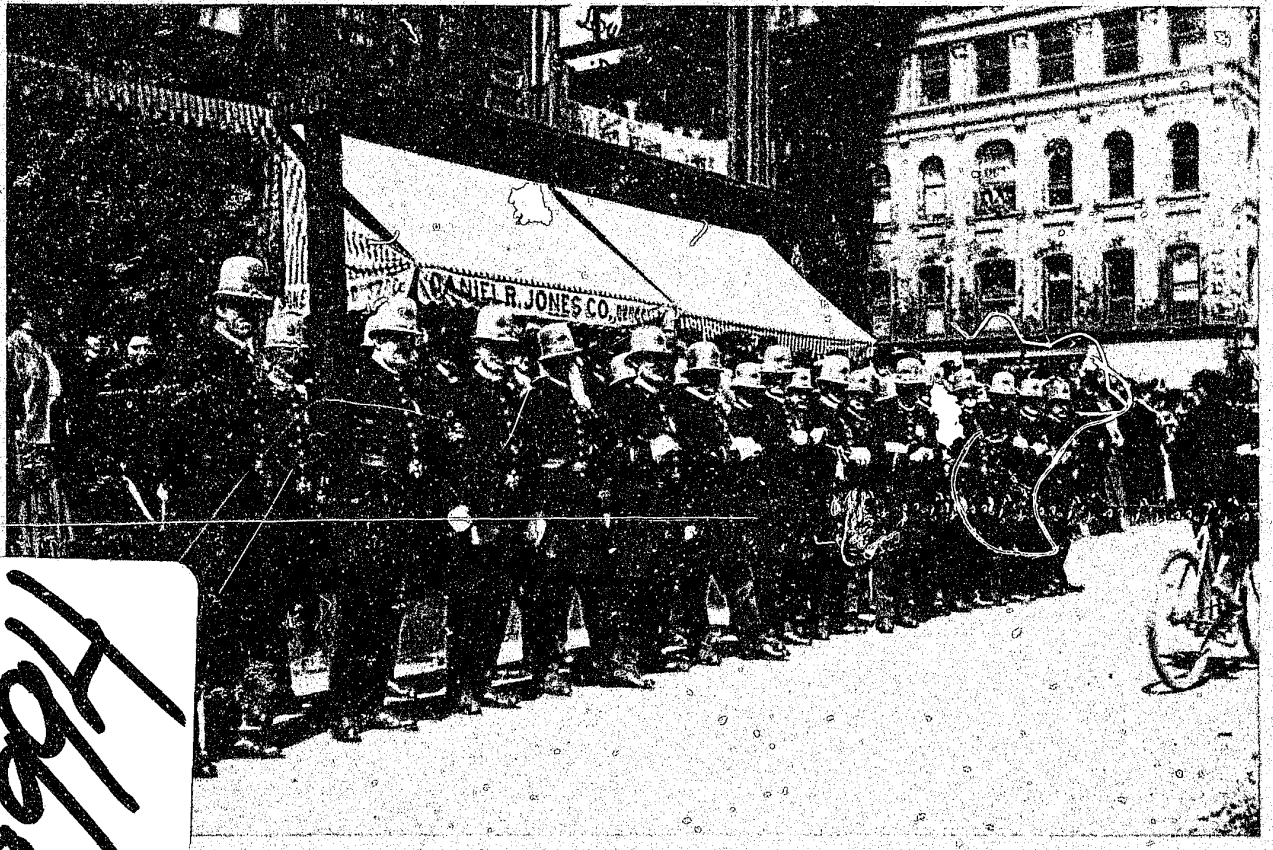
FINAL REPORT

Special Committee on

Criminal Justice Standards and Goals



Wisconsin Council on Criminal Justice

SPECIAL COMMITTEE ON
CRIMINAL JUSTICE STANDARDS AND GOALS

FINAL REPORT

ADOPTED BY THE WISCONSIN COUNCIL ON CRIMINAL JUSTICE

JANUARY, 1977

Wisconsin Council on
Criminal Justice
122 West Washington Avenue
Madison, Wisconsin 53703

FOREWORD

Traditionally, Wisconsin has been a leader in progressive legislation and innovative programs to deal with the problems of criminal justice. No responsibility is greater than maintaining order, preserving liberty and assuring equal justice for all citizens. In recent years, the problems of criminal justice have grown. If Wisconsin is to maintain it's leadership position, as I'm sure it will, this growth demands our attention.

In 1975, the Wisconsin Council on Criminal Justice began a two-year study of Wisconsin's criminal justice system in order to develop long-range goals and implementation standards for improving the quality of justice in Wisconsin. This report marks the completion of that study. The significance of this report was not merely that it was done, but that it continues Wisconsin's long-standing tradition of examining problems, their causes and then responding to those problems. Only through this type of re-examination will we be able to determine what works and what does not and where improvements can be made.

The Wisconsin Council on Criminal Justice's Study Committee has evaluated a number of areas including the role and function of the police; the structure, jurisdiction and administration of the courts; the delivery of defense services to the poor; the use of plea negotiations; the need for speedy trials and uniformity in sentencing; the services available to offenders; the operation and organization of our jails and correctional institutions and the effective allocation of criminal justice resources.

The year-long work which is embodied in this report has helped to focus greater attention on many criminal justice problems and has made a significant contribution toward assuring the citizens of Wisconsin the rights of both safety and justice. If Wisconsin is to maintain it's leadership position, as it must, then this report deserves our critical attention.

Patrick J. Lucey

PATRICK J. LUCEY
Governor
State of Wisconsin

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PREFACE

The study undertaken by this Special Committee involved many controversial issues of importance to the criminal justice system and the citizens of the State of Wisconsin. There were no simple solutions to these complex problems. The Goals and Standards contained in this report are the Committee's attempt to improve Wisconsin's system of justice and ensure equal treatment for all the citizens of the state.

In reviewing these Standards and Goals, the reader is urged to devote special attention to the commentary which follows each set of recommendations. This commentary, in most cases, explains why the recommendations were chosen.

Two major changes to the Standards and Goals Committee's recommendations appear in Goal 17; Sentencing. The Committee supported a determinate sentencing proposal, and a Sentence Review Board composed of both judicial and non-judicial personnel. The WCCJ, disagreed with the action taken by the Standards and Goals Committee, and reinstated the recommendations on indeterminate sentencing, and the concept of sentence review through the use of a court of appeals. (Please see Appendix A for a minority committee report on the determinate sentencing proposal.)

The detailed, sometimes tedious Committee task is now completed, and the report has been modified and adopted by the Wisconsin Council on Criminal Justice. However, we must now strive for implementation of the Goals and Standards.

I wish to thank the Committee members, especially the four chairpersons, for their dedication to a difficult assignment. On behalf of the Committee, I also extend sincere gratitude to the Subcommittee advisors, practitioners, members of the public and others who contributed to this effort. We are also grateful to the staff for their dedicated work.

Sincerely,

David O. Steingraber

David O. Steingraber
Chairman
Special Committee on Criminal
Justice Standards and Goals

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INTRODUCTION

This report contains the recommendations of the Special Committee on Criminal Justice Standards and Goals. It is the second set of recommendations to be adopted by the Wisconsin Council on Criminal Justice (WCCJ) in as many years, the first volume being devoted exclusively to Wisconsin's Juvenile Justice System (Juvenile Justice Standards and Goals Report; Wisconsin, 1975)

The Wisconsin Standards and Goals development process has grown out of the 1973 Law Enforcement Assistance Administration (LEAA) mandate for all states to study their criminal justice systems, develop comprehensive goals and standards, and incorporate these concepts into their 1976 annual action plans. Funding for both the Juvenile and Adult Standards and Goals study was provided through LEAA.

The process for development of the goals and standards contained in this report approximated the procedure used for the study of the Juvenile System and maximized public participation from the outset. The 48 member committee appointed by Governor Lucey in January of 1976 was comprised of citizens, law enforcement officials, elected state and local representatives, private attorneys, prosecutors, judges, and members of the business and government communities. A member of each of the WCCJ regional criminal justice planning councils was also on the committee. Attempts were made to reflect characteristics of the state's population in the committee membership.

The Committee was divided into four subcommittees. The Policing, Courts and Corrections Subcommittees considered issues within their functional areas; the fourth Subcommittee, Critical Issues, addressed topics which were system-wide in nature.

Throughout the year-long study, the Committee looked at Wisconsin's complex network of law enforcement agencies, courts, correctional programs and related social service agencies and attempted to develop recommendations which would help reduce the effects of crime, establish more equitable law, and provide more efficient justice for all Wisconsin residents. The study process began with a Plenary Conference in February 1976. Because of the limited time available for study, each subcommittee had to carefully select the issues which it felt were of greatest significance.

From March through May, the Committee held ten public hearings, one in each criminal justice planning region. Approximately 425 citizens attended these hearings and provided input early in the process. Once the issues of study were identified, staff provided the research necessary for an informed subcommittee decision.

Each subcommittee met bi-weekly or monthly to discuss identified problems, research reports, results of public hearings and to develop possible methods of change. Throughout the deliberation process, all draft documents were provided to regional councils. Regional staff were encouraged to participate in the Committee's work as non-voting members. By mid-October, the subcommittees had completed their recommendations. Draft reports were submitted to all Regional Councils for review and comment early in November. The final Plenary Session, held December 15, 16 and 17th was conducted to clarify conflicting standards, finalize the recommendations of the Committee, establish priorities from among the goals and forward the approved report to the Wisconsin Council on Criminal Justice.

Committee priorities, later endorsed as policy priorities by the WCCJ, appear on pages 5-18.

COMMITTEE PRIORITIES -- WCCJ POLICY PRIORITIES

PRIORITY ONE: GOAL 30 - VICTIM/WITNESS SERVICES

THE RIGHTS OF VICTIMS SHOULD BE RECOGNIZED BY THE CRIMINAL JUSTICE SYSTEM, AND SERVICES TO VICTIMS AND WITNESSES OF CRIMES SHOULD BE INCREASED. EACH JURISDICTION SHALL DECIDE WHERE VICTIM/WITNESS SERVICES ARE MOST APPROPRIATELY PROVIDED, AND IMPLEMENT THEM ACCORDINGLY.

Goal 30 urges the Criminal Justice System to recognize the rights of victims of crimes, and encourages services to be developed for both victims and witnesses. Subgoals and standards under this goal specify ways in which police, courts and correctional institutions can improve the handling of victims and witnesses. In addition, the criminal justice system is encouraged to work with other community service agencies to provide continuous services to special victims and targets of crime.

PRIORITY TWO: GOAL 16 - SENTENCING

RATIONALLY-BASED SENTENCING SHALL BE PROMOTED, AND DISPARITY IN SENTENCING SHALL BE REDUCED.

The sentencing structure presented in this goal is based on the premise that major improvements in the sentencing process should take place before sentencing has been imposed. Therefore many of the standards are aimed toward upgrading and delineating the guidelines for the sentencing judge. The authority and the responsibility for the sentencing decision is vested, by virtue of these recommendations, with the trial court judge.

Procedures governing imposition of fines, orders for restitution, and revocation of probation are also detailed in the sentencing goal. To enforce all these recommended procedures and guidelines, Subgoal 17.6 creates a sentence review process that is meaningful and automatic for all felony sentences. Power to modify sentences in line with the goal of reduction in disparity and promotion of rationally-based sentences is provided by the Court of Appeals in the final section of the sentencing recommendations.

PRIORITY THREE: GOAL 17 - JAILS

NO PRE-TRIAL DETAINEE SHALL BE INCARCERATED IN A WISCONSIN JAIL UNLESS A COURT FINDS THAT THE PERSON IS A DANGER TO OTHERS OR MAY FLEE THE JURISDICTION IF NOT INCARCERATED. CONFINEMENT IN WISCONSIN JAILS SHOULD BE USED FOR THE FEWEST NUMBER OF CONVICTED OFFENDERS CONSISTENT WITH A COMMUNITY'S SECURITY. WHEN INCARCERATION IN JAIL IS NECESSARY FOR EITHER SENTENCED OFFENDERS OR PRE-TRIAL DETAINEES, LOCAL GOVERNMENTS, WITH THE COOPERATION OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, SHALL TAKE ALL NECESSARY MEASURES TO ENSURE HUMANE TREATMENT AND UTILIZATION OF COMMUNITY RESOURCES, WHENEVER APPLICABLE.

This goal recommends that confinement in jails should be used for the fewest number of convicted offenders as is consistent with the community's security. Pre-trial detainees should be incarcerated only when a court finds that the person is a danger to others or may flee the jurisdiction if not incarcerated. Provisions in the subgoals and standards of this goal include: state financial aid to implement changes in jail standards; creation (by Department of Health and Social Services) of standards and guidelines for jail operation, including programs physical facilities and security; improvements in the recruitment, compensation, training and promotion practices for jail employees, enactment of legislation allowing that sentenced offenders may be tranted furloughs in specified situations; and establishment of internal jail policies which provide equitable humane treatment for jail inmates.

PRIORITY FOUR: GOAL 18 - COORDINATED COMMUNITY-FOCUSED SERVICE DELIVERY and GOAL 20 - INCARCERATION AND RELEASE

COMMUNITY-FOCUSED CORRECTIONS SHALL SERVE AS AN INTEGRAL PART OF THE CORRECTIONAL SYSTEM. SOCIAL SERVICE PROVIDERS SHALL BE COORDINATED THROUGH A COMPREHENSIVE PLAN, WITH CORRECTIONAL CLIENTS BEING INTEGRATED INTO THE SERVICE DELIVERY PROGRAMS ON AN EQUAL BASIS WITH OTHER CITIZENS. THE PROGRAMS SHALL SERVE CLIENTS SUCH AS THOSE ON PROBATION, PAROLE, AND PRE-TRIAL DIVERSION, OFFENDERS IN CAMPS, FARMS, METRO CENTERS, PRE-RELEASE CENTERS, AND LOCAL JAILS, AS WELL AS THOSE RECENTLY RELEASED FROM SUPERVISION WHO REQUEST SERVICE.

This goal recommends the reorganization of the correctional system through the removal of the camps, workfarms and the Metro center from the administrative control of the Bureau of Institutions. Minimum security correctional units would be merged with the Bureau of Probation and Parole to create a Bureau of Community-Focused Corrections. The goal also advocates the

establishment of community facilities which would serve as alternatives to incarceration. The Goal further recommends that the role of the probation and parole agent be changed to one of "service brokerage" rather than custodial observation.

CONFINEMENT IN A PENAL INSTITUTION SHALL BE UTILIZED ONLY AS A DISPOSITION OF LAST RESORT BY ALL STATE SENTENCING AUTHORITIES. A MECHANISM SHALL BE CREATED TO MINIMIZE ANY DISPARITY OF SENTENCING, AND RELEASE FROM INCARCERATION SHALL BE PROVIDED AT THE EARLIEST POSSIBLE TIME CONSISTENT WITH PROTECTION OF THE RIGHTS OF THE PUBLIC AND THE OFFENDER.

This goal recommends several changes to the Parole Board. The subgoals and standards set forth the following: Placement of the Parole Board with the office of the Secretary of Department of Health and Social Services with appointed members of diverse background serving no more than six year terms; the parole function remains essentially the same with contracting for release (Mutual Agreement Program) continuing; reasons for denial of parole must be provided to the inmate in written narrative form.

The Committee had deleted Goal 20 and thus it did not appear in the priority list. WCCJ action reinstated Goal 20 and placed it in its present priority position, sharing this position with Goal 18.

PRIORITY FIVE: GOAL 13 - SPEEDY TRIAL

CONSISTENT WITH THE FAIR ADMINISTRATION OF JUSTICE, ALL CRIMINAL CASES SHALL BE BROUGHT TO TRIAL AS SOON AS POSSIBLE AFTER CHARGING.

This goal is a policy statement supporting both the state's and the defendant's right to a speedy trial. It recommends that modification be incorporated into the criminal justice system in order to provide the easiest possible access by the people and the minimum inconvenience to witnesses. Specific standards accompanying this goal recommend that adjournments be granted only when they are deemed essential and only when a showing of good cause has been made to the court.

PRIORITY SIX: GOAL 7 - COURT ORGANIZATION AND ADMINISTRATION

IN ORDER TO PROVIDE A UNIFIED ORGANIZATIONAL AND ADMINISTRATIVE STRUCTURE WITH MAXIMUM FLEXIBILITY FOR THE EFFECTIVE ADMINISTRATION OF JUSTICE, THE COURTS OF WISCONSIN SHOULD BE REORGANIZED. WISCONSIN'S COUNTY AND CIRCUIT COURTS SHALL BE MERGED INTO A SINGLE LEVEL TRIAL COURT OF GENERAL JURISDICTION. A COURT OF APPEALS SHALL BE ESTABLISHED. THE SUPREME COURT'S SUPERVISORY AND ADMINISTRATIVE AUTHORITY OVER ALL COURTS SHALL BE CONFIRMED.

Court organization and administration includes recommendations which have been offered before in Wisconsin in the Citizens Study Committee on Judicial Organization in 1973, and also which are included in the proposed constitutional amendment. The subgoals and standards under this goal call for the merging of the circuit and county courts into a single level trial court of general jurisdiction; the creation of a court of appeals; vesting the Supreme Court with the authority to remove judges for cause; financing all appellate and trial courts from state revenue; and requiring mandatory education programs for judges, prosecutors and other court personnel.

PRIORITY SEVEN: GOAL 2 - POLICY DEVELOPMENT IN POLICE AGENCIES

EVERY POLICE AGENCY IN WISCONSIN SHALL CONTROL THE EXERCISE OF DISCRETION BY ALL PERSONNEL THROUGH PROMULGATION OF WRITTEN ORDERS ESTABLISHING OPERATIONAL POLICIES.

This goal advocates the control of the exercise of discretion by the promulgation of written operational policies in all Wisconsin police agencies. Provisions of the subgoals and standards include: encouragement to seek legislation which modifies the present "full enforcement" statute; methods for development of policy which include research, citizen input, departmental training, and continual review and/or revision; assurance of due process rights in all policies; and devoting special attention to the development of policies to address the areas of selective enforcement, handling juveniles, and the use of force.

