made from state funds to victims of crime, while reparation and restitution refer to payment made by the criminal offender to his victim as indemnification for the harm or injury caused by the crime.

One of the theories which has been advanced in support of proposals for legislation involving compensation by the state to victims is that the state has a duty to protect its citizens from crime and that if it fails to do so it incurs an obligation to indemnify those who are victimized.⁸ A second argument is that since the state imprisons offenders and thereby renders most of them unable to answer to their victims in terms of tort damages, the state should be responsible to such victims.⁹ The third and most widely accepted reason for adoption of compensation schemes is that the state should aid unfortunate victims of crime as a matter of general welfare policy.

⁵ See Cameron, Compensation for Victims of Crimes of Violence, The New Zealand Experiment, 12 J. Pub. L. 367 (1963).

⁶ Home Office and Scottish Home Office, Compensation for Victims of Crimes of Violence, Cmnd. No. 2323 (1964).

⁷ See e.g. Cal. Pen. Code §§/3600-03 (West 1965).

⁸ Culhane, California Enacts Legislation to Aid Victims of Criminal Violence, 18 Stan. L. Rev. 266, 272 (1965).

⁹ Ibid.

The New Zealand Criminal Injuries Compensation Act became effective on January 1, 1964.¹⁰ It established an administrative tribunal which has power to hold hearings on claims for compensation and to make awards. Compensation is limited to personal injuries resulting from certain crimes of violence. No compensation is allowed for loss of, or damage to, property. The government reserved to itself the right to collect from the offender after an award has been made to the victim. On August 1, 1964, the British government introduced a nonstatutory scheme establishing an administrative board to assess and award compensation to victims. Compensation is limited, under the British procedure, to cases involving personal injuries resulting from crimes of violence.¹¹ In making its decision the board is to consider among other things, whether or not the victim was partially to blame for his own injuries.¹²

Under a 1967 California act,¹³ a crime victim, or a member of his family or a dependent who has sustained

¹⁰Weeks, The New Zealand Criminal Injuries Compensation Scheme, 43 So. Cal. L. Rev. 107 (1970).

¹¹Schafer, S., The Victim and His Criminal, 1968, pp. 121-122.

¹²Ibid., pp. 121, 123.

¹³Cal. Govt. Code §§ 13960-13966 (West Supp. 1969). See also Shank, Aid to Victims of Violent Crimes in California, 43 So. Cal. L. Rev. 85 (1970).

injury or pecuniary loss as a result of physical injury or death may obtain compensation through an administrative procedure. When an award is made, the state becomes subrogated to any right of action accruing to the claimant as a result of the crime for which the award was made. The act also contains the following unique provision which applies during the sentencing phase of the offender's trial:

Upon conviction of a person of a crime of violence...resulting in the injury or death of another person... the court shall take into consideration the defendant's economic conditions, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, may, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury...and the proceeds in such fund shall be available for appropriation by the Legislature to indemnify persons¹⁴ filing claims pursuant to this chapter.

A New York statute also creates an administrative board with power to entertain claims by victims for compensation for physical injuries.¹⁵ This act apparently is applicable to claims involving all types of crimes except those arising from the operation of a motor vehicle in which injury was not intentionally inflicted. The Massachusetts victim compensation law which became effective on July 1,

¹⁴ Ibid., §§13964.

¹⁵ N.Y. Executive Law art. 22, §§620-635 (McKinney Supp. 1969).

1968,¹⁶ limits compensation to crimes involving force or violence, or threats of force or death. The claimant may obtain an award by filing a claim against the Commonwealth in the district court. Both the Massachusetts and New York statutes contain subrogation provisions.

Hawaii enacted victim compensation legislation in 1967,¹⁷ under which claims are processed by an administrative commission. It should also be noted that Senator Yarborough (D-Tex.) has introduced victim compensation bills in the United States Senate.¹⁸

These plans for compensating victims of crime are based almost entirely upon the state welfare or compensation approach rather than on the basis that the offender himself should be made to pay for his crime. The California act does contain the provision that fines may be imposed against offenders who are able to pay and that such fines are to be contributed to a victim indemnity fund. Several of the above schemes do contain subrogation provisions; but, in

¹⁶ Mass. Ann. Laws ch. 258A, §§1-7 (1968). See also Floyd, Massachusetts Plan to Aid Victims of Crime, 48 B.U.L. Rev. 360 (1968).

¹⁷ Hawaii Rev. Stat. §351 (1968). Rubin & Glen, Development in Correctional Law, 14 Crime & Delin. 155, 170 (1968). See Md. Ann. Code Art. 26A, §§1-17 (Supp. 1968).