PRIORITY EIGHT: GOAL 9 - DELIVERY OF SERVICES TO INDIGENT PERSONS

EVERY PERSON CHARGED WITH A CRIME SHALL BE ENTITLED TO BE REPRESENTED BY LEGAL COUNSEL AS SOON AFTER ARREST AS POSSIBLE. IF SUCH A PERSON LACKS SUFFICIENT FUNDS TO RETAIN COUNSEL, COMPETENT, ADEQUATELY COMPENSATED ADVERSARY COUNSEL SHOULD BE PROVIDED.

This goal mandates that legal counsel shall be provided to every person charged with a crime unless right to counsel is waived. If a defendant is indigent, counsel shall be provided by the state. Major recommendations under this goal include: Statewide standards and criteria for determining indigency; limitation of repayment of legal fees as a condition of probation to those cases where it appears probable that the defendant can pay such fees during the period of probation; creation of a public defender board which will appoint defense counsel; adoption of statewide standards of certification of publicly compensated counsel; and creation of a statewide system of providing defense counsel which includes both staff attorneys (public defenders) and private attorneys.

PRIORITY NINE: GOAL 4 - POLICE TRAINING

THE SUBJECT MATTER OF POLICE TRAINING PROGRAMS SHALL CORRESPOND TO THE TASKS ACTUALLY PERFORMED BY POLICE AND SHALL BE STRUCTURED TO DEVELOP THE OFFICER'S UNDERSTANDING OF THE EXERCISE OF DISCRETION. POLICE TRAINING SHALL REFLECT THE DIVERSITY AND COMPLEXITY OF THE POLICE FUNCTION AND THE NEED FOR THE DEVELOPMENT OF PERSONAL TALENTS WHICH CAN FULFILL THAT FUNCTION ACCORDING TO THE TRUST PLACED IN THE POLICE BY THE PUBLIC. NO ELECTED OR APPOINTED PEACE OFFICER SHALL ASSUME DUTIES BEFORE BEING ADEQUATELY TRAINED.

This goal calls for the establishment of police training programs with subject matter which corresponds to the tasks actually performed by the police. Recommendations under this goal include: restriction of assuming police duties before being adequately trained; requirement of training at the recruit, supervisory and management levels; a mandate that the Law Enforcement Standards Board develop and provide the course curricula for all training after analysis of specific tasks performed by police agencies; and urgings that the Law Enforcement Standards Board continually analyze, revise, and update police training.

PRIORITY TEN: GOAL 10 - DIVERSION

WHERE IT APPEARS THAT THE INTEREST OF THE STATE AND THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE WILL BE SERVED, THE STATE AND THE DEFENDANT MAY AGREE TO A PROGRAM OF DIVERSION FOR THE ACCUSED PERSON IN LIEU OF CONTINUING THE CRIMINAL PROSECUTION.

This goal calls for diversion from the criminal justice system where it appears that the interest of the state and effective administration of criminal justice will be served. However, diversion is not to be offered unless the prosecutor is convinced of the guilt of the accused. The standards also call for further study because of concern for the rights of the defendant, the kinds of diversion employed and the records generated by diversion.

PRIORITY ELEVEN: GOAL 3 - POLICE PERSONNEL

POLICE AGENCIES SHALL RECRUIT AND UTILIZE THE MOST HIGHLY QUALIFIED PEOPLE POSSIBLE TO PERFORM THE TASKS REQUIRED BY THE MULTI-FACETED, COMPLEX NATURE OF THE POLICE FUNCTION.

This goal recommends that police agencies employ people best suited to fulfill the complex tasks of the police function. Whenever possible, para-professionals should be employed to perform those functions not requiring the authority and skills of sworn personnel. Sworn officers should concentrate on those functions for which their high degree of training and skills qualify them. Separate career ladders are recommended that recognize the difference between police practitioners and police administrators. Attractive career incentives are recommended for police generalists as well as lateral entry into specialized fields. It is further recommended that the Law Enforcement Standards Board (LESB) establish minimum qualifications for chief administrators.

PRIORITY TWELVE: GOAL 24 - COMMUNITY ACCEPTANCE OF THE EX-OFFENDER

EX-OFFENDERS SHALL BE ENTITLED TO ALL OF THE RIGHTS, PRIVILEGES, AND RESPONSIBILITIES THAT ARE ENJOYED BY THE GENERAL PUBLIC.

This goal recommends the removal of barriers presently existing between ex-offenders and their employment licensing and participation in public employment. Specific standards accompanying the goal recommend that labor unions play an active role in securing employment for those offenders who participated in apprenticeship programs while incarcerated. It also recommends that insurance companies not discriminate against ex-offenders in the issuance of insurance or in the rates charged, unless the actuarial basis for the classification is established. It is also recommended that constitutional barriers which serve to limit the individuals participation in public service be abolished.

PRIORITY THIRTEEN: GOAL 25 - EFFECTIVE ALLOCATION OF CRIMINAL JUSTICE RESOURCES

THE INCREASE IN CRIME IN WISCONSIN REQUIRES THAT THE RESOURCES OF THE CRIMINAL JUSTICE SYSTEM BE CONCENTRATED ON CRIMINAL ACTIVITY WHICH HAS A DIRECT IMPACT ON PERSONS OR PROPERTY. OFFENSES WHERE THE DIRECT HARM DONE IS ALMOST EXCLUSIVELY TO THE OFFENDER SHOULD RECEIVE FEWER CRIMINAL JUSTICE RESOURCES THAN THOSE COMMITTED AGAINST OTHER PEOPLE. THE STATUTES DEFINING THIS TYPE OF OFFENSE OFTEN EXHIBIT ONE OR MORE OF THE FOLLOWING QUALITIES: THEY INTERFERE WITH PRIVACY OF PERSONAL CONDUCT OR CHOICE OF LIFE STYLE: PENALTIES ARE INEQUITABLE OR DISCRIMINATORY ON THE BASIS OF SEX: THEY ARE VAGUE IN RELATION TO CONSTITUTIONAL RIGHTS: THEY HAVE NO COMPLAINING VICTIM.

This goal contains recommendations on non-commercial gambling, private sexual conduct among consenting adults, prostitution, and alcohol and other drug abuse. The intent of the four subgoals is to adjust the criminal justice role in these activities, so that 1) criminal justice resources are properly and effectively utilized, and 2) those in need of help are directed to the appropriate resources outside the criminal justice system.

PRIORITY FOURTEEN: GOAL 29 - AFFIRMATIVE ACTION

NO CRIMINAL JUSTICE AGENCY SHALL SUBJECT OR ALLOW ITS EMPLOYEES OR CLIENTS TO BE SUBJECTED TO DISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, RELIGION, OR HANDICAP. EVERY AGENCY SHALL TAKE AFFIRMATIVE STEPS TO ERADICATE THE PRESENT EFFECTS OF PAST DISCRIMINATION.

This goal is a specific policy statement in support of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. The ultimate attempt of this goal is to insure full and equal participation of minorities and women in employment opportunities in the criminal justice system. Their participation is a necessary component of the Safe Streets Acts policy to reduce crime and delinquency in Wisconsin and throughout the United States.

PRIORITY FIFTEEN: GOAL 22 - INSTITUTIONAL PROGRAMS AND PERSONNEL

INSTITUTIONAL PROGRAMMING AND PERSONNEL PRACTICES SHALL INTEGRATE THE GOALS OF THE CORRECTIONAL SYSTEM SUCH AS THE SECURITY NEEDS OF THE INSTITUTION, THE PROTECTION OF THE COMMUNITY, AND THE PREPARATION OF THE INMATE FOR RE-ENTRY INTO SOCIETY.

This goal recommends that program development be based upon inmate needs with emphasis in programming utilizing community resources wherever possible. The goal also recommends that the present system of contracted programming (MAP) be continued and expanded in scope to permit the continuation of programming after discretionary or mandatory release from an institution. Other recommendations include that in recruiting and training personnel, the Division of Corrections include consideration of security needs, correctional objectives and human relation skills.

PRIORITY SIXTEEN: GOAL 23 - CORRECTIONS ORGANIZATION AND ADMINISTRATION

THE CORRECTIONAL SYSTEM SHALL BE ORGANIZED AND ADMINISTERED TO MAXIMIZE COMPREHENSIVE PLANNING AND SERVICE DELIVERY TO CLIENTS.

Recommendations under this goal include improved communication and cooperation within the Department of Health and Social Services, between the Department of Health and Social Services and other state agencies, and citizens. The goal supports the existing Inmate Complaint Review System and recommends that it be expanded to include probationers, parolees, and persons receiving voluntary services. In addition, it recommends that the Office of Jail Ombudsman be established by legislative action. Finally, there is a recommendation that the offender shall have both the right of privacy of information and the right of access to records comparable to non-offenders.

Exceptions shall be based upon security needs of an institution, the criminal justice system, and the offender. Lastly, the goal includes a policy recommendation that the placement, assessment and evaluation unit of the Division of Corrections implement the principle of the least restrictive incarcerational alternative when evaluating and assessing offenders. The unit's function shall be to provide initial and continued coordination of inmate programming.

PRIORITY SEVENTEEN: GOAL 28 - GUN CONTROL

POSSESSION OF GUNS SHOULD BE STRICTLY CONTROLLED. THE WISCONSIN LEGISLATURE AND APPROPRIATE REPRESENTATIVES OF THE STATE OF WISCONSIN SHOULD ATTEMPT TO INFLUENCE THE PASSAGE OF LEGISLATION TO BAN THE MANUFACTURE, SALE, OR TRANSFER OF HANDGUNS AND HANDGUN AMMUNITION WITHIN THE UNITED STATES.

Guns are clearly the implement of much injury and suffering. Once they cease to be in common supply, the serious harm caused by their use will decrease. This goal recommends the curtailment and elimination of guns as popular weapons, and also outlines changes necessary in Wisconsin law to assist in the prosecution of those persons possessing illegal weapons.

PRIORITY EIGHTEEN: GOAL 1 - THE POLICE FUNCTION

POLICING IS A MULTI-FACETED,COMPLEX DELIVERY OF COMMUNITY SERVICES, INCLUDING BUT NOT LIMITED TO THE ENFORCEMENT OF THE LAW. EVERY POLICE ADMINISTRATOR SHALL IDENTIFY AND AUGMENT THE NATURE OF THE SERVICES PERFORMED BY THE POLICE AND COMMUNICATED TO THE COMMUNITY.

This policy goal states the central position of the Wisconsin Council on Criminal Justice as it relates to the improvement of policing systems in Wisconsin. Within the goal is included the concept of policing as a delivery of community services including but not limited to the enforcement of the law. Within the community, the police are given the authority to maintain order by intervening in conflicts, disputes, and disorders. Having intervened, the police have the discretion to choose from a number of options to reduce hostility and restore order. Currently, the law only allows the police one response -- the formal arrest. Recognizing that the arrest option is not always the best option, it is recommended that legislation be drafted that accurately defines police responsibilities, creates the tools and resources necessary to the performance of those responsibilities, and removes legal barriers to the proper performance of the police role.

PRIORITY NINETEEN: GOAL 6 - NEW RESPONSES

TO FULLY IMPLEMENT THE POLICE FUNCTION AND ACTIVELY PARTICIPATE IN THE RESOLUTION OF COMMUNITY PROBLEMS TO THE EXTENT OF THEIR RESPONSIBILTIIES, POLICE AGENCIES MUST DEVELOP RESPONSES IN ADDITION TO THOSE TRADITIONALLY USED IN MEETING THE NEEDS OF THEIR COMMUNITIES.

This goal provides suggestions for new programs and strategies that police can utilize to meet the needs of their communities. Some of the suggestions include: supplementing the traditional patrol approach to policing with recommendations covering conflict management, crime prevention, case screening and specialized units.

PRIORITY TWENTY: GOAL 27 - PROTECTION AND PRIVACY

THE CONFIDENTIALITY OF ALL CRIMINAL JUSTICE INFORMATION RELATING TO AN IDENTIFIABLE INDIVIDUAL WILL BE PRESERVED THROUGH PROCEDURES DESIGNED TO INSURE THE PRIVACY AND SECURITY OF SUCH INFORMATION.

This goal recommends that the State of Wisconsin adopt enabling legislation for protection of privacy and security in criminal justice information systems. The enabling legislation should establish administrative structure, minimum standards for protection of privacy and security, and civil and criminal sanctions for violations of statutes, rules, or regulations adopted under it. The legislation should apply to both manual and automated systems. The goal also recommends that every person have the right to review, challenge, and supplement criminal justice information relating to him or her. Each criminal justice agency with custody or control of criminal justice information shall make available convenient facilities and personnel necessary to permit such reviews. Other recommendations include that agencies maintaining criminal justice information identifiable as to a particular individual must establish methods and procedures to insure the completeness and accuracy of the data. Limitations on access and dissemination of criminal justice information shall be imposed to insure the protection of the privacy and security of that information. Finally, each criminal justice agency shall adopt operational procedures designed to insure the physical security of criminal justice information in its custody and to prevent the unauthorized disclosure of such information.

PRIORITY TWENTY-ONE: GOAL 26 - CRIMINAL JUSTICE INFORMATION SYSTEMS

ACCURATE AND SUFFICIENT INFORMATION SHOULD BE AVAILABLE TO ALL CRIMINAL JUSTICE AGENCIES TO ENSURE THE EFFECTIVE PLANNING AND ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM. THIS SHALL BE ACCOMPLISHED THROUGH DEVELOPMENT OF A TOTAL CRIMINAL JUSTICE INFORMATION SYSTEM. MODIFICATION IN THE CRIMINAL JUSTICE INFORMATION SYSTEM SHALL BE COUPLED WITH ADEQUATE PROTECTIONS OF THE CONFIDENTIALITY OF INFORMATION GATHERED AND THE PROTECTION OF INDIVIDUAL PRIVACY.

This goal urges the development of a total criminal justice information system coupled with adequate protections of the confidentiality of information. Subgoals and standards outline establishment of a criminal justice information unit who will coordinate the development of an integrated network of state and local information systems and prepare a master plan to implement this system. The state is urged to provide technical assistance and training for local and state law enforcement, courts and correctional system personnel in order to standardize and integrate information from all components of the criminal justice system.

PRIORITY TWENTY-TWO: GOAL 12 - PLEA NEGOTIATIONS

WHERE IT APPEARS THAT THE INTERESTS OF THE STATE AND THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE WILL BE SERVED, THE STATE MAY ENGAGE IN PLEA NEGOTIATIONS FOR THE PURPOSE OF REACHING AN APPROPRIATE PLEA AGREEMENT.

This goal addresses the controversial area of plea negotiations and recommends some innovative controls over the process. These controls include the following: increased public visibility of the plea negotiation process; written procedures for the plea negotiation process, composed by each district attorney's office; no recommendation as to length of sentence; prohibition of judicial involvement in plea negotiations; and restraints for both the prosecution and defense.

PRIORITY TWENTY-THREE: GOAL 21 - RIGHTS OF INCARCERATED OFFENDERS

AN INCARCERATED OFFENDER SHALL RETAIN AS MANY RIGHTS AND PRIVILEGES AS ARE CONSISTENT WITH CURRENT LEGAL STATUS. INSOFAR AS POSSIBLE, RIGHTS OR PRIVILEGES UNRELATED TO INSTITUTIONAL SECURITY SHALL BE RETAINED.

The focus of this goal is to establish standards for the Division of Corrections that seek to improve communication between Division personnel and inmates by involving both in developing institutional rules. It also recommends that the State Legislature empower the Secretary of the Department of Health and Social Services to grant furloughs. Finally, it seeks to define criteria surrounding searches of inmates, practice of recognized religion, immediate access to incarcerated offenders, and the rules of conduct of institutions and the disciplinary procedure to be followed in violation of those rules of conduct.

PRIORITY TWENTY-FOUR: GOAL 5 - ORGANIZATION AND SUPPORT FOR POLICE AGENCIES

EVERY POLICE ADMINISTRATOR SHALL DEVELOP AN ORGANIZATIONAL STRUCTURE THAT WILL ASSURE THE GROUPING AND DIRECTION OF ACTIVITIES IN THE MANNER MOST EFFICIENT FOR PROGRESS TOWARD THE AGENCY'S OBJECTIVES. EVERY POLICE ADMINISTRATOR IS RESPONSIBLE AND ACCOUNTABLE FOR THE PERFORMANCE OF THE AGENCY.

This goal recommends an organizational structure for police agencies that will provide the most efficient progress in meeting agency objectives. The subgoals and standards urge the evaluation of consolidation of services such as communications, records, purchasing, planning and policy development.

PRIORITY TWENTY-FIVE: GOAL 14 - JURIES

THE RIGHT TO TRIAL BY JURY SHOULD BE MAINTAINED IN ALL CRIMINAL CASES UNLESS WAIVED BY THE DEFENDANT WITH THE CONSENT OF THE STATE AND THE COURT. PROCEDURES SHALL BE DEVELOPED TO BROADEN THE SOURCES FROM WHICH PROSPECTIVE JURORS ARE CHOSEN AND TO IMPROVE THE ADMINISTRATION OF JURIES.

This goal contains recommendations that juries in criminal cases consist of twelve members unless the parties in the court stipulate to smaller numbers of jurors. In any event verdicts by juries in criminal cases shall be unanimous. In addition, it recommends that juries be fairly and efficiently selected and administered in order to provide for selection of prospective jurors from as wide a cross section of the population as possible, and to provide for administration which will economize use of funds and the kind of jurors.

PRIORITY TWENTY-SIX: GOAL 19 - CONTROL OF NON-INSTITUTIONALIZED OFFENDERS

AN OFFENDER ON PROBATION OR PAROLE SHOULD BE AFFORDED EVERY OPPORTUNITY TO DEMONSTRATE SOCIALLY ACCEPTABLE BEHAVIOR EVEN THOUGH THE STATE MUST MAINTAIN SOME SUPERVISION AND ACCOUNTABILITY OVER THE EVENTS OF THE CLIENT'S LIFE.

This goal contains recommendations on the relationship between probation and parole agents and the offender, the procedures used for revocation, and procedures used for discharge from probation and parole. Probation and parole agents are urged to make every effort to actively involve a client in program planning and evaluation.

PRIORITY TWENTY-SEVEN: GOAL 15 - ACCEPTANCE OF PLEA

THE COURT SHALL NOT ACCEPT A PLEA OF GUILTY FROM THE DEFENDANT WITHOUT FIRST ADDRESSING THE DEFENDANT PERSONALLY AND DETERMINING THAT THE PLEA IS VOLUNTARY AND ACCURATE.

This goal recommends that the court not accept a plea of guilty without first determining whether the tendered plea is a result of prior plea discussions and a plea agreement, and if it is, what agreement has been reached. Specific standards accompanying the goal recommend the attendance of the apprehending officer and the victim or the victim's representative at the trial. Other recommendations include the prohibition of judicial participation in negotiations. It is stated that fairness to the defendant demand generous opportunity to withdraw the plea upon judicial rejection of the agreement. Automated substitution of judges in such a situation was not endorsed since the defendant may still exercise the right to a jury trial on the question of guilt.

PRIORITY TWENTY-EIGHT: GOAL 11 - PRE-TRIAL RELEASE

EVERY EFFORT SHALL BE MADE BY THE PROSECUTOR, DEFENSE ATTORNEY, AND THE JUDGE TO ASSEMBLE SUFFICIENT FACTS ABOUT THE DEFENDANT AS EARLY IN THE PROCEEDINGS AS POSSIBLE SO THAT PRE-TRIAL RELEASE CAN, WITH SOME ASSURANCE OF SUCCESS, BE PERMITTED IN THE MAXIMUM NUMBER OF CASES.

This goal recommends that release on one's own recognizance be assumed for all defendants unless there is a finding of substantial risk of nonappearance, of the need to impose conditions, or of the likelihood the defendant will commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice if released. Other recommendations include that upon the finding that release with condition is necessary only the least honorous conditions reasonably likely to assure the defendant's appearance in court be imposed. Finally, it recommends that money bail be set only when it is found that no other condition of release will reasonably assure the defendant's appearance in court.

PRIORITY TWENTY-NINE: GOAL 7 - CITATION AND SUMMONS

WHERE IT APPEARS THAT THE INTERESTS OF THE STATE AND THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE WILL BE SERVED, THE STATE SHALL AUTHORIZE THE ISSUANCE OF CITATIONS AND SUMMONS IN LIEU OF ARREST.

This goal recommends that the State's representative enter into consideration of issuance of citations and summons in lieu of arrest for appropriate individuals and offenses, keeping in mind that he or she is responsible for promoting justice for the community, the victim, and the accused. Accompanying standards recommend that it be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effect of enforcement of the law. Additionally, all judicial officers are recommended for statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against the person not already in custody.

POLICING STANDARDS AND GOALS

"Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."

Henry Clay
1829

INTRODUCTION

The recommendations contained in this report are presented in the belief that a greater awareness and understanding of the police function in a democratic society is fundamental for improving the quality of policing. Central to this belief is the recognition that the police are performers of complex and multiple tasks beyond the detection and apprehension of law violators.

During the deliberations it became clear that the complexity of the police function is a product of responsibilities given to the police in addition to those required of the criminal justice process. Such responsibilities include the aiding of individuals in danger of physical harm, facilitating the movement of people and vehicles, resolving conflict, promoting and preserving civil order, assisting those who cannot care for themselves, protecting constitutional guarantees, and providing emergency services to the community 24 hours a day. This realization led the Committee to explore areas of policing that go beyond the traditional concept of the police function as only the enforcement of laws.

Some of the recommendations contained in this report may be standards only in the loosest sense. Some of the standards describe the way police discharge their responsibilities. Some of the standards call for acceptance of a point of view and urge examination of police operations from that perspective. Some standards establish minimum criteria for police recruitment and training. Some standards encourage experimentation and creativity in the organization of police agencies. All of the standards call for the acknowledgement of the police as administrative agents exercising discretion in the performance of their responsibilities.

Unique to this report on the police is the preamble - a short treatise stating the principles and assumptions upon which the recommendations are made. The preamble serves as the unifying thread of the report and should be referred to when studying the recommendations. Six goals cover the topics of the police function, policy development, personnel, training, organization and support, and new responses. Considered as an integrated whole based on principles set forth in the preamble, this report outlines a plan for the logical and necessary improvement of policing in Wisconsin.

THE POLICE FUNCTION

Police agencies should promulgate the concept of policing as a multifaceted, complex delivery of community services including but not limited to the enforcement of the law. Within the community, the police are given the authority to maintain order by intervening in conflicts, disputes, and disorders. Having intervened, the police have the discretion to choose from a number of options to reduce hostility and restore order.

Currently, the law only allows the police one response - the formal arrest. Recognizing that the arrest option is not always the best option, the Committee recommends the drafting of legislation that accurately defines police responsibilities, creates the tools and resources necessary to the performance of those responsibilities, and removes legal barriers to the proper performance of the police role.

POLICY DEVELOPMENT

Having recognized the discretionary nature of the police function, the chief administrator shall control the exercise of discretion by all personnel through promulgation of written orders establishing operational policies. In so doing, the chief administrator shall communicate to the community the extent and nature of the discretion exercised by agency personnel.

In the writing of operational policies, the chief administrator must assure that no person who may become a subject of enforcement or administrative action is denied the due process of law as a result of discriminatory, arbitrary, inconsistent, or covert enforcement policies. At a minimum, police agencies shall develop policies and procedures controlling selective enforcement, handling juveniles, and the use of force.

The procedures to be used in developing policy shall include identification of issues appropriate for policy formulation, appointment of an administrative advisory panel, a systematic method of conducting business, and specified criteria for determining whether policies should be made public. Implicit in these procedures is the necessity for continual review and, when appropriate, revision of policies. Finally, programs shall be developed to instruct all personnel in the meaning and application of the policies.

PERSONNEL

Police agencies shall employ people best suited to fulfill the complex tasks of the police function. Whenever possible, para-professionals should be employed to perform those functions not requiring the authority and skills of sworn personnel. Sworn officers should concentrate on those functions for which their high degree of training and skills qualify them.

Separate career ladders should be developed that recognize the difference between police practitioners and police administrators. Attractive career incentives should be provided for police generalists and lateral entry in specialized fields should be encouraged. It is further recommended that the Law Enforcement Standards Board (LESB) establish minimum qualifications for chief administrators of police agencies.

POLICE TRAINING

The subject matter of police training programs shall correspond to the tasks actually performed by the police and shall be structured to develop the police officer's understanding of the exercise of discretion. Because of the crucial and discretionary nature of the police role in a democratic society, no elected or appointed officer shall assume duties before being adequately trained.

A number of recommendations are made specifically to the Law Enforcement Standards Board (LESB). It is recommended that LESB provide course curricula based on task analysis for recruit, in-service, and management/supervisory training. Other recommendations include the expansion of the specialized training "circuit riders" and the development of a standardized final exam for the certification of police officers.

ORGANIZATION AND SUPPORT

Police administrators shall arrange and direct agency activities in such a way as to provide the most efficient accomplishment of agency objectives. The management of police agencies should incorporate the principles of public administration and should be based on an over-all plan to assist it in meeting its objectives.

When appropriate, police agencies should evaluate the advantages of consolidating certain services such as communications, records, purchasing, planning, and policy development. In addition, police agencies should consider alternative forms of organization if it would improve the delivery of services.

NEW RESPONSES

Police agencies must develop new responses to community problems in addition to those traditionally used. Agencies should supplement the law enforcement/patrol approach to policing in the areas of crisis intervention, crime prevention, screening of criminal cases, technological improvements, and special units to develop and test new concepts. Agencies are encouraged to devote greater efforts to non-traditional policing in the areas of agency coordination, community advisory functions, contingency planning, and consolidation of services.

PREAMBLE

This attempt to give direction to the effort to improve policing in Wisconsin is based upon five principles:

1) The police have a responsibility to give meaning and commitment to the preservation of democratic ideals.

2) The police ultimately must be held accountable through the democratic process.

3) The police exercise discretion in deciding whether to respond to a situation, in assessing the needs of a situation to which they respond, and in choosing a method for resolving a situation.

4) The police response to most situations involves at least the implication of the use of coercive force.

5) The improvement of the quality of police services is a matter of concern for all citizens of the State.

These five principles in turn compel the conclusion that the complexity of the police function must be understood; that a mechanism for guiding the use of discretion must be employed; that persons engaged in policing must be of the highest quality and must be fully trained; that police agencies must be organized to provide the most effective services possible; and that new responses must be found to address the problems of the community served by the police. This conclusion represents the goals and standards for policing.

Commentary

This Preamble attempts to state explicitly the assumptions and purposes underlying these standards and goals relating to the police. A brief amplification of the five principles may make more apparent the conclusion reached.

If the police are thought of as the force standing between a citizen and his or her liberty, policing must be committed to democratic methods: Constitutional rights must be observed in the main, not in the exception. If the police are thought of as the force between order and chaos, the principle remains that the police must be committed to the order of democracy if they are to maintain it.

Accountability of public officers to the people was an obvious notion to John Locke, when he wrote, "The people shall be judge; for who shall be judge whether the trustee or deputy acts well and according

to the trust reposed in him, but he who deputes him...." (Locke, 1689) The people judge through a democratic process involving access to information, debate, and compromise. Police as public officers and police agencies as public agencies should be accountable in the manner of all public officers and agencies.

The recognition of the existence of discretion in policing is the by-word of the day. For too long, our society assumed that policing was a ministerial function. Today we are learning, much to the surprise of many, that policing involves vast discretion and that the exercise of that discretion often is not guided effectively.

The possibility of the use of some sort of force to coerce the resolution of a situation in the manner thought best by the police is common to most situations in which police are involved. (Bittner, 1968) It is inevitable that some agency in a civil society must exercise coercive force of some kind in the resolution of conflict and settlement of dispute. That the agency exercising coercive force in our society is the police gives some citizens pause, particularly since the commitment of the police to the democratic ideal is not always apparent and since the complexity of the function of policing is not usually perceived.

While the quality of specific police services is a matter for local attention and control, the overall quality is properly a focus for state-wide attention. We have mandated that "no State shall...deny to any person...the equal protection of the laws." (Amendment XIV, U.S. Constitution) All of us are adversely affected if a certain minimum level of quality is not maintained.

The conclusion which results from an analysis of these five principles represents the six goals and derivative subgoals and standards for policing.

GOAL NO. 1: THE POLICE FUNCTION

Policing is a multi-faceted, complex delivery of community services, including but not limited to the enforcement of the law. Every police administrator shall identify and document the nature of the services performed by the police and communicate it to the community.

Subgoal 1.1: Police Intervention and Disposition

The community shall delegate to the police the authority to intervene in conflicts, disputes, and disorders. Upon intervening, the police shall either dispose of the situation themselves or refer it to another agency for action. Police should make every effort to follow up on referrals made to other agencies.

Standard 1.1(a)

The police role in the community should be one of intervention between parties engaged in conflicts and disputes. The police intervention should immediately attempt to bring a cessation to the hostilities.

Standard 1.1(b)

Shortly after the point of intervention, the police must decide how to dispose of the problem. Whenever the police confront a problem which they have the authority to resolve, they should do so. Whenever the police confront a problem which they cannot immediately resolve, they should refer that problem to the appropriate agency and make every effort to follow up on the referral.

Commentary

According to Egon Bittner, people call the police because police have the power and authority to intervene, through the use of coercive force if necessary, in conflicts and disputes. (Bittner, 1970) The primary function of the police is to enter a situation of developing conflict and put an end to the immediate confrontation. This is the "point of intervention." The police provide a buffer between the parties involved in the dispute. Their task is to maintain peace and prevent the destruction of one party's rights and freedoms by the other.

Once the police have intervened in a conflict, dispute, or disorder, they must decide how to dispose of the problem at hand. In most cases the disposition calls for police referral to someone else. Sometimes the "point of intervention" is the same as the "point of disposition." The police officer responding to a complaint about a loud party may simply go to the door and request that the party-goers keep the noise down.

In essence, people call the police because the police are readily available and have been given the authority to intervene in situations potentially disruptive of the peace, safety, and free exercise of rights and privileges of citizens. The need for an intervening agent is the key to the need for police. While the police possess considerable power to intervene in citizens' affairs, they do not often possess the authority to dispose of the problem with which they are confronted. The difference between the police and other community service agencies is the length of time between the "point of intervention" and the "point of disposition." It is very short for the police, while it may be much longer for other service agencies.

Subgoal 1.2: Police Tasks

The police shall perform tasks of law enforcement, community service, and the maintenance of order.

Standard 1.2(a)

The police shall prevent and deter law-breaking whenever possible. They shall identify and apprehend law-breakers according to a system of priorities that maximizes the people's free and safe pursuit of their rights and privileges. They shall advise other agencies and citizens in matters of crime prevention and law enforcement. (cf. Standard 15.1(b))

Standard 1.2(b)

The police shall identify civil and social problems whenever possible within their jurisdictions. They shall attempt to resolve those problems when they are able and assist other agencies in resolving problems beyond the scope of the police function.

Standard 1.2(c)

The police shall provide emergency aid to those who are threatened with imminent harm to their person or property and to those who cannot care for themselves.

Standard 1.2(d)

The police shall maintain the order of the community.

Commentary

The police receive a mandate from the community to exercise certain degrees of power, including the use of coercive force, for the purpose of maintaining order. Order in the community is necessary for two reasons: (1) the peace and safety of its citizens, and (2) the free exercise of citizens' rights. Crime should be recognized as one of many threats to safety and the free exercise of rights.

The American Bar Association has attempted to identify the major current responsibilities of police:

> In assessing appropriate objectives and priorities for police service, local communities should initially recognize that police agencies are currently given responsibility, by design or default:
>
> 1) To identify criminal offenders and criminal activity and, where appropriate, to apprehend offenders and participate in subsequent court proceedings;
>
> 2) To reduce the opportunities for the commission of some crimes through preventive patrol and other measures;
>
> 3) To aid individuals who are in danger of physical harm;
>
> 4) To protect constitutional guarantees;
>
> 5) To facilitate the movement of people and vehicles;
>
> 6) To assist those who cannot care for themselves;
>
> 7) To resolve conflict;
>
> 8) To identify problems that are potentially serious law enforcement or governmental problems;
>
> 9) To create and maintain a feeling of security in the community;
>
> 10) To promote and preserve civil order; and
>
> 11) To provide other services on an emergency basis.
>
> (ABA, Urban Police Function, 1973)

The police function is more than enforcing the law. It is the delivery of a myriad of services to the community. Problems arise within the life of the community and resolutions to those problems are translated into tasks to be performed by some agency. The effectiveness of the police as problem-solvers may not involve their arrest powers. In fact, arrest may not be the proper action. In addition to merely enforcing the law, the police, because of their authority and immediacy, are frequently called upon to perform other community services. Sometimes these services must be provided due to the default of other community agencies.

Since the police are the most available agency, they are often the first to become aware of community problems. They must make other community resources aware of problems which are beyond the scope of the police function. Problems outside the immediate effect of police action may nevertheless necessitate action by the police. Realistic approaches to problem-solving demand the coordinated assignment and assumption of tasks between the police and other community service agencies.

Subgoal 1.3: Police Discretion

Police administrators, personnel, and professional organizations shall seek state and local legislation which accurately defines police responsibilities, creates the tools and resources necessary for the performance of those responsibilities, and removes legal barriers to the proper exercise of police discretion.

Standard 1.3(a)

Police agencies and personnel shall approach their tasks according to the most effective application of their discretionary powers. (cf. Standard 11.3(c))

Standard 1.3(b)

Control over police power should concentrate more on the functional limits and less on the formal limits of discretion.

Standard 1.3(c)

Where a conflict arises between the free exercise of citizens' rights and a threat to the peace and safety of the community, the police shall exercise their discretion in

such a way as to protect the institutions of our democratic form of government consistent with the Constitution and democratic ideals.

Standard 1.3(d)

Police policy, personnel selection, training, and organization shall be based upon the complexity and intricacy of the exercise of discretion.

Commentary

The police function entails a wide range of discretionary choices. There are a number of ministerial functions; that is, functions which allow little or no leeway regarding the action to be taken when an officer intervenes. Nevertheless, most decisions made by the police involve a variety of possible responses, the choice of which is left to the discretion of the officer and/or police administrator involved.

Seven areas have been suggested where the police are faced with decisions to be made at their discretion:

1) Resource allocation
2) Internal administration
3) Investigative techniques
4) Pre-arrest discretion
5) Alternatives to arrest
6) Methods of enforcement
7) Post-arrest discretion
(Goldstein, 1967)

How the police will accomplish their mission in the community depends on how they exercise their discretion within these areas of decision-making.

There are two ways of limiting the discretionary power of police; formal limits and functional limits, and they clearly overlap. (Davis, 1969, 1975) Formal limits are those imposed upon the police by outside forces such as statutory law and the police budget allocation. Functional limits may involve formal limits; however, functional limits are generally evolving from the public's expectations of the police. For instance, the police are not usually authorized to answer questions regarding tax assessments, but they may nevertheless receive a telephone call regarding such a question because they are visible and accessible. The functional limits on police discretion can be structured for all to see by the development of formal police policies which define the boundaries of discretionary choices.

Both individual police personnel and the public must know the limits of police authority.

> In a democracy ... it is essential that discrepancies between public expectations and police performance be kept to a minimum. (Cooley, 1976)

Finally, the concept of police in a free and open society is essentially a contradiction. Considering the difficulty of maintaining a neutral position and considering the complex variety of discretionary choices, the police must keep foremost in their minds the freedom of the citizens they serve. They must weigh the relative demands of peace and safety against the constitutionally guaranteed liberties of the people. The loyalty of the police must be to our democratic ideals, not to particular factions. Police must be considered preservers of our democratic way of life, not threats to it.

GOAL NO. 2: POLICY DEVELOPMENT

Every police agency in Wisconsin shall control the exercise of discretion by all personnel through promulgation of written orders establishing operational policies. (cf. Standard 9.1(b))

Subgoal 2.1: Awareness of Police Discretion

Every police administrator shall communicate to public officials and the community the extent and nature of the discretion exercised by police agencies. (cf. Standard 8.1(a))

Standard 2.1(a)

Every police administrator shall identify, document, and communicate to the public the extent and nature of the exercise of discretion by all personnel. Each agency shall conduct a public education program to inform public officials and the community of the nature and significance of police discretion.

Standard 2.1(b)

Every police administrator shall seek legislation which modifies full enforcement statutes to allow for the necessary exercise, proper control, and public accountability of discretionary authority.