¹⁸ Yarborough, The Battle for a Federal Violent Crimes Act: The Genesis of S 9., 43 So. Cal. L. Rev. 93 (1970); Yarborough, S. 2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act, 50 Minn. L. Rev. 255 (1965).

view of the economic status of most offenders, it is unlikely that the state or government will be any more successful in pursuing these remedies than private victims have been in the past in pursuing civil tort remedies against offenders.

Mention should be made of victim restitution programs in both Minnesota and Massachusetts. In Minnesota, the victim and the inmate are brought together and the inmate personally pays the victim. In Massachusetts, an inmate makes restitution under a contract agreed upon and signed by him, the parole board, and the institution.

Also in West Germany, a law has been proposed which would provide victims of violent crime with enough money to maintain their individual living standards. First year costs are estimated at \$5 or \$6 million, doubling by 1980, with the cost to be borne by the eleven West German states rather than the federal government. It will be tied into the existing federal law on war victims' benefits.

There are currently 13 states which have victim compensation statutes: California, New York, Hawaii, Massachusetts, Maryland, New Jersey, Nevada, Alaska, Washington, Rhode Island, Illinois, Delaware and Georgia.¹⁹ The U.S. Senate has passed a bill that would allow a maximum \$25,000

¹⁹ Private communication from Mary McClaymont, National District Attorney's Association; Commission on Victim Assistance, Washington, D.C., 1975.

payment to crime victims and President Ford has proposed a \$50,000 maximum payment, limited to victims of federal crimes. In addition, the Dutch, Austrians, Australians, and Swedes have laws that provide some special compensation, as do some provinces in Canada.

APPENDIX

State Prison Industries: The South Carolina Plan¹

A progressive plan for prison industry exists in South Carolina. Here a total reorganization of the penal system is being made with the idea of training current and future inmates for jobs upon release as the major thrust behind the reorganization.

I. Factors Related to an Evaluation of the Future Inmate Labor Force

1. The planned state regionalization of residential facilities into centers housing 200 persons.
 - a. Because of the regionalization, any one industry will be able to draw only from one center.
 - b. The physical location of prisons will have an impact on prison industries as the industries will be dependent on what kinds of private industries are located nearby.
2. The potential co-utilization of inmates from different "treatment" levels or stages of incarceration.
 - a. Levels²
 - (i) Referral and Diversion-involves the use of non-correctional programs such as mental health, or drug or alcohol abuse treatment programs which deal more appropriately with the needs of some offenders than correctional programs.

¹State of South Carolina, Department of Corrections, The Correctional Industries Feasibility Study: Market Research Phase, Phase 2, The Market Opportunity Analysis, 1973.

²State of South Carolina, Office of Criminal Justice Programs, South Carolina Adult Corrections Study, May 1973.

- (ii) Community Supervision-consists of programs (such as traditional probation) which provide some degree of support and supervision for individuals in the community.
- (iii) Intensive Community Supervision-refers to those programs which provide a greater degree of supervision in the community for offenders who might be incarcerated if the only alternative was traditional probation. On a temporary basis, these programs can provide the degree of structure and "limit-setting" needed to help an individual through a rough period.
- (iv) Partial Residential Programs-provide support for offenders returning to community life. They enable the reintegration process to occur incrementally, thus minimizing danger to the public and providing support for each offender.
- (v) Community Correctional Residential Programs-relate the institutionalized offender to the community without releasing him/her before this is appropriate. Community correctional centers interact frequently with the community, facilitating the use of community resources and the involvement of the citizenry in the correctional facility. They also support varying degrees of offender involvement in activities outside the perimeter of the correctional facility.
- (vi) High Security Residential Programs-provide environment for the dangerous offender that supports the learning of personal responsibility and of alternative interpersonal skills. Such programs aim for the offender's return to the community correctional context, and for her/his ultimate return to the community itself.

It is planned that "level" five institutions will be most suitable for the prison industries program. In South Carolina it is expected that there will be 3,100 of such inmates in 1977 and 4,200 by 1982.³

3. The length of an inmate's sentence.

- a. It is estimated that inmates serve approximately 50 percent of their initial sentence. With this in mind, it is estimated that an inmate would require at least a 3-year sentence to be able to participate in a prison industries program.

4. The requirement by a correctional facility that there be an inmate force for institutional maintenance and kitchen duties.

- a. In a 200 person center (the recommended size), it is estimated that between 40 and 54 men would be needed on a daily basis to perform routine maintenance jobs.