Commentary

Over the past ten or fifteen years there has been a growing awareness of the broad discretionary authority exercised by police officers. (Goldstein, 1960) While it was once thought that the police were "ministerial" officers, responsible only for a mechanistic application of the law (LaFave, 1965), it is now recognized that they are in reality among the most important and powerful decision-makers in government. (Davis, 1969) Invested with the authority to use coercive force against the civilian population, to protect individual liberties, to set in motion the machinery of the criminal justice system, and to provide a myriad of other public services from conflict resolution to emergency medical services to maintenance of traffic flow, the police are constantly called upon to make fine interpretations of law and public policy. Discretionary authority exists whenever the effective limits on his or her power leave the police officer free to choose among alternative courses of action. (Davis, 1969) The scope of the discretionary authority afforded police officers in the performance of these responsibilities is broader than that allowed almost any other public employee, except the highest elected officials.

The recognition of the discretionary nature of police authority came about largely as a result of dissatisfaction with the manner in which police were carrying out their duties. (NAC, The Police, 1967) In the process of attempting to learn why the police engaged in practices which seemed at odds with ideas of democracy and effectiveness in government, it was discovered that much of what is called police policy is the product not of administrative direction, but of an absence of executive control over operational matters. (Davis, 1969) Police administrators had failed to establish policies and procedures controlling the discretionary authority exercised by line-level personnel in day-to-day "on the street" situations. The agency executives were generally successful in setting policies and procedures for staff and supportive functions--such as radio use, care of departmental equipment, grievance procedures, promotions, transfers, and shift assignments. However, little attention was directed at establishing policies relating to the use of weapons, selective enforcement, interrogation practices, use of informants, protection of First Amendment rights, and other issues confronted daily by line officers. The general attitude was that the criminal law said all that was required on these subjects, and that there was no need--nor even authority--for the police administrator to add more.

More recently it has become abundantly clear that the criminal law is woefully inadequate as a guide to the average patrol officer in making the complex decisions. (Davis, 1969) As a result, the officer is forced to fall back on personal values, perceptions, priorities, interpretations, biases, and gut reactions in making often critically sensitive decisions. The effect of such decision-making is often an inconsistent, arbitrary, and discriminatory exercise of police power, causing discontent and insecurity within the community affected as well as within the police agency itself. (Davis, 1975) Citizens are prevented from knowing what conduct will result in police attention or criminal sanctions. Individual police officers are left to wonder whether they will be disciplined for violation of some unwritten rule. Administrators have no direct control over the primary functions of the agency.

The search for a solution to these problems has led to the application of principles of administrative law to police agencies. The concept of administrative rulemaking has been adopted from the traditional regulatory agencies as a tool for establishing policies and procedures to control discretionary authority in operational areas. (Davis, 1969) Even though the idea is still very new, the use of written policies and rules to control discretion has been carried out successfully in a number of police agencies and seems to hold great promise. (LaFave, 1965)

The major impediment to greater use of such written policies has been the "full enforcement" statutes in most states, which seem to say that a police officer has no discretion in the exercise of arrest

power. (LaFave, 1965) It has been shown, however, that such statutes are not amenable to literal interpretation and thus are not an insurmountable obstacle. (Davis, 1975) The operating premise thus is, that the police do have discretionary authority and the executive head of the police agency may declare in writing the manner in which employees are to exercise that discretion. (Davis, 1969)

These Standards and Goals call for such actions by all police administrators in Wisconsin. Standard 2.1(a) calls for a study to be made by individual police agencies to determine precisely how discretionary authority is being exercised locally. These studies will become the basis for all policy-making regarding discretionary authority. In addition, the studies will serve as a method of informing the community about the many responsibilities of the police agency and the limited tools available to meet those responsibilities.

Standard 2.1(b) recognizes the problems created by the full enforcement statutes and requires the police administrator to seek more appropriate legislation to provide police with clearly defined authority and resources commensurate with their responsibilities. These standards do not condition their implementation upon legislative action, but they do recognize that such action is highly desirable.

Subgoal 2.2: Control of Police Discretion

Every police administrator shall assure that no person, citizen or member of the agency, who may become a subject of enforcement or administrative action, is denied due process of law as a result of discriminatory, arbitrary, inconsistent, or covert enforcement policies.

Standard 2.2(a)

Every police administrator shall define in writing for every area of discretionary authority identified, the limits within which that discretion must be exercised and, within those limits, the appropriate alternative choices available in exercising discretion along with some guidance for making the choice.

Standard 2.2(b)

Every police administrator shall assure that no member of the agency is subjected to internal disciplinary action for alleged improper exercise of discretionary authority unless the limits on that discretion appear in written departmental policies.

Commentary

Standards 2.2(a) and 2.2(b) are based on the assumption that the arbitrary and discriminatory law enforcement which results from a lack of administrative policy controlling police discretion constitutes a violation of due process of law. (Davis, 1975) Thus, it becomes necessary for the police administrator to define in writing the agency's enforcement policies in order to avoid constitutionally invalid police actions.

However, it is not only the private citizen who may be the victim of a deprivation of due process. In the absence of written policy, the individual police officer has no way to know whether the exercise of discretion meets with administrative approval. If it is violative of due process to take enforcement action against a citizen in the absence of written policies, it is equally violative to take such actions against a police officer. (Keller, 1976) The department must define in writing any offense for which an officer may be disciplined, and if the improper exercise of discretion is an offense, then the proper exercise of that discretion must be defined.

Subgoal 2.3: Areas of Special Attention

Special attention shall be given by police administrators to development of policies and procedures controlling selective enforcement, handling juveniles, and the use of force.

Standard 2.3(a)

Departmental orders regarding selective enforcement shall establish criteria to be used by police officers in determining circumstances under which an arrest should be made. The orders shall also state what laws are not enforceable and those laws which will be enforced only under limited circumstances specified by the order. At a minimum, such orders shall address the enforcement of vice, disorderly conduct, and traffic offenses.

Standard 2.3(b)

Departmental orders regarding the handling of juveniles from initial contact through diversion or other disposition shall be established to govern the agency's involvement in the detection and apprehension of delinquent behavior and the prevention of juvenile crime.

Standard 2.3(c)

Orders regarding the use of force shall, at a minimum, define the appropriate use of deadly force in situations involving self-defense or defense of others, effecting an arrest, apprehension of fleeing offenders, use of warning shots, pursuit of motor vehicles, and the appropriate use of restraining devices and non-lethal weapons. Emergency driving must also be considered as having the potential of deadly force.

Commentary

The discretionary authority of a police officer extends to a wide range of operational situations, including the use of force, stop-and-frisk and other searches, use of informants, line-ups and other investigatory tools, and so on. However, no area of discretion is more critical than that of selective enforcement. The process of selecting from the universe of criminal activity those cases to be actively enforced through arrest involves the most sensitive and difficult decisions a police officer has to make. At the same time there are fewer controls on this decision-making process than on nearly any other area of operations. (Davis, 1975)

The essence of selective enforcement is non-enforcement of certain laws under all or some conditions when facts establishing a violation of that law are believed to exist. There are two reasons for establishing policy on non-enforcement. First, this goal seeks to control and guide all discretionary action; non-enforcement is as discretionary as enforcement and needs the same attention. Second, it is a fact that many laws are today not enforced or enforced only under very limited factual situations. Such a law is the statute prohibiting fornication. It would severely strain the sense of fair play embodied in our concept of due process were an agency to begin enforcing such laws, or begin enforcing them in certain cases. Some of the most difficult questions involving selective enforcement arise in connection with vice offenses and disorderly conduct offenses, (Davis, 1975) where the conduct may be widely tolerated, "victimless," or minimally harmful. Standard 2.3(a) specifically requires that police agencies promulgate operational guidelines in these areas. Other areas which are deserving of administrative attention are enforcement of laws regulating First Amendment activity, family disturbance cases, handling rape cases, and all kinds of search and seizure problems. (Texas Model Rules, 1974)

Standard 2.3(b) reflects concern over the extensive workload involving juveniles. In effect, it endorses the concept presented in Subgoal 3.1 of Juvenile Justice Standards and Goals, developed by the WCCJ Special Study Committee in 1975.

The other highly controversial area of police discretion is the use of force. Statutory and judicial definitions of the scope of this authority are vague almost to the point of being meaningless, at least from an operational viewpoint. They offer no guidance to the officer involved with a physical confrontation with a citizen, especially where less than deadly force is being wielded. Many complaints lodged against police officers by citizens stem from the use of some degree of physical force by the officer. (NAC, The Police, 1967) Firm administrative guidelines are required to define with some degree of specificity what degree of force may be used in various kinds of confrontations. Standard 2.3(c) requires agencies to develop such policies.

Subgoal 2.4: Policy Making Procedures

Procedures for development of agency policy shall, at a minimum, provide for identification of issues appropriate for policy formulation, appointment of persons to serve in an advisory capacity to the administrator, a systematic method of conducting business, and criteria for determining when policies should not be made public.

Standard 2.4(a)

Every police administrator shall establish within the agency a permanent body to assist and advise in the development of policy.

1) Members of the body shall be appointed by the administrator and serve at his or her pleasure. Members shall include line and staff personnel of the agency, legal counsel, representatives of employee associations where such associations exist, community representatives, and such persons who have expert knowledge useful to the body.

2) The advisory body shall assist the administrator in identifying issues appropriate for policy development and in drafting policies. The advisory body shall not become involved in issues directly related to wages, hours, or conditions of employment. It may advise the administrator on matters which affect the quality of police service provided by the agency, and such matters shall not be a subject of collective bargaining.

3) Police agencies serving political subdivisions of less than 10,000 population shall consolidate their efforts under one advisory body which shall represent every political subdivision involved. All police agencies within a county or regional area shall meet and coordinate the development of policies of mutual concern or area-wide interest.

Standard 2.4(b)

Rulemaking procedures of the Administrative Procedure Act (Chapter 227, Wis. Stats.) may be used as a model whenever appropriate.

Standard 2.4(c)

The Division of Law Enforcement Services (under the authority granted by s.165.85 (3)(g) to the Law Enforcement Standards Board) shall develop and collect model policies for dissemination to agencies requiring assistance.

Standard 2.4(d)

Agency policies shall be open to the public except when a public disclosure would be likely to result in a detrimental increase in specific illegal activity, would jeopardize the effectiveness of any investigation or investigatory method, or would unreasonably invade any right of privacy.

Standard 2.4(e)

Departmental policies and procedures shall be subjected to continuous review and evaluation by the police administrator and shall be revised whenever appropriate. The advisory board may advise the administrator on revision of policy.

Commentary

The manner in which police policies are formulated is as important as their substantive content. (Davis, 1969) While it is up to agency executives to initiate the policy-development process, they ought not to assume that only high ranking police officers should have a voice in the process. All ranks and functional units of the department should be involved continuously in policy formulation. Persons outside the department, such as governmental officials and community leaders, should also be consulted on a regular basis. It is especially important that persons having expert knowledge in technical areas, such as law and behavioral science, be routinely involved in the policy formulation process to assist in identifying and solving problems. Standard 2.4(a) reflects the foregoing considerations.

While all personnel should have a voice in the policy formulation process, it is important that their voice be heard in the proper forum. As collective bargaining becomes more prevalent in police agencies, there is a tendency to relegate all communication between management

and employees to a negotiation process. This is undesirable as regards the setting of an agency's operational policies. While most collective bargaining agreements call for negotiations of wages, hours, and working conditions, it is essential that the agency distinguish between issues which affect directly those working conditions and those which do so only indirectly. While the concept of quality of service is adapted from the private sector and as yet has no firm definition as applied to public service employees, it should be useful in determining those issues which are inappropriate for collective bargaining. Standard 2.4(a) incorporates the concept into the policy-making process.

While formal rule-making processes such as exist in the state and federal regulatory agencies may not be fully desirable in police agencies, the fundamental doctrines of administrative rule-making, such as notice and comment, are useful guides to an effective procedure. Standard 2.4(b) urges that such rule-making procedures be adapted to the police policy-making process wherever appropriate.

One strong criticism of open policy development in police agencies, especially regarding selective enforcement practices, is that disclosure of any non-enforcement policy will result in an increase in violations of the law in question. While there is no empirical evidence to support this conclusion, it does deserve consideration. The most obvious response is that if a policy of non-enforcement is sound, it makes no difference how frequently the conduct in question occurs. That is, if it has been decided that arrests should not be made for possession of minimal amounts of marijuana, it makes no difference whether one person or one thousand people are in possession of such minimal amounts. This is not a completely satisfactory response, however, for in some cases the frequency of occurrence of illegal activity is an inherent part of the problem. Thus, if open non-enforcement of prostitution laws would result in an influx of prostitutes to a given area, creating an offensive situation for the community, it might be better to forego publication of the policy. Nevertheless, the fact that publication of policies might be undesirable in some cases is not sufficient reason to refrain from policy formulation altogether nor to keep all policies secret. A determination can be made on a case-by-case basis of the probable consequences of announcement of non-enforcement, and that factor can be dealt with separately from the substance of the policy. Other factors related to publication, such as investigative techniques and security, should also be considered. Standard 2.4(d) deals with these factors.

The formulation of operational policies should not be a one-time-only process. Continuous reassessment and revision of policies should take place to refine them in the light of new data or changed circumstances. All possible sources of feedback regarding the effectiveness of policies should be sought out. (NAC, The Police, 1967) Standard 2.4(e) calls for this constant review and evaluation of operational policies.

Subgoal 2.5: Implementation and Enforcement

Programs for implementation of operational policies shall provide for instruction of all affected personnel in the meaning and application of such policies and for the effective enforcement of such policies through internal disciplinary procedures.

Standard 2.5(a)

Every police administrator shall assure that appropriate recruit-level and in-service training takes place so that all affected personnel are thoroughly familiar with and understand departmental policies controlling the exercise of discretion.

Standard 2.5(b)

Every police agency shall establish an effective internal disciplinary procedure to assure that violations of departmental policies are detected and dealt with in an appropriate manner, according to due process.

Standard 2.5(c)

The comprehensive policy and procedure manual of a police agency should be the basis for departmental training programs.

Commentary

It is essential that all agency personnel be thoroughly familiar with all policies, rules, and orders which affect the manner in which they perform their duties. It is not enough to write policy statements and then file them away until someone asks if there is a policy on such-and-such an issue. The policies, their rationale and interpretation must be matters of common understanding within the agency. Therefore, Standard 2.5(a) calls for training and educational programs to accompany the formulation of operational policies, and Standard 2.5(c) calls for policy to become the basis for training at the departmental level.

Policies must be made to have real effect through actual implementation. Supervisory personnel within the agency must see to it that operational policies are adhered to by all personnel. Failure to comply with agency policy must be met with administrative sanctions.

However, it is critical that the agency avoid promulgating operational policies in a context of disciplinary offenses. Such policies should not be considered primarily as another means to "get" an employee. Good faith errors and non-compliance to avoid clearly unwarranted consequences should be among the defenses available to an officer accused of violation of an agency policy. Standard 2.5(b) reflects these considerations.

Subgoal 2.6: Effect of Policy

The fact that policy is established should not increase the civil liability of officers, nor should it cause the exclusion of evidence otherwise admissible.

Standard 2.6(a)

The fact that an officer acted contrary to or outside of written policy should not solely cause the officer to be held civilly liable. Courts should take into account factors which caused the deviation from policy and other factors normally associated with the determination of civil liability.

Standard 2.6(b)

Evidence obtained by an act contrary to or outside of written policy should not be suppressed solely on the basis of the contravention of policy, provided that the evidence is otherwise admissible.

Commentary

Even the most voluminous policy manual cannot be expected to address every situation which a police officer may encounter. The actions of an officer must be judged according to broader standards, assuming the officer acts in good faith and within statutory and judicial limits. A Florida intermediate court recently ruled that the state law is the standard for liability where departmental orders are more rigid than the law, although recognizing the appropriateness of departmental orders for purposes of internal discipline. (City of St. Petersburg v. Reed, 1976)

Standard 2.6(b) reflects another concern over the development of policy: that it will become another tool for the defense in suppressing evidence. Judge Carl McGowan has suggested that the exclusionary rule involves a balancing of interests, and the presence of policy would simply add another factor into the balance. In his dissent in Bivens v. Six Unknown Agents, 1971, Chief Justice Burger presented and endorsed the approach advocated by the American Law Institute in its Model of Pre-Arraignment Procedure (Tent. Draft No. 4, 1971). That code suggests a number of factors which ought to go into the balance on a motion to suppress evidence. The Standard reflects one part of the Code's suggestion.

GOAL NO. 3: PERSONNEL

Police agencies shall recruit and utilize the most highly qualified people possible to perform the tasks required by the multi-faceted, complex nature of the police function.

Subgoal 3.1: Recruitment, Screening, Promotion

Police agencies should aggressively seek and retain the best qualified personnel from all walks of life.

Standard 3.1(a)

Recruiters should seek well-educated, emotionally fit people from all quarters of society. The best qualified personnel are those who demonstrate emotional and intellectual characteristics best suited to their role as police in the community. People considering police careers will find a broad education most useful.

Standard 3.1(b)

To assure recruitment of the best qualified personnel, police agencies shall actively strive to reflect the whole population by affirmatively recruiting women and minorities.

Standard 3.1(c)

Agencies should expand their areas of recruitment to include vocational schools and colleges. Residency requirements for recruitment should be discouraged.

Standard 3.1(d)

Testing and screening procedures shall relate directly to the work to be performed. Citizenship requirements for applicants shall be deleted. There shall be no mandatory prohibitions against applicants who have had no job related criminal justice contacts.

Standard 3.1(e)

The ultimate goal shall be to have all recruits required to have at least a Baccalaureate degree from an accredited institution.

Standard 3.1(f)

Promotion should be based on criteria such as education, training, validated test results, personal qualities, past performance, and directed personal development. Arbitrary criteria like seniority and honorary awards shall be avoided. Factors such as race, sex, age, and veterans points shall not be considered.

Commentary:

To the police officer confronting a variety of events, the number of discretionary responses is infinite. The selection of the appropriate response demands at times the eye of an artist, the skill of a professional, and the finesse of a diplomat. Police agencies must attract personnel capable of understanding the use and application of their discretion.

Police agencies must analyze the types of individuals best suited for the job, and commit themselves to aggressive recruitment of those types. Recruiting duty may be assigned to a specific individual in the agency. The recruiter should reach into every segment of the community to facilitate recruiting efforts and responses. In recent years, the vogue has been to seek police officer candidates with college degrees. While a college education is one indicator of a person's capabilities, colleges are not the sole source of qualified police candidates. Vocational schools are another source. The objective is to recruit personnel with an aptitude for community service. This demands active recruiting to find the types of individuals desirable to fill the important role of police officer. Affirmative recruitment of women and minorities must be of highest priority.

Individuals contemplating a career in police work should seek education beyond high school, and those desiring positions of supervision or management should seek at least a bachelor's degree. Persons planning police careers will find a broad background in social science, psychology, history, political sciences, languages, literature, etc., useful. Arts and sciences provide points of reference for individuals delivering complex community services. They develop an awareness of the causes and dynamics of human behavior.

In their quest for the highest qualified people, police agencies should search beyond their own jurisdictions. The search should apply to all levels of police service and should strive to establish a cross-section of ideas and background throughout the agency. Residency within the jurisdiction served should not be required for application.

One of the shortcomings of policing has been an "us/them" syndrome between the police and the community. This is especially true in jurisdictions with minority populations. In order to alleviate this complication, police agencies should make a special effort to recruit and retain women and minority personnel at all levels. Police agencies should assume a leadership role in breaking down barriers of race, sex, ethnicity, and other factors which tend to create tension between the police and the community. This idea should be pursued from a nation-wide perspective and not simply an isolated community perspective. This nation-wide perspective coincides with the concept of recruiting personnel beyond the confinements of the jurisdiction served. The leadership role includes eliminating arbitrary job requirements which exclude persons for reasons of age and physical handicaps, except where those factors bear a direct relationship to the job assignment. All citizens benefit when traditional, arbitrary prejudices are removed.

Testing and screening have presented difficult problems in recent years. Federal anti-discrimination measures have accentuated the need for job-related testing. While numerous rulings have declared certain testing criteria as not job-related, few reliable guides have been developed to define job-relatedness. Until more research is done to link the work actually done on the job with the testing requirements for recruitment, agencies must struggle to develop fair testing criteria.

The realization of the complexity of the police function should contribute to values which recognize policing as more than the mere application of mechanical skills. Recruitment practices must ensure that people dedicated to community service are brought in to police work. (Urban Police Function, 1973) The qualities sought in police personnel should contribute to the development of policing as a profession.

Agencies should promote the person best qualified to perform the duties of the position. Past performance does not necessarily qualify a person for the duties of a different position, and it is not necessarily an indicator of future performance in a different job category.

Promotion to supervisory or management positions should stress leadership potential. This means that the candidate for promotion should be evaluated according to an understanding of the community role of the police. This assumes, of course, that the candidate will also possess basic administrative abilities.

Selection for promotion should be based on general performance evaluation and background investigation which probe the candidate's leadership potential. (The Presidents Commission: Challenge of Crime in a Free Society, 1967) Oral interviews of the candidate may be used as part of the background investigation, but they should not be weighted disproportionately over other selection devices.

Since the purpose of promotion is to fill the position with the most qualified person, arbitrary advantages such as seniority and veteran's points should have no bearing on the promotion process. Careful analysis will show that while it may be fair to allow the use of veteran's points for hiring, it is unfair and may be detrimental to the agency to allow their use for promotion.

Prospective candidates for promotion should prepare themselves for competition. Judgments will be made on the prospective candidate's pursuit of college and vocational school education, outside reading, varied job experience, in-service training, and other indications of self-development. Self-development may be evaluated during trial periods of assignment to the promotion position. One possible promotion mechanism is the development of eligibility lists for various positions. Inclusion on eligibility lists may be contingent upon a potential candidate's pursuit of self-development activities and successful performance during a trial period in the position sought.

Subgoal 3.2: Generalists, Specialists, Sworn/Unsworn Personnel, Para-Professionals

Sworn police officers should perform those functions for which their high degree of training and skills qualify them. Paraprofessionals should perform functions which do not require the authority and skills of sworn personnel.

Standard 3.2(a)

The police generalist should be the key to the police agency. The police generalist concept combines the tasks of patrol officer and investigator. Specialists should be considered where the resources and needs exist.

Standard 3.2(b)

Small agencies should seek specialized assistance from state agencies, larger local agencies, and independent contractors. Small agencies should consider pooling resources for the sake of more efficient use of outside specialists.

Standard 3.2(c)

Wherever possible, police agencies should employ non-sworn para-professionals to relieve sworn officers from tasks that remove them from their service duties. (cf. Standard 7.5(c))

Commentary

One approach to the structuring of the police function has been to limit the number of tasks performed by the police. This approach attempts to define as closely as possible which functions the police agency intends to do. Another has been to organize line personnel into three categories: patrol officer, police agent, and community service officer. The agency then assigns duties according to the degree of complexity, knowledge, skills, and authority necessary to each.

Both of these approaches have been tried in various ways with varying degrees of success. However, both assume that police calls for service are totally predictable. This is not the case. Since the police generally represent the only public agency available for service around the clock and in all locations, it is often the first source of assistance contemplated by people who need help. Therefore, the assignment of police tasks does not necessarily lend itself to easy categorization. For this reason the police generalist is the backbone of the police service. The generalist is the first called, first to arrive, first to intervene, and first to act toward disposition of the problem at hand.

All police agency operations should revolve around what is commonly called the patrol division. The object of special units, such as crime prevention and crime analysis, as well as special investigative teams, is to concentrate police attention on particular aspects of the patrol function.

Police agencies have used sworn officers in positions where their police knowledge may not be needed and may not in fact qualify them. For instance, the interpretation of current legal decisions as they apply to police work is often left to the devices of the individual officer, where it should be the function of a staff legal advisor, district attorney, or outside attorney, retained for that specialized task. The development of an agency's information system may be the product of a chief administrator's own resourcefulness, rather than careful study by an information systems specialist. Small agencies and large agencies alike can seek such services from outside sources, such as state agencies and independent contractors. The services may be long term or short term, depending on the type of services required.

Each agency should define the problem, determine what kind of specialization is required, and then seek implementation through whatever specialized means are available. However, while specialization is good in some areas, it is not good in others. Police agencies should beware of over-specialization. They should be guided by this principle: if there is a need, and if the resources are available, specialists should be considered.

The use of coercive force by the government against its citizens may seem like a contradiction in a free, open, and democratic society. It is recognized, however, as necessary at times. A large percentage of what presently constitutes police work can be performed without this special authority by unsworn para-professionals. For those events exhibiting the potential need for coercive force as a means of intervention or resolution, carefully selected and highly trained sworn personnel must be utilized.

A sample of the many tasks now performed by sworn officers which could be performed by para-professionals includes clerical duties, record-keeping, regulating the flow of traffic, chauffeur duties, accident investigation, animal calls, maintenance of public facilities, caring for the incapacitated, issuing citations for violation of municipal codes, warehousing property, watchman duties, answering telephones, staffing information desks, crime prevention programs, research and planning, office management, and communications. The reader can surely add to this list. However, while this list may appear facile, caution is advised. For while many of the present police tasks do not seem, on the surface, to require sworn authority, a police background may indeed be desirable for the most efficient performance. For example, a police dispatcher with a patrol background may prove more effective than one without. Still, there are many tasks in the police agency that can be performed by specialists and para-professionals, thus freeing sworn officers to perform the tasks for which they are trained and authorized.

Subgoal 3.3: Practitioners/Administrators: Dual Career Ladders

There should be separate sets of criteria to account for the differences between police practitioners and police administrators.

Standard 3.3(a)

The requirement for police generalist should be independent of those for police administrator. Attractive career ladders should be designed to retain those generalists who excel in their job performance and desire to continue performing the generalist function.

Standard 3.3(b)

Police agencies should encourage lateral entry into the agency by any person qualified in the specialized fields.

Standard 3.3(c)

The head of a police agency should be selected for administrative ability. The function of a chief administrator is that of a public policy maker. While knowledge of police work is important, knowledge of public administration is of prime importance to the head of a police agency. The Law Enforcement Standards Board (LESB) shall recommend to the Legislature minimum qualifications for chief administrators of law enforcement agencies.

Commentary

The duties and responsibilities of police line personnel are not the same as those of police administrators. The type of individual desirable for police field duty is not necessarily the type of individual desirable for administrative duties, and vice versa. Police agencies still commonly select their chief administrators from rank and file members who have proven themselves exceptional in the performance of field tasks. This selection process works to the detriment of the agency in two ways: (1) it removes from field duties a highly qualified generalist, and (2) it limits the agency's choice of candidates for the critically important position of chief administrator.

The job of patrol generalist has traditionally been considered a young person's job. It is generally considered one of low prestige in the police agency and is usually assigned to the most junior officers. However, as has been pointed out, the patrol generalist is the most important position in the agency from the point of view of delivery of police services. The generalist makes decisions that affect citizens' lives in many ways. It is therefore important to retain in the generalist category those individuals who demonstrate the aptitude and the will to perform that function.

If an agency is to retain the best qualified people in the generalist category, it must provide the proper career incentives. It is necessary initially to offer a starting salary sufficient to attract high quality personnel capable of professional police work. It is then necessary to offer sufficient pay increases within the generalist category, so that the most capable personnel are not compelled to seek supervisory and management jobs to enter the highest pay grades.

Police agencies must allow for lateral entry to attract the best qualified specialists. Positions of specialization should be defined in separate job descriptions which specify the appropriate level of entry and pay grade. While police background may be desirable in many specialist positions, it is not necessarily required for all specialized functions. Police generalists possessing the proper qualifications should be allowed entry into the specialized category.

LESB should provide a model of minimum qualifications to assure a statewide level of competence in police administrators. Since the chief administrator's main function is to guide the agency's policies and operations, model qualifications should stress such personal qualities as the ability to direct agency operations on a daily basis, the ability to make viable policy, receptiveness and commitment to change, imagination and creativity. The state legislature should consider an amendment to Section 165.85 of the Wisconsin Statutes requiring minimum standards for all police administrators. In the long term, Wisconsin may look forward to all police chief administrators graduating from a special, highly selective police college, perhaps attached to a university.

Subgoal 3.4: Shared Personnel

A method should be developed to facilitate the exchange of specially skilled personnel for short term assignments between local police agencies.

Standard 3.4(a)

The Legislature should authorize the Division of Law Enforcement Services, Training and Standards Bureau, to establish and maintain a central registry of local police personnel available for short term, specialized assistance to other local agencies within the state.

Standard 3.4(b)

Federal Public Law 91-648, Intergovernmental Personnel Act, Title IV, may be used as a model for the Division of Law Enforcement Services' central registry. The Wisconsin Intergovernmental Personnel Act Advisory Council should consider including this sharing of police personnel as one of its annual priorities.

Commentary

Although separate police jurisdictions in Wisconsin do presently share personnel when there is mutual interest in a specific case, there is no formal provision to enable the borrowing of personnel with special expertise, except in emergency situations.

While it may be true that such an exchange of specialized personnel is possible now, the desired expertise is not readily accessible. For that reason, a centralized registry of specialists would be most convenient. The Training and Standards Bureau is the best location for such a central registry. The Bureau would not administer the exchange, nor would it maintain a staff of specialists on call. It would simply put a requesting agency in touch with other agencies where the resources may be available.

The logistics of the central registry (such as Civil Service requirements, insurance, salary, liability, fringe benefits, etc.) can be worked out by the Training and Standards Bureau. The Bureau would provide common definitions of terms used in the system for cross reference and easy access.

The federal Intergovernmental Personnel Act (Public Law 91-648) may be a useful source for the development of rules and regulations. Title IV of the Act, for instance, designates shared personnel as either "(1) on detail to a regular work assignment in his agency; or (2) on leave without pay from his position in the agency." The Act goes into some detail on such logistical matters as rate of pay, annual and sick leave, insurance, accrued benefits, disability, and travel expenses.

A limited amount of federal grant money is available through the U.S. Civil Service Commission. A system of sharing law enforcement personnel may qualify for assistance.

Besides the obvious benefit of specialized service, there is an added benefit to the sharing of personnel. This is the development of the assisting specialist's work experience through contact with a wide variety of police agencies and their different methods of operation. This broadening of experience will benefit the assisting agency, which should compensate for the temporary loss of services of the specialist. Thus, both the requesting agency and the assisting agency benefit, and service to the citizens improves.

GOAL NO. 4: POLICE TRAINING

The subject matter of police training programs shall correspond to the tasks actually performed by police and shall be structured to develop the officer's understanding of the exercise of discretion. Police training shall reflect the diversity and complexity of the police function and the need for the development of personal talents which can fulfill that function according to the trust placed in the police by the public. No elected or appointed peace officer shall assume duties before being adequately trained as provided under Subgoal 4.1 and its Standards (a) through (e).

Subgoal 4.1: Required Levels of Training

Training shall be required of police personnel at the recruit, supervisory, and management levels prior to assumption of duties and on a continuing annual basis during tenure of employment.

Standard 4.1(a)

Probationary officers and part-time officers may perform the duties of a police officer prior to completion of recruit training only under the direct supervision of a certified officer. This means that no probationary or part-time officer shall engage in discretionary decision-making without consulting his or her supervisor.

Standard 4.1(b)

At a minimum, all police agencies shall provide 40 hours per year in-service training to all officers. In-service training should seek to augment recruit training. Topics for in-service training should be chosen from task analyses done regularly by each agency to determine the knowledge and skills required by its officers in the field. In addition to task analyses, training should be enriched by current research and literature, new techniques, legal changes, and advanced instruction in recruit training topics.

Standard 4.1(c)

All police agencies shall require supervisory training prior to appointment to those positions. Supervisory training shall be oriented toward the skills and knowledge necessary for progressively responsible decision-making at the first-line (e.g., "Sergeant") and second-line (e.g., "Lieutenant") command levels. Supervisory decision-making includes the application of policy.

Standard 4.1(d)

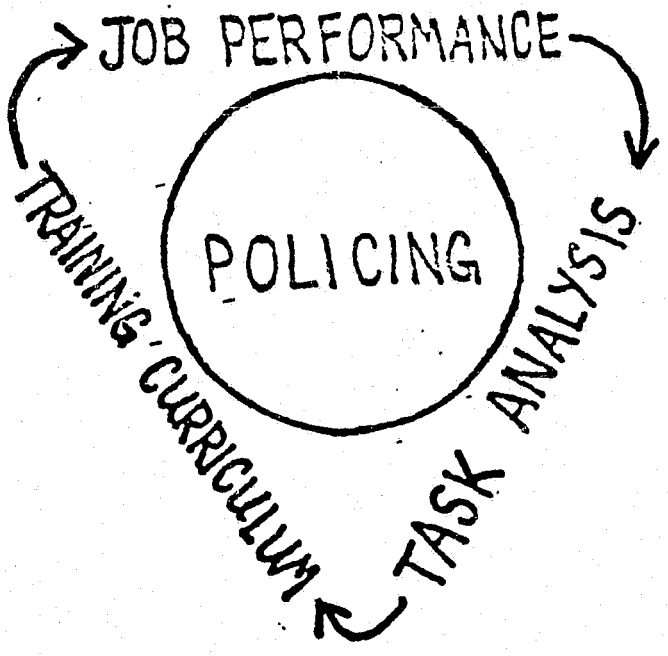
All police agencies shall require management training prior to appointment to those positions. Management training shall be oriented toward the skills and knowledge necessary for progressively responsible decision-making at the administrator level. Management decision-making includes the development and administration of policy.

Commentary

One of the paradoxes of policing is the relatively meager amount of training required. Wisconsin requires over 1500 hours of training to practice the trade of barbering (Wisconsin Stat. 158.09) or cosmetology (Wisconsin Stat., Chapter 159), but it requires only 240 hours of training to be a police officer. (Wisconsin Stat. 165.85 (4)(b)) An occupation of such critical importance requires much more. If one considers the role of a physician as one of intervention in people's lives at a point when they need help, one must regard the role of the police with a similar degree of seriousness.

The majority of police training focuses on the "nuts and bolts" of enforcing the law. Studies have shown however that "law enforcement" consumes a small portion of a police officer's daily routine. (Bittner, 1974) If the police are to be trained in light of their varied activities as discussed in Goal 11, The Police Function, police training must focus on the complexity of making discretionary choices. The delicate balance between democratic freedoms and the authority to use coercive force to curtail individual freedoms must be the central theme in policing.

Police administrators and trainers have a three-fold responsibility in the development of training curricula. First, they must analyze the tasks actually performed by their personnel. Second, they must determine the priority of each task. Finally, they must develop the curriculum according to the analyses of tasks and their priorities. This process, of course, is cyclical. Job performance relates to task analysis; task analysis relates to curriculum; and curriculum relates to job performance. All these elements relate to the behavior of police officers, supervisors, and managers as they exercise their discretion.



If police training is structured according to the tasks actually performed in the field, the criteria for evaluating an officer's job performance can be lifted directly from the training. If the officer's performance is poor, it indicates either that the officer failed to absorb the training or that the training was faulty. Not only should the officer be regularly evaluated, but the training itself should be continuously evaluated and revised to correspond to field experience.

Standard 4.1(a) addresses the present practice of allowing police to perform unsupervised before receiving even the most rudimentary training. (Wisconsin Stat. 165.85(4)). Small agencies often assign probationary and part-time officers to field duty before they have an opportunity to complete recruit training. Larger agencies often assign probationary officers to field duty for the purpose of orientation during recruit training. Standard 4.1(a) mandates that any such assignment must be under the direct supervision of a trained and experienced officer. Direct supervision means that the probationary or part-time officer is in continual contact with the supervising officer during duty hours. Thus, when probationary or part-time officers are confronted with situations that require discretionary decisions, they are able to consult first with supervising officers. Prior to certification, probationary or part-time officers are not considered qualified to make discretionary decisions on their own.

Complete basic training prior to service may work a hardship for some Wisconsin agencies. Even though the Law Enforcement Standards Board reimburses political subdivisions for all training expenses, small jurisdictions often suffer financial and service handicaps due to an officer's absence for the 240-hour period. This reflects the practice of not hiring until an opening occurs. Governing bodies frequently could avoid this problem by anticipating vacancies before they occur. Ultimately, the entire state will benefit from the improved police service offered by officers who are fully qualified before they assume field duties.

Supervisors and managers have two levels of responsibility: 1) day-to-day administration of the agency's functions, and 2) overall administration of the agency's policies. At both levels, it is crucial that they be skilled in management and policy-making. Training in such skills should take place before police supervisors and managers are formally appointed to their positions by the appointing body. Standards 4.1(c) and 4.1(d) require such prior training to ensure the employment of police administrators competent to develop and administer the policy recommended in Goal No. 2.