5. The skill or potential skill levels available within any given institution.

- a. Initial testing of inmates showed that between 45-50 percent had an insufficient reading level even to take the tests. Thus, besides any vocational skills taught, approximately half the planned inmate population of 200 would also need additional training in educational skills.

II. Choosing the Industries

A list of 451 possible prison industries was drawn up and then selected/eliminated using the following criteria:

1. Unsuitable products for an inmate labor force. This included goods which are contraband in the prison--the manufacture of handguns, ammunition, liquor, drugs.

³South Carolina Adult Corrections Study, op. cit.

2. Above average requirements for professional and technical workers.

All industries showing 15 percent (the national average) or more of their workers in these occupational categories were deleted from further consideration-book publishing, industrial gases, synthetic rubber, petroleum refining, steel mills, internal combustion engines, machinery and transformers.

3. Industries characteristically with very low or very high average employment per plant.

Those industries with an average plant employment of under 40 and with 80 percent or more of all plants under 50 employees were excluded. The upper range contained plants with an average employment in excess of 500 persons, and these industries were excluded from further consideration.

4. Consistent and significant employment loss industries were also dropped.

Employment trends from 1958 through 1972 (by year) were examined.

After employing the above criteria, 255 industries remained. In turn, these industries were examined as to:

(1) the proximity of South Carolina to raw material or supply sources, (2) the proximity of South Carolina to product markets and (3) the male to female ratio for each industry.

III. Industries Selected

1. Weaving mills, man-made fiber and silk fabric,
2. Finishing plants, man-made fiber and silk fabric,
3. Miscellaneous finishing products,
4. Tufted carpets and rugs,
5. Yarn mills, except wool,
6. Throwing and winding mills,
7. Thread mills,
8. Nonrubberized, coated fabrics,
9. Nonwoven fabrics,
10. Hardwood dimension and flooring,

11. Upholstered household furniture,
12. Concrete block and brick,
13. Miscellaneous concrete products.

IV. Service Industries

As in manufacturing, industries were selected/rejected with the following criteria:

1. Unsuitable services for an inmate labor force (not compatible with the penal structure).
Hotels, motels, news syndicates, detective and protective services, parking lots, motion pictures, legal services, medical services. In all, 24 sectors were dropped.
2. Above average requirements for professional and technical services.
Funeral homes, advertising, computer services, research and development laboratories, engineers and architects. This step eliminated 11 additional groups.
3. Industries characterized by low average employment levels and a high ratio of firms with less than five employees.
All categories with an average establishment size (United States) of less than five persons and 70 percent or more of the establishments with under five employees were dropped. This step eliminated 16 additional service categories.
4. Industries which have shown consistent employment level decline over the past decade. This step dropped seven more industries from further consideration.

After the above criteria were employed, 19 service industries remained. Each was evaluated with respect to: (1) projected growth rates; (2) average employment sizes--with larger employers given more weight than smaller employers; (3) a "movement" index evaluating the amount and extent of mobility required for a service - those requiring

higher mobility were given lower rates and vice versa; and
 (4) failure rates or low success.

After this weighting process was employed, the rank
 order of above average potential service opportunities were:

1. Photofinishing labs,
2. Blueprinting and photocopying,
3. Equipment rental and leasing,
4. Tire retreading and repair,
5. Miscellaneous automobile services,
6. Miscellaneous electrical repair,
7. Truck rental and leasing,
8. Car washing,
9. Linen supply,
10. Industrial laundries.

V. Additional Considerations

1. Training

An additional factor in the selection of industries is the amount of training required for the inmates.

This breaks down into the following categories:

- a. Apprentice training (for apprenticeable jobs only),
- b. In-plant training (given by an employer in the form of organized classroom study),
- c. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker),
- d. Essential experience on other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify.

Given this training consideration, it was felt the upholstered household furniture and concrete products and brick manufacturing would realize the largest pool of useable

inmate labor. Moreover, these plants would have shorter training period needs before the operational stage could be realized. Time requirements for the remaining industries would be somewhat longer, with the availability of previously skilled labor probably being an important determinant.

2. Socially Conscious Corporations

It was also felt that socially conscious corporations which may or may not be selected, given the criteria stated above, could be chosen if they made an extra effort to aid in the prison industries program. This could benefit such corporations in providing them with: (1) good publicity; (2) social accomplishment possibilities; and (3) a high potential for a good return on their investment.

3. Capital Shy Corporations

Companies or corporations with a good economic history, but presently lacking sufficient capital to expand, may choose to cooperate if the state would help finance their expansion.



END