Education in police trends and ideas should provide the major thrust in the improvement of police management and supervision. These standards may spur the establishment of a high quality course of special instruction in police management restricted to the most promising clientele. Some day, police management positions in Wisconsin may be filled by graduates of such a highly selective academy. Until then, supervisory training should strive to develop the most promising candidates for positions that require the interpretation and application of policy. Management training should strive to develop candidates capable of creating and administering police policy.

The extreme variety and constant change inherent in police work requires that police officers continually hone their skills and increase their knowledge. Standard 4.1(b) requires a minimum of 40 hours per year in-service training. Again, the number of hours seems small compared to the complex function of the police, but in-service training, like recruit training, must be viewed primarily from the point of view of substance and secondarily from the point of view of number of hours. In-service training, like recruit training, should be designed from analysis of the tasks actually performed by officers. A balance must be struck between the seriousness of the tasks and the frequency with which they are performed. In-service training should accomplish two things: (1) review the fundamentals of policing, and (2) expand upon the fundamentals according to on-going task analysis. The substance of in-service training should expand the officer's skills and knowledge.

In-service training should draw upon as many sources as possible to enhance the officer's understanding of the role and function of police. Just as a surgeon's continuing education does not dwell upon the mechanics of a scalpel, the police officer's continuing education should not dwell upon rudimentary skills.

Forty hours of annual in-service training may present a problem of finances and work schedules for smaller agencies. However, it is of the greatest benefit to the quality of police service.

Subgoal 4.2: The Law Enforcement Standards Board (LESB)

The Law Enforcement Standards Board shall provide course curricula to serve the needs of recruit, in-service, and management/supervisory training. The curricula shall be determined by an analysis of the specific tasks performed by police agencies. Training should provide the basis for future evaluation of personnel performance. Training should be continually analyzed, revised, and updated.

Standard 4.2(a)

The Law Enforcement Standards Board shall coordinate all Wisconsin police training efforts on a state-wide level.

Standard 4.2(b)

The Law Enforcement Standards Board shall develop performance-related objectives for each item in its curriculum. The objectives shall be developed according to analyses of specific tasks performed by police in the field. The objectives shall delineate the talents, skills, and knowledge desired in each officer as a result of completing the course. The objectives shall serve as standards which apply to all Wisconsin police officers and shall encompass the basic functions of all police officers. The LESB Curriculum Advisory Committee shall translate the objectives into items of curricula.

Standard 4.2(c)

Special curriculum packages shall be developed which treat the unique aspects of policing minority communities, including special jurisdictional relationships with Indian tribal governmental.

Standard 4.2(d)

The Law Enforcement Standards Board shall develop recruit training curriculum packages according to subjects identified through an analysis of tasks performed by police officers in the field. The curriculum packages shall be stored centrally and distributed by LESB on request. Certified academies shall incorporate required curriculum packages as a minimum in their recruit training programs.

Standard 4.2(e)

The Law Enforcement Standards Board shall develop in-service training curriculum packages according to its analysis of the tasks performed by police. The curriculum packages shall be stored centrally and distributed by LESB on request. In-service training packages shall include refresher courses, as well as new courses developed through task analyses. The curriculum packages shall be identified by subject matter in such a way as to maintain flexibility of the time block consumed.

Standard 4.2(f)

The Law Enforcement Standards Board shall require that classroom instructors at certified academies demonstrate proficiency in the following: (1) communications skills, (2) subject knowledge, (3) instructional methods, and (4) adult education. This standard does not limit the use of outside resources (i.e., speakers, demonstrations, etc.) for the sake of enrichment.

Standard 4.2(g)

The Law Enforcement Standards Board shall expand its professional staff of specialized training "circuit riders" in order to sustain excellence in communications skills, subject knowledge, instructional methods, and adult education.

Standard 4.2(h)

The Law Enforcement Standards Board shall develop a standardized final examination for certification as a police officer in the State of Wisconsin. The final examination shall be developed in conjunction with the recruit training programs noted in Standard 4.2(c).

Standard 4.2(i)

Newly graduated recruit officers should serve side-by-side with experienced officers for a substantial period of time before assuming the duties of a patrol officer alone.

Commentary

Since its establishment, the Law Enforcement Standards Board (LESB) has made considerable strides for the improvement of police training. What was once almost no training outside the metropolitan areas of Wisconsin has progressed to the present network of regional and local academies certified and overseen by the board. These standards recommend an expanded role for LESB in the development and coordination of police training in Wisconsin. For example, competition between academies for students from the same geographical areas creates uncertainty and inefficiency in the delivery of training services by each academy. Small police agencies, however, may find this competition provides greater flexibility, allowing officers to attend training sessions more compatible with their work schedules. LESB, acting as coordinator, could alleviate potential scheduling conflicts.

There should be a division of training and educational responsibilities between the Vocational, Technical and Adult Education system and the University of Wisconsin system. There should be a uniform system of continuous evaluation of training programs. Problems in training evaluation and task analysis require state coordination.

While the LESB curriculum for recruit training maintains a uniformity of topic, it does not presently guarantee uniformity of instruction. Using the over-all task analysis as a guide, the LESB Curriculum Advisory Committee should oversee the development of the content of each course. This development requires expansion of the present LESB list of topics. The present topic list should be revised according to task analysis and then thoroughly developed so that each recruit receives, at a minimum, consistent content in each course.

Recruit training courses should concentrate on the basic police function common to all jurisdictions. The basic curriculum can then be elaborated to account for distinctions between agencies such as the different needs of urban and rural police agencies in Wisconsin. Standards 4.2(b) and (d) should not be construed to limit recruit training to the basic curriculum.

LESB should develop a multi-media training library from which police trainers and administrators can choose packages to fit their training and work schedules. The training packages should be sufficiently flexible to fit a wide variety of time periods available for training and should act more as guides than requirements.

The system of regional academies often suffers from its reliance on part-time instructors. While instructors drawn from a pool of police practitioners may bring considerable knowledge and experience to the training process, many lack instructional skills.

Certified academies should seek instructors who are familiar with and utilize modern techniques of adult education. Specialists and other experienced persons should be used to enhance instruction.

The legislature may wish to consider changing the composition of the LESB Curriculum Advisory Committee (Wis. Stat. 165.85(3)) to include professionals in the area of adult education. This will assure input into the training development process by professional educators as well as professional police administrators.

LESB should increase its present level of service in specialized training areas. This specialized training should be patterned after the present LESB offerings in such areas as recent legal decisions, photography, and evidence collection.

While the Law Enforcement Standards Board presently requires a final examination, it does not prescribe the content of that final examination, as called for in Standard 4.2(h). The police recruit will be required to pass the examination as a condition of certification by the State of Wisconsin to practice policing.

State-wide certification of police officers also may help provide flow of personnel from agency to agency. The resultant emphasis would not be on service to the agency itself, but on the practice of police service as a profession. Dedication to professional practice, rather than dedication to individual agencies, can serve to upgrade the quality of police service, just as the certification of teachers emphasizes the quality of professional teaching over the structure of the school system.

Some departments have enthusiastically reported the benefits of a recruit officer's serving side by side in the field during training with a number of different experienced officers. Examples of two methods of field training are: (1) the recruit attends academy sessions for four hours every working day and performs non-sworn field duties at the side of an experienced officer for the remaining four hours; (2) the recruit attends academy sessions one week, and serves in the field in alternating weeks. This not only exposes the recruit to good, bad, and mediocre police work; it also breaks down preconceived notions of the police function. It allows the recruit to relate academy training to the actual duties of a sworn officer. It has been said that the first thing a recruit is told upon leaving the training academy is to forget everything learned at the academy. Field service while attending the academy, or moving the academy into the field, may lessen the disillusionment if these experiences, good and bad, are openly discussed with fellow recruits and academy staff in the classroom. Indeed, it may spur the recruit's enthusiasm for police service.

GOAL NO. 5: ORGANIZATION AND SUPPORT

Every police administrator shall develop an organizational structure that will assure the grouping and direction of activities in the manner most efficient for progress toward the agency's objectives. Every police administrator is responsible and accountable for the performance of the agency.

Subgoal 5.1: Management

Every police agency shall operate according to progressive principles of public administration and management.

Standard 5.1(a)

Every police agency shall establish objectives toward which that agency intends to direct its activities.

Standard 5.1(b)

Every police agency shall encourage the maximum participation possible of agency personnel in management concerns.

Standard 5.1(c)

Employee organizations can play a valid role in departmental operations. The agency administrator should develop continuing interaction with employee organizations.

Standard 5.1(d)

Every police agency shall establish productivity measures which accurately reflect the impact of agency activities on agency objectives.

Standard 5.1(e)

Every police agency shall evaluate specific operations in order to learn constructively from past experience.

Commentary

The changing nature of society makes it necessary that agencies serving society be flexible enough to change their responses to fit the times. While present police organizational structures may have

been adequate to meet demands in the past, they do not necessarily meet the needs of the present. Some police agencies have suffered from poor direction and control, confused responsibility, and improper grouping of duties, which have tended to stifle initiative toward necessary change. (President's Advisory Commission: The Police, 1967)

Police agencies often find themselves mired in traditions that can pull them away from their purpose. Good administrative practices dictate a continuous reassessment of the fundamental objectives for which the organization was created. This reassessment can only be accomplished if the agency operates from a set of premises stating how it fits into the life of the community. Beginning with these premises, the agency can establish concrete objectives toward which to work.

To illustrate, an operating philosophy may be:

> Police operations will exemplify social concern for the protection of individual freedoms, the general welfare and the development of humanitarianism in the community.

One objective to achieve such a general goal may be:

> To protect constitutional guarantees for all persons.

One way to achieve such an objective may be:

> Provide a continual training program to insure professional competence and development of personal and organizational discipline in order to carry out Departmental goals and objectives.
> (Madison Police Department, 1975)

Such statements establish operating principles by which the police and the public can judge the agency's activities. In addition, they provide a guide by which agency personnel can compare the identification of community problems with the efficiency of the agency.

Since the police agency is an inextricable part of the local governmental unit, elected officials must analyze its functions by asking such questions as: What community problems should become matters of government concern? If it is a matter of government concern, what is the appropriate response? Is the police agency best suited to respond?

> Local governments must formulate objectives and priorities of police concern, and methods for ensuring that the police are made fully accountable to their police administrator and to the public for their actions. (Urban Police Function, 1973)

Although the chief administrator of the agency is ultimately responsible for responsiveness to community problems, the chief alone cannot analyze all the ramifications of policing the community. Input must be sought from all segments of the agency, as well as responsible elements of the public. Line personnel develop a unique perspective on the day-to-day problems of policing. Employee organizations can be a valuable source of input from line personnel. Chief administrators should seek participation by those organizations on a continuing basis. Input from employee organizations does not include final decision-making, but it is better to get together and talk about issues before they reach the bargaining table. However, as head administrator of the agency, responsibility for the final decision is the chief's.

To date, no satisfactory measure has been found for police productivity. How do you measure public confidence? What is a tolerable level of crime? Are the people of the community free to exercise their rights and privileges as citizens? Police concerns do not lend themselves easily to quantifiable measures. Numerical crime reports and arrest records alone have been shown to be questionable measures of police performance. However, there are administrative questions that do lend themselves to a more profound analysis than simple crime reports.

1) How many police officers in your department perform tasks that could be done cheaper or better by a civilian?

2) How much time do police spend on non-crime activities?

3) In response to demand for more police protection, do you simply add more patrol officers to the force or do you try to increase police capabilities?

4) What hours of the day are calls for services heaviest? Is that when most of your police officers are on duty?

5) Where are the high crime areas of your city? Is your department flexible enough to concentrate its personnel in those areas at peak crime times?

6) How long does it take to respond to an emergency call?

7) Does your department expect maximum performance from its personnel by decentralizing authority, responsibility and accountability?

8) Does your department assign people according to their abilities and preferences?

9) Does your department train personnel for the real problem they will confront?

10) What are your department's greatest equipment costs? Is the best use made of existing and available equipment?

11) Are persons brought in from outside the department to serve in key positions?

12) Does your department have an easy time recruiting or do you have to beat the bushes to find warm bodies?

(National Commission on Productivity and Work Quality, 1975)

Questions of this nature assist in making a detailed analysis of a police agency's structure and operations.

It must be stressed that agency objectives, programs, and plans should not be so rigid that they cannot be changed. Each agency should continally evaluate its day-to-day operations in an effort to refine its response to the community. This should be done at every opportunity to identify factors common to situations encountered repeatedly by police. After an incident like a family trouble call, for instance, the police personnel involved should be gathered together to discuss the incident and the way it was handled: what happened? how was it handled? what has been the experience in past similar situations? This approach can be applied to many common occurrences encountered by police. Perhaps policy and training approaches can be gleaned from such evaluations. Ultimately, improved service should be the result.

Subgoal 5.2: Over-all Plan

Every police agency should develop an over-all plan to guide it toward its established objectives. Research and planning should be undertaken to identify policing problems and recommend alternative solutions. Large agencies should maintain full-time research and planning units; small agencies should consolidate research and planning efforts.

Standard 5.2(a)

The over-all plan should show department-wide effort toward achievement of the agency's objectives, delegation of authority and responsibility throughout the agency, and coordination of individual components of the agency.

Standard 5.2(b)

Each police agency should create programs designed to achieve the agency's objectives. Each program should be translated into various plans to carry out that program.

Standard 5.2(c)

At a minimum, each agency should maintain contingency plans to address specified recurring operations. In addition, each agency should develop long-range plans to address anticipated needs and potential programs.

Commentary

Traditionally, police agencies have been organized to react to situations as they arise. Insufficient attention has been paid to the anticipation of police problems and well-reasoned alternative responses. The great amount of discretion inherent in policing was pointed out in Goal 1, The Police Function. In order to effectively exercise that discretion, police agencies must engage in administrative planning, operational planning, inter-agency planning, research and development. (NAC, Police, 1973)

Administrative planning includes the setting of over-all agency objectives and the allocation of budgetary resources to those objectives. The agency's organizational chart should show how the agency's personnel and resources are allocated to achieve the agency's objectives. It should show individual responsibility for the carrying out of agency programs and how those programs relate to one another, and ultimately, to the delivery of services.

After over-all programs are developed, alternative plans should be initiated to put the programs into operation. Operational planning should take advantage of as many people as possible who are directly involved in carrying out the plans.

Planning need not be confined to police operations. Since the police deal with all segments of the community, as many of those segments as possible should be consulted in an effort to develop the most effective response to the problems identified.

Administrative and operational plans should be continually evaluated and revised to meet the agency's needs. Research must be undertaken on a regular basis to identify the necessary changes. Small neighboring jurisdictions may find it a good investment to gather their resources into a coordinated regional planning effort. Large agencies should devote full-time staff to research and development of alternative planning responses to police programs.

Subgoal 5.3: Consolidation of Specific Services

Police agencies should evaluate the advantages of consolidating certain services with their neighboring jurisdictions for the sake of efficiency and effectiveness. (cf. Standard 17.4(d))

Standard 5.3(a)

At a minimum, small agencies should seek consolidation of the following logistical functions: communications, records, purchasing, maintenance, training, and use of equipment.

Standard 5.3(b)

Small political subdivisions should consider contracting for police services from larger political subdivisions.

Standard 5.3(c)

Small agencies should consolidate their planning efforts.

Standard 5.3(d)

Agencies should coordinate their policy development efforts.

Standard 5.3(e)

Every agency should have access to a legal advisor and other specialized, professional assistance.

Commentary

Consolidation of services speaks to the economic problems of operating a small police agency. Large agencies devote significant portions of their budgets routinely to support services. While small agencies may serve a large area, they often serve a population incapable of maintaining full-time support services.

The advantages to combining the operations mentioned in Standard 5.3(a) are apparent. While the advantages of specialized professional assistance, planning, and policy development are also apparent, they are not often easily accessible for the small agency operating on a limited budget.

If very small jurisdictions find it impossible to maintain a modern police service, they should explore the possibilities of contracting for police services. In both the short and long term, this approach may be found to provide the best delivery of services to the community. In Wisconsin, this approach would generally mean that some municipalities would contract with the county sheriff's department for coverage. Enabling legislation may be needed to accomplish this contracting of services.

The most urgently needed specialized, professional assistance is that offered by a full-time police legal advisor. This advisor should be available to police agencies at all times. The advisor should assist agencies in such matters as policy development, application of current court decisions to the police function, and case consultation with officers. Other specialized, professional assistance will be useful in matters such as psychology, management techniques, information systems, and use of technology.

Subgoal 5.4: Examination of Alternatives

Where it would promote responsiveness to the community, every police agency should use alternative forms of organization.

Standard 5.4(a)

Each police agency should examine, and where appropriate, modify its organizational structure to assure the direction of agency energies toward delivery of services to the community.

Standard 5.4(b)

Each police agency should develop and utilize outside community resources to enhance its delivery of services.

Commentary

There are many ways to structure the delivery of police services other than the traditional para-military model. In fact, the para-military model has been found in many ways to hamper the development of policing. (Urban Police Function, 1973) Every agency should carefully analyze its organizational structure, activities, and routines in light of how they relate to effective public service. If they have no real relation to public service, they should be altered or scrapped.

Instead of looking at itself as a world of its own, the police agency should look at itself in relation to the community and surrounding area. It should analyze why it exists and how it can better fulfill its function. In doing so, it should search for ways to involve itself in the community, as well as ways in which to involve the community in the police agency. Recent experiments such as the neighborhood watch, citizen band radio clubs, and crime-prevention programs have shown the effectiveness of citizen involvement in policing. While strict methods of law enforcement are effective means of policing, they are not the only means. The police agency and the community it serves are only limited by their imaginations in developing alternative methods of policing.

GOAL NO. 6: NEW RESPONSES

To fully implement the police function and actively participate in the resolution of community problems to the extent of their responsibilities, police agencies must develop responses in addition to those traditionally used in meeting the needs of their communities.

Subgoal 6.1: Supplemental Programs and Allocation of Resources

Police agencies shall develop programs and allocate resources to supplement the traditional approach to policing.

Standard 6.1(a)

Police should develop expertise in crisis intervention and conflict management.

Standard 6.1(b)

Police should identify potential community problems which can be approached through crime prevention techniques.

Standard 6.1(c)

All police agencies should carefully screen cases to determine which are most likely to be cleared and direct priority efforts accordingly.

Standard 6.1(d)

Local police agencies should develop special units to experiment with new ideas and concepts and to respond to particularly pressing police situations.

Standard 6.1(e)

Police agencies should continually examine technological advances for their usefulness in police work.

Commentary

The decision to engage the criminal justice system as a means of problem resolution is only one discretionary choice available to the police. The limited resources allowed police dictate that their allocation be carefully analyzed and directed for maximum impact.

Not only should methods of enforcing the law be scrutinized for maximum effect; but new, more efficient approaches to community policing should be explored.

Since the essence of policing is the intervention in conflicts, disputes, and disorders, expertise in crisis intervention and conflict management should be the police officer's stock in trade. Encouraging work has been done in such areas as family crisis intervention and crowd control. While the police should limit themselves to short-term intervention and leave long-term treatment to other community service agents, they should be well-versed in a variety of approaches to crisis situations. These approaches should be oriented toward the avoidance of arrest and further criminal justice system involvement. The stressing of such non-criminal justice approaches should have the effect of encouraging a re-assessment of the police function.

The efforts of police in crime prevention have made dramatic progress in recent years. The reference to crime prevention in Standard 6.1 (b) is intended in its most expansive sense. It includes the usual subjects of target hardening and community education; it also calls for police initiative in the role of community problem-solver. Police should play an active part in development of building codes, architectural innovations, and environmental design so long as involved in police responsibilities. At the very least, the police should be consulted by community groups on ideas and proposals that may affect the orderly functioning of the community. There should be a regular liaison between the police agency and other community agencies involved in planning, licensing, and regulation. Communities may find it helpful to require social impact statements along the lines of environmental impact statements. A common complaint of police is that they must deal with the same problems and people over and over again, because other community agencies either do not respond or do not exist to provide in-depth solutions for problems. While these recommendations may seem to place yet another burden on police agencies, in the long run they should lessen the burden of policing the community.

Another approach to policing is the development of imaginative new programs to address old problems. For example, if traditional patrol techniques fail to decrease robberies of all-night grocery stores, limiting the amount of cash available to the robber by securing sums of money over twenty dollars may succeed. This technique has been successful in reducing robberies of bus drivers.

Certain factors are significant in predicting which reported crimes are more likely to be cleared than others. For instance, a crime with an eyewitness is more likely to be successfully investigated than one with no witnesses. Police agencies should analyze such factors in an attempt to devote resources where they are most productive.

Police agencies must develop the capability to identify problems and experiment with alternative responses. Such a capability is possible by establishing special organizational units to experiment on a limited basis with new ideas, concepts, and responses. Experimentation should take place in the areas of community service, maintenance of order, crime prevention, and law enforcement.

Monitoring and evaluation of experimental projects may be supported or conducted by innovative and imaginative planning and research units. Units of this type may be developed by local agencies through a cooperative effort.

Business and industry continually develop and place on the market new technology for potential use in police work. Although expensive and sometimes of questionable value, technology should be examined by policy agencies for its usefulness in upgrading operations and support services. While policing is essentially the business of dealing with people, it can be augmented by hardware that is thoughtfully integrated into various police operations.

Subgoal 6.2: State Agencies and Other Governmental Units

Police agencies should take advantage of the resources of other agencies which may have a greater impact than traditional police work.

Standard 6.2(a)

The Wisconsin Division of Criminal Investigation and the county prosecutors should expand their efforts in the areas of white collar crime and public corruption. They should seek the assistance of the Securities Commissioner, Insurance Commissioner, Banking Commissioner, and other supportive agencies. (cf. Standard 16.2(m))

Standard 6.2(b)

Police should urge the proper authorities to use community planning and zoning as means of controlling problems that lend themselves to such methods.

Standard 6.2(c)

As police perceive the impending decriminalization or legalization of certain offenses, they should develop contingency plans to respond to those problems outside the realm of criminal law enforcement. The community must provide the authority and resources to the police if they are expected to cope with such problems.

Standard 6.2(d)

Police agencies should assume an active advisory role in recommending legislation that has an effect upon the performance of the police function.

Standard 6.2(e)

Every police agency should be aware of the resources and assistance available at all levels of government. Local, state, and federal enforcement efforts should be coordinated in appropriate cases.

Commentary

The standards under Subgoal 6.2 are suggestions for innovative responses to policing problems and should be expanded in an effort to find solutions to community problems. New responses in policing should involve members of government, business, education, health, and other citizen groups to create community-wide interest and concern in policing.

White collar crime and public corruption require considerable time and expertise in investigation. Add to this the tendency of such crimes to cross jurisdictional borders and it is apparent that most local agencies are ill equipped in this area. Within the Wisconsin Department of Justice, the Division of Criminal Investigation possesses the resources necessary for the investigation of white collar crime and public corruption. Prosecutors offices, where feasible, should develop capability for aggressively addressing white collar crime and public corruption. Standard 6.2(a) recommends the utilization of these resources by local agencies to promote a total cooperative effort in these crime areas.

As police develop liaisons with other community agencies, they should interject the idea of community planning and zoning as a means of regulating certain problematic affairs. This approach has met with some success in responding to controversial public issues, traffic control, and environmental safety.

As demands increase for the decriminalization or legalization of certain behavior, the police must realistically face the denial of a traditional law enforcement response to those problems. Recently this problem has come to light in Wisconsin with the decriminalization of public drunkenness. Even though Wisconsin police are no longer authorized to arrest drunks, they are still faced with the problem of how to deal with an intoxicated person. In many areas of Wisconsin the only facilities for the care of intoxicated persons are located one or more hours' drive away. If there are only two

officers on duty in the community, it deprives the community of half of its police service while the other half transports the inebriate to detoxification facilities. The decriminalization or legalization does not remove a behavioral problem, nor does it relieve the community of the responsibility for allocating the authority and resources necessary if it expects the police to continue to handle the problem.

Since the police are usually the first agency involved in the application of the law, they have a vested interest in legislation for which they must ultimately formulate a response. Legislatures should take advantage of the unique perspective of the police. The state legislature, county boards, and municipal governments should actively seek police advice on pending legislation. The police themselves should initiate advisory efforts when they identify legislative issues of concern to them. This seems an ideal function for the police legal advisor.

Ongoing, planned criminal activity deserves special law enforcement attention. Such crimes as fencing of stolen property, vice activities, and racketeering provide the impetus for a host of lesser criminal activity. It fosters such directly harmful activity as theft, drug abuse, and bribery of public officials. Because of the widespread nature of ongoing, planned criminal activity, enforcement efforts must be coordinated between local, state, and federal levels. Dramatically different responses to ongoing crime problems have been explored in the last few years: from diplomatic efforts to reduce opium production to police undercover fencing operations in large urban areas. The effectiveness of such imaginative responses is yet to be evaluated.

The police must guard against complacency, explore new ways of doing things, and provide dynamic responses to a changing society.

COURTS STANDARDS AND GOALS

"The law, so far as it depends on learning, is indeed, as it has been called, the government of the living by the dead. To a considerable extent no doubt it is inevitable that the living should be so governed. The past gives us our vocabulary and fixes the limits of our imagination; we cannot get away from it. There is, too, a peculiar logical pleasure in making manifest the continuity between what we are doing and what has been done before. But the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty; it is only a necessity."

Justice Oliver Wendell Holmes
1895

INTRODUCTION

Proper subjects for consideration under the heading "Courts" range from the manner of and need for an arrest to the guidelines and procedures for the imposition of sentence. Even the very structure of the courts is included under the title of this section. Because the topic is so vast and the considerations so varied, the careful establishment of priorities was necessary at the onset of the Subcommittee's deliberations. Decisions had to be made as to what areas demanded the most attention and what areas could be meaningfully addressed within the confines imposed by time and resources.

The sentencing procedure emerged early in the process as the foremost consideration. Sentencing is, for many defendants, the culmination of their involvement in the judicial system. The gravity of the possible result of sentencing is self-evident. Many of the problems and inconsistencies in our present sentencing structure were already known to subcommittee members, but even more difficulties became apparent as further study was devoted to the issue. It soon became clear that attempts to patch up the system would not suffice. What was needed was a careful re-examination of the basic principles behind the criminal sentencing process. Therefore, the recommendations contained in the sentencing goal are the most far-reaching and carefully considered of any in this report.

Before recommending any changes in Wisconsin's sentencing structure, the subcommittee looked to the experiences of other states (Illinois, Maine, California, Minnesota, Alaska) as well as our own. Other models (Fogel, Uniform Corrections Code) were studied. None of these models was adopted completely. Every effort was made to select the best aspects of each and to integrate them into one cohesive system for sentencing.

The sentencing structure presented in Goal 16 is based on the premise that major improvements in the sentencing process should take place before sentence has been imposed, not after. Therefore, considerable effort is expended toward upgrading and delineating the guidelines for the sentencing judge. (Subgoal 16.1) Throughout Subgoals 16.1 and 16.2, individual case consideration and access to the best possible information is stressed.

To guard against abuse or injustice, meaningful review of sentences is an integral part of the structure that has been created. (Subgoal 16.6) This review, if constituted according to the recommendations, would also assure that the guidelines required at sentencing are actually followed.

Sentence review is a good example of how the subcommittee attempted to draft recommendations so that each goal complements the others. The reviewing body is proposed as a court of appeals, the creation of which is a major part of the goal of court organization. The process of properly utilizing valuable judicial time is an obvious concern of the subcommittee. If judicial burdens are lightened through the use of court administrators (Standard 7.4(c)) and through the resources of the Public Defender Board (Goal 9) then extra court time should be available to follow the detailed sentencing recommendations and to implement the goal of the Speedy Trial provisions. (Goal 13)

The realities of our criminal justice system are acknowledged in these standards and goals. The section on Plea Negotiations (Goal 12) aptly illustrates this recognition. A great deal of popular support could have been gained by calling for the total abolition of plea negotiations and agreements. Nonetheless, the subcommittee realized the impossibility of enforcing such a standard and the unworkability of administering the extra court and prosecutor time such a recommendation would mandate.

Similar considerations limited the scope of the subcommittee's approach to diversion. (Goal 10) Rather than requiring detailed technical procedures to protect the rights of a person entering diversion, these standards contain instead a reiterated caveat for the prosecutor to respect these rights. The diversion standards offer a compromise so that the prosecutors will be encouraged to use diversion when appropriate and will not be discouraged by forms, red tape, or lengthy conferences. (Standard 10.3(c))

Certain basic precepts permeate the Courts standards and goals. Most important is the principle of the presumed innocence of an accused person until guilt is proven beyond a reasonable doubt. This principle is clearly reflected in the recommendations on citation and summons and on pre-trial release (Goals 8 and 13). Goal 8 is an effort to extend the use of non-arrest procedures for those accused of crimes. Goal 11 works toward the pre-trial incarceration of the least number of people. Both these goals reflect the belief that until proven guilty, an accused person should be deprived of as little freedom as is necessary to insure his or her appearance in court and the effective investigation of the case. (See also Standard 16.3(c)).

Equally important throughout these recommendations is the concept of equal justice. Perhaps Goal 9, Delivery of Legal Services to Indigent Persons, is the most direct statement of this concept. It is fundamental to our system of criminal justice that rich and poor alike obtain the assistance of an attorney when such services are needed and desired. It is fatal to the concept of equal justice if the wealthier person is able to retain counsel immediately upon request while the indigent accused must await the convening of a court to secure the services of an attorney. Disparity of treatment, whether in sentencing, services of counsel, or in the opportunity for pre-trial release is censured and resisted in these proposals.

Existing law or procedures reflective of the principles enunciated in this section are not reiterated except in rare instances in which it was thought that the added emphasis would be helpful. The standards and goals presented under the Courts subject heading are predicated on the belief that the deprivation of liberty represents the most serious consequence of governmental action and should be accomplished only with the utmost care, deliberation and fairness.

GOAL NO. 7: COURT ORGANIZATION AND ADMINISTRATION

In order to provide a unified organizational and administrative structure with maximum flexibility for the effective administration of justice, the courts of Wisconsin should be reorganized. Wisconsin's county and circuit courts shall be merged into a single level trial court of general jurisdiction. A court of appeals shall be established. The Supreme Court's supervisory and administrative authority over all courts shall be confirmed.

Subgoal 7.1: Supreme Court

The Supreme Court shall be the head of the Wisconsin Judicial System, including the appellate and court administrative processes.

Standard 7.1(a)

The Supreme Court has appellate jurisdiction over all courts, may hear original actions and proceedings and issue all writs necessary in aid of its jurisdiction.

Standard 7.1(b)

The Chief Justice of the Supreme Court shall be the administrative head of the judicial system and shall exercise this administrative authority under procedures adopted by the Supreme Court.

Commentary

Several levels of courts currently exist in Wisconsin. These courts range from the limited jurisdiction municipal courts and the county and circuit courts to the Supreme Court. No court of appeals is part of our judicial system. Only recently have efforts been made to unify the shared administrative and organizational concerns of these different courts. (s.251.235-251.243, Wis. Stats., 1975) The need to improve these aspects of our court system has been forcefully demonstrated. (Citizens Study Committee on Judicial Organization, 1973)

The overlapping nature of the various jurisdictions and the lack of a firm organizational structure has resulted in an unfortunate waste of scarce resources. This waste has developed at a time when increasingly greater demands are being placed on the courts, as well as on all other facets of the criminal justice system.

The efficient administration of justice is a necessary prerequisite to the equitable administration of justice. The failure to adequately meet these goals causes more damage than can be measured in squandered taxpayer dollars. For criminal defendants to be forced to live with the possibility of conviction and loss of freedom any longer than is absolutely necessary cannot be tolerated in our criminal justice system. For this painful delay to be precipitated by administrative problems is inexcusable. The deterrant value of swift and certain justice is lost when mismanagement and antiquated patterns of organization thwart the best intentions of the courts, the laws, and society.

Central to the efficient operation of any complex administrative structure is the clear delineation of lines of authority. These proposals place ultimate authority within an already existing hierarchy. All lines of managerial control emanate from the Wisconsin Supreme Court. The functional arm of these powers remains in the office of the State Administrator of Courts.

Subgoal 7.2: Authority Over Judges

The Supreme Court shall have authority to remove judges for cause.

Subgoal 7.3: Court of Appeals

In order to provide for speedier disposition of appeals from trial courts, to insure individualized justice and to reduce the cost of appeals for the litigants, a court of appeals shall be created.

Standard 7.3(a)

Decisions of the court of appeals shall be final unless the Supreme Court in its discretion decides to hear the matter.

Standard 7.3(b)

The court of appeals shall sit in panels throughout the state to promote the convenience of the litigants.

Commentary

Appeal to our Supreme Court has become a remedy entailing unacceptable expense and delay. (Citizens Study Committee on Judicial Organization, 1973) Appeals have increased from 356 in 1960 to 656 in 1974. The average delay of 18 months before decision is rendered in an appellate case weakens the foundations of the entire court system. For cases appealed from circuit courts which have also been appealed from county courts, the cost and delay are multiplied. (Wisconsin Supreme Court, 1975)

These facts are particularly disturbing in criminal cases. The loss in these cases is freedom, not just money. Consequently, the situation is even less tenable. What is needed is a forum of relatively quick, inexpensive, and easy access - a court of appeals. The dominant advantages of such a court over the existing circuit courts are two-fold. First, finality of decision can be secured via a court of appeals that does not exist in the circuit court. The Supreme Court, under this proposal, would consider only those cases of particular statewide importance sufficient for the granting of a writ of certiorari. Second, delay and expense could be diminished by creation of a court of appeals since written opinions, printed briefs, travel to the state capitol, and case load per panel would all be minimized.

Establishment of a court of appeals gains greater significance and utility when considered in conjunction with the next subgoal--the merger of county and circuit court jurisdiction.

Subgoal 7.4: Trial Court Organization

The circuit and county courts in Wisconsin shall be merged into a single level trial court of general jurisdiction and, under the direction of the Supreme Court, the state shall be divided into judicial administrative districts.

Standard 7.4(a)

A chief administrative judge shall be chosen in each district in a manner prescribed by the Supreme Court. This judge shall exercise within his or her district the full executive power of the judicial branch of government, subject to the superintending control of the Supreme Court. The chief administrative judge shall have full authority to order directives, policies and rules of the district to be carried out. Failure to comply with an order of the chief administrative judge shall be grounds for discipline under the Judicial Code.

Standard 7.4(b)

The duties of the chief administrative judge shall be prescribed by the Supreme Court and should include the following:

1) Assignment of judges within each multi-judge trial court and the encouragement of rotation to avoid over-specialization;

2) Maintenance of a system for the efficient management of caseflow through the multi-judge trial court and efforts toward the equalization of work-loads among the judges; (cf. Subgoal 26.3)

3) Establishing hours for court operation;

4) Appointment of court committees;

5) Preparation of recommended policies and plans and submission of such recommendations to the entire court or to other authorities as appropriate;

6) Providing for representation of the court in ceremonial functions and in its relations with other branches of the government or with other courts and with news media;

7) Calling and presiding over meetings of the judges in the district;

8) Supervising vacation schedules;

9) Coordinating attendance by judges and other court personnel at conferences which require absence from the court during working hours;

10) Direct supervision over the district court administrator's performance of duties;

11) Supervision of court finances including financial planning, the preparation of budgets and fiscal reporting;

12) Selection of court administrators from a list provided by the State Administrator of Courts;

13) Supervision under applicable statutes of jury administration;

14) All duties necessary and sufficient for the effective administration of justice.

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Standard 7.4(c)

Each chief judge shall be furnished with the district court administrative assistance necessary to carry out the duties of the office. This includes, in most districts, at least one professionally trained court administrator. (cf. Subgoal 30.2)

Standard 7.4(d)

The office of elected Clerk of Circuit Court should be abolished and replaced by appointed court administrative positions under direction of the judges.

Commentary

For years, the distinction between county and circuit courts has been viewed as needlessly complicated. (Pound, 1906) Although the circuit courts cover more territory and take appellate jurisdiction over a small number of county court decisions, these distinctions are seldom reflected in the impact of the decision. Salary has been one of the classic delineators between the two jurisdictions, but even that distinguishing feature has eroded. In Waukesha County, the county judges are paid more than the circuit court judges. (s.251.235-251.243, Wis. Stats., 1975)

There is no need to elaborate on what has been said so well:

> Finally, a single level trial court, perhaps called a "district court," would implement the philosophical concept that every case in a court of our state is equal in importance to every other case and that no person should be relegated to a less prestigious court or judge for the trial of his (sic) case. (Citizens Study Committee on Judicial Organization, 1973)

The organization of geographically grouped courts into judicial districts has already taken place. (s.251.235-251.243, Wis. Stats., 1975) Chief administrative judges have been elected, but only two district court administrators have been hired to aid them in the performance of their duties. In fact, this performance has been hampered by confusion about both the substance of these duties and the authority to fulfill them. The standards in this section offer clarification in both these areas. Great practical significance vests in the words: "Failure to comply with the order of the chief administrative judge shall be grounds for discipline under the Judicial Code."

Standard 7.4(d) reiterates the responsibility of the judges for the functioning and decisions of their courts. The elected position of Clerk of Courts conflicts with this responsibility. What is needed in these offices is an effective professional administrator. The needs of the court must dictate the functioning of such an office, not the popularity of the office manager.

The increasing complexity and volume of court administration, particularly in more populated areas, may demand even more managerial help than a district court administrator. When such demands exist, they should be met through the services of a trial court administrator. That person's duties include, but are not limited to, assisting the trial court judges in the day-to-day handling of their cases, calendar management, budget preparation, personnel supervision, liaison with appropriate governmental agencies, the gathering of statistics and improving the efficiency of the court system.

Subgoal 7.5: State Funding

All financing of appellate and trial courts shall be from state revenue.

Standard 7.5(a)

Uniform salaries and fringe benefits for judges and their immediate support personnel shall be set by the state and totally funded from state revenue.

Standard 7.5(b)

State assumption of full financing for the balance of the operation of the courts shall occur gradually. By 1981 state financing shall also include supplies, services, and finally, lease payments and/or renovation expenses of courtroom facilities.

Standard 7.5(c)

All judges shall be furnished with adequate work space and support personnel to permit full utilization of judicial time in trial work. Parajudicial personnel shall be utilized in those aspects of judicial work which do not require an elected trial judge.

Standard 7.5(d)

Witness fees should be increased to a reasonable level of compensation adjusted to cost-of-living.

Commentary

County supplements to judicial salaries range from zero to $11,000 per year. (Wisconsin Supreme Court, 1975) No one has yet found a justification based on service, skill, or expertise to explain these differences in salaries. Staff for judges varies from funding for just one reporter who also performs secretarial, clerical, and administrative functions to a full cast of separate staff members for each job. Again, no rational distinction except county budgets justifies these differences. The merits of the case, the importance to the parties and the necessity for full judicial attention don't vary with the status of county financies. Only state funding of the judiciary and its necessary staff without county contribution, can eliminate these resentment-inspiring disparities. The image of a judge petitioning a county board for more money and staff vividly demonstrates the necessity for statewide funding.

Subgoal 7.5 is in concert with the recommendations for a single-level trial court. Distinctions between circuit and county court judges would no longer exist, and salary differences determined by geography would no longer interfere with the equal status of all trial court judges. Administrative difficulties resulting from illness, vacations, and judicial disqualifications sometimes demand that judges handle cases in other parts of the state, reiterating the need for uniform salaries across the state. As is reflected throughout these standards and goals, justice is a statewide concern and should, therefore, be a statewide financial responsibility.

Subgoal 7.6: Judicial and Court Personnel Education

Mandatory attendance requirements for education programs for judges and other court personnel shall be established and enforced through the Supreme Court. In addition, education and training programs shall be provided for prosecutors.

Standard 7.6(a)

The state shall finance the judicial education programs for Wisconsin judges and support personnel. Attendance at out-of-state educational programs shall be encouraged.

Standard 7.6(b)

All judges shall be required to attend a sentencing institute periodically.

Standard 7.6(c)

In-service training shall be provided for all court personnel to include education and training programs for prosecutors.

Commentary

A questionnaire answered by Wisconsin judges in 1972 established that few judges have much background education directly pertinent to their judicial duties. No new judge has had any training in the problems of functioning as a judge prior to assuming the bench. Some new judges have had little previous experience in criminal law before entering the judiciary. Even experienced judges need continual updating as to the changes in the law and criminal dispositional alternatives. (Citizens Study Committee on Judicial Organization, 1973) Especially in light of this Committee's recommendations in sentencing, judicial education is a fundamental concern. The stakes are too high, the issues too complex to trust to the intuitive responses of well-meaning decision-makers. The statewide information called for in the sentencing goal requires training for the providers of the raw data. The efficient administration of the courts mandates that judges, prosecutors and other court personnel be well versed in the details and possibilities for improvements in their work.

Out-of-state educational programs are encouraged for the value they can offer in exposing judges and support personnel to new ideas and different methods to better Wisconsin's criminal justice system.

GOAL NO. 8: CITATIONS AND SUMMONS IN LIEU OF ARREST

Where it appears that the interests of the State and the effective administration of criminal justice will be served, the State shall authorize the issuance of citations and summons in lieu of arrest.

Subgoal 8.1: Use of Citations and Summons Where Appropriate

The State's representative shall enter into consideration of issuance of citations and summons in lieu of arrest for appropriate individuals and offenses, keeping in mind that he or she is responsible for promoting justice for the community, the victim and the accused.

Standard 8.1(a)

It shall be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. A law enforcement officer having grounds for making an arrest shall take the accused into custody or, already having done so, detain him or her further only when such action is required by the need to carry out legitimate investigative functions, to protect the accused or others where his or her continued liberty would constitute a risk of immediate harm or when there are reasonable grounds to believe that the accused will refuse to respond to a citation. (cf. Standards 1.2(a), 2.3(a), Subgoal 2.1, Goal 25.)

Standard 8.1(b)

All judicial officers shall be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody.

GOAL NO. 9: DELIVERY OF LEGAL SERVICES TO INDIGENT PERSONS

Every person charged with a crime shall be entitled to be represented by legal counsel as soon after arrest as possible. If such a person lacks sufficient funds to retain counsel, competent, adequately compensated adversary counsel should be provided unless right to counsel is waived.

Subgoal 9.1: Right to Counsel

Any person charged with a crime shall be provided counsel as soon after arrest as possible unless right to counsel is waived.

Standard 9.1(a)

Procedures should be adopted to insure that all persons arrested may consult with counsel as soon as possible without the necessity of first obtaining court-appointed counsel.

Standard 9.1(b)

Each law enforcement agency shall adopt written procedures for providing access to counsel to persons who are arrested. Counsel shall be provided prior to any custodial interrogation or lineup unless right to counsel is waived. (cf. Goal 2)

Standard 9.1(c)

In cases in which it is not clear whether a person has sufficient funds to retain counsel, such person shall be provided publicly compensated counsel until a final determination of indigency can be made.

Commentary

The timely, effective assistance of defense counsel has become a precept of our criminal justice system. (Miranda v. Arizona, 1966; Escobedo v. Illinois, 1964) The existence of procedures and personnel necessary to realize this precept, however, has not always been forthcoming. Wisconsin at present has a patch-work system for the defense of indigents. Each community devises its own method of providing counsel; each judge who appoints counsel bases that choice on his or her own criteria. Standards upon which the determination of indigency are premised vary with the economic or political background of the decision-maker. Because the right to competent representation by counsel is so critical to the fair functioning of the criminal justice system, local variations or biases cannot be allowed to impinge upon or adulterate that right.

Subgoal 9.1 strives to provide representation as soon as it is needed. The concept that post-arrest interrogation may require the assistance of counsel has become a legal verity. In Wisconsin, however, mechanics more than bad faith have frustrated exercise of this right. When a person of means is arrested, that person simply telephones a lawyer and asks the attorney to be there for the interrogation. An indigent person may want an attorney, but neither the accused nor the police may know how to secure the immediate presence of counsel. This situation is especially dire in less urbanized areas in which there is no public defender on call. Counsel may not be appointed for an indigent defendant until the initial court appearance which may not take place until days after the interrogation.

Subgoal 9.1 calls for the establishment of procedures to handle such a situation. It also extends the right to counsel to lineups because of the crucial assistance an attorney during such a proceeding, assistance that should not be restricted to the wealthy.

The written police policies called for in Standard 9.1(b) can be devised through consultation with the Public Defender Board called for in Subgoal 9.3. Through the combined efforts of law enforcement and the Public Defender Board, methods can be formulated to insure that indigent as well as monied accused are afforded early representation by counsel.

Subgoal 9.2: Availability of Counsel to Indigents

Every person charged with a crime who lacks sufficient funds to retain counsel shall be provided publicly compensated legal counsel.

Standard 9.2(a)

Every person charged with a felony or misdemeanor shall be entitled to retained or publicly compensated legal counsel regardless of the penalty anticipated by the court or prosecutor.

Standard 9.2(b)

Statewide standards and criteria for determining when a person is eligible for publicly compensated counsel should be adopted.

Standard 9.2(c)

Procedures should be adopted for allowing a person charged with an offense to make a partial payment for attorneys' fees and still be eligible for the services of publicly compensated counsel.

Standard 9.2(d)

Repayment of all or part of the attorneys' fees may be made a condition of probation only when it appears probable that the defendant can pay such fees during the period of probation. However, non-payment of fees shall not preclude discharge from probation when it is later determined by the sentencing court that the defendant cannot reasonably pay the fees. (cf. Standard 30.3(c))

Standard 9.2(e)

Recoupment of attorneys' fees by the appointing governmental agency shall be allowed except when the defendant is sentenced to prison or if the defendant was not found guilty. Such recoupment must be achieved in a civil suit wherein the defendant is afforded the same rights as any civil litigant, and the civil court determines that the defendant can satisfy such judgment in a reasonable period without substantial hardship to the defendant or to the defendant's family. (cf. Standard 30.3(c))

Standard 9.2(f)

Fraudulent concealment of assets in order to obtain counsel at public expense shall be a crime.

Commentary

Subgoal 9.2 is a recognition of the artificial and unworkable case law standard for appointment of counsel for indigents accused of misdemeanors. (Argersinger v. Hamlin, 1972) Argersinger requires that the court determine before plea or trial whether incarceration will be the penalty. If it will not be the penalty, counsel need not be appointed. The backward nature of this determination need not be elaborated. Aside from the obvious difficulties with this system, a not-so-readily apparent problem arises when a fine is imposed, payment is not made, and jail time is ordered. The initial determination had been that no incarceration was contemplated, but events have dictated otherwise. Meanwhile, the indigent defendant may be jailed without ever having had the assistance of counsel. In order to avoid such possibilities and to clarify an otherwise very confusing standard, these recommendations call for the assignment of counsel for every indigent charged with a crime regardless of the contemplated penalty.

Since, at present, there are no established criteria to aid in determining indigency, each judge is faced with a very difficult decision. One of the tasks of the Public Defender Board would be to prepare such criteria and to update them continuously. In performing this task, the agency should utilize advice from the judiciary, as well as statistics on the cost of living and of retaining counsel to defend against each type of offense chargeable under the criminal code. The best obtainable information is essential to guarantee against the possibility of requiring an indigent defendant to proceed without counsel.

The final standards under this subgoal attempt to provide for defendant contribution to attorneys fees in such a manner that neither the public nor the defendant is unfairly treated. Standard 9.2(f) manifests a strongly-held feeling that abuse of the public defender system should be subject to added criminal sanctions.

Subgoal 9.3: Elimination of Judicial Appointment

To avoid even the appearance of conflict or impropriety, appointment of counsel by the court should be abolished and replaced by appointment by the Public Defender Board which is an independent non-political agency outside the judicial branch of government. The duty of the trial judge to remove counsel found to be inadequate or ineffective shall remain unchanged.

Commentary

Criticism of the system of the judicial method of appointing counsel for indigent defendants has been long-standing and is gaining momentum. (Citizens's Committee on Judicial Organization, 1973) Discontinuation of this system is urged in order to place greater distance between the judge and the lawyers appearing before the court.

Appearances of impropriety may occur wherever the judge makes appointments from a personally compiled list of attorneys' names. When an attorney is dependent on the good-will of the judge for further appointments, there exists the fear that pressures to please the judge will bear more heavily than those to defend the accused. This dependency may exercise a chilling effect on a vigorous presentation of all the viable legal issues in a case.

Not only may such a system of appointment weaken the active defense of a case, it may also raise justifiable doubts in the mind of the defendant. If the attorney who is supposed to be an advocate is instead courting the favors of the judge, the defendant's qualms may

be reasonable. As has been expressed in Subgoal 16.2, the perceptions of the defendant cannot be ignored. As is stressed throughout all these standards and goals, even the appearance of unfairness must be assiduously avoided.

A recent Wisconsin Supreme Court Case, Milwaukee Co. vs. WCCJ, 1976, has established that variations from the present appointment system must be legislatively mandated. Therefore, it is urged that statutory provisions implementing these recommendations be adopted within the very near future.

Subgoal 9.4: Certification of Publicly Assigned Counsel

To insure that publicly compensated counsel is competent to provide representation, standards for certification of counsel, created with the advice of the judiciary, should be adopted on a statewide basis.

Standard 9.4(a)

Before any attorney is assigned to provide representation at public expense in any case, he or she shall first obtain certification from the Public Defender Board (which includes judicial participation) that he or she is competent to provide representation in that type of case.

Standard 9.4(b)

Certification shall be based on the attorney's previous experience, the attorney's participation in relevant continuing education programs, the attorney's desire to provide representation in such cases, and the attorney's ability as evaluated by other members of the bar.

Standard 9.4(c)

Procedures should be adopted to insure that all attorneys are properly and fairly certified.

Standard 9.4(d)

Procedures should be adopted by the Public Defender Board for reviewing the reasonableness of attorneys' fees and the adequacy of compensation for assigned attorneys.

Commentary

One of the more salient points made in favor of retaining judicial appointments of counsel for indigent defendants is that judges are in the best position to determine the ability of a local attorney to adequately defend a criminal case. Subgoal 9.4 combines the best of that argument with the advantages of a more impartial appointment system. By detailing the prerequisites for certification to defend criminal cases, great strides can be made toward assuring the competence of publicly funded criminal defense work.

Through the mechanism of certification and the concern for compensation evidenced in Standard 9.4(d), efforts are being made to increase and encourage the involvement of private attorneys in the defense of criminal cases. The advantages of the private bar's involvement are significant. For the defendant, representation or the knowledge that representation by private practioners is available, can do a great deal to mitigate against a perception of the defender system as just another governmental arm. For the system itself, private attorney participation can offer scrutiny from a different perspective. For the general public, continued and increased private bar involvement helps assure that when an attorney is privately retained to defend a criminal case there is a greater likelihood that the attorney will have had exposure to the intricacies of criminal procedure and experience working with the criminal justice system.

To avoid the potentially compromising situation of having the very judge whose rulings the defense attorney may have challenged also decide the reasonableness of the lawyer's fees, Standard 9.4(d) places that responsibility with the Public Defender Board. It is hoped that rulings by this agency will eliminate fears of financial constraints that may affect the conduct of a defense. At the same time, it is anticipated that this agency could act as an arbitrator should the judge believe that an attorney has abused the prerogatives of the defense assignment through frivolous motions or needless hours.

Subgoal 9.5: Statewide Public Defender

In order to insure a statewide standard of competency of counsel in criminal cases, the continued involvement of the private bar in criminal cases, and minimum expense to the taxpayers, a statewide system of providing defense counsel should be adopted which includes both staff attorneys (public defenders) and private attorneys.

Standard 9.5(a)

Funds for the compensation of assigned counsel shall be provided solely from State revenues.

Standard 9.5(b)

In order to insure the maximum availability of counsel at minimum cost and the continued involvement of the private bar in indigent defense representation, a "mixed system" consisting of the assignment of statewide public defenders and members of the private local bar should be adopted.

Standard 9.5(c)

A statewide trial public defender system should be created, supervised by an independent board of directors outside the judicial branch of government, and empowered to provide representation to any indigent criminal defendant.

Commentary

For quality control, adversarial independence, managerial and economic reasons, the establishment, operation and funding of a statewide criminal defense system is the logical conclusion of this section's recommendations. As is described in previous subgoals, such a system can meet the demands for prompt assignment of counsel, impartiality of assignment, competence of counsel and effective administration. In addition, this system can more equitably distribute the costs of indigent defense to all the state's taxpayers by shifting the funding source from local property taxpayers to the state income tax revenues.

GOAL NO. 10: Diversion

Where it appears that the interest of the state and the effective administration of criminal justice will be served, the state and the defendant may agree to a program of diversion for the accused person in lieu of continuing the criminal prosecution.

Subgoal 10.1: Guidelines for Diversion

Every prosecutor's office shall establish and make available to the public criteria, policies and practices for diversion which demonstrate equal opportunity for participation by all qualified accused people, protections against even the appearance of coercion, and awareness of varied and suitable diversion programs.

Standard 10.1(a)

No accused person shall be offered the opportunity for diversion until the prosecutor is convinced that conviction would be the more likely outcome of a criminal prosecution. (cf. Standard 18.8(d), Subgoal 30.4)

Commentary

At every stage in the progress of an offender through the criminal justice system there exist avenues of exit. The police officer may decide not to press charges through arrest or summons; the police supervisor may not feel continued prosecution is warranted if other help is obtained; the district attorney may sincerely believe that the offender needs counseling at a mental health center more than the added strain of a trial. Diversion benefits not just the accused, it also helps the criminal justice system. The expense and time of a full-scale prosecution are avoided while the offender receives the services or strictures he or she may really need. This is a description of ideal diversion.

Less than ideal diversion exists when programs are more available to some people than to others. Destructive diversion exists when uninformed, innocent people participate in its programs out of a fear of the lawyers fees and time from work that an unpredictable "proof" of their innocence might cost them.

For the purposes of this section, the term "diversion" is limited to the prosecutorial decision of whether to go forward toward conviction. Many of the same considerations that generated the recommendation for prosecutors offices having written plea negotiation policies brought forth a similar call for diversion policies. Again, even the appearance of unequal treatment or coercion must be avoided.

The threshold for entry into a diversion program must be a belief by the representative of the state in the guilt of the accused. Ideally, no one should ever enter this critical stage of the criminal justice system unless the person escorting him or her is convinced of the subject's guilt. Even more compelling, however, is the need to avoid recommending entry into a program carrying the tacit admission of guilt without a belief by the prosecutor that this is a case in which conviction could be secured.

Subgoal 10.2: Application of Diversion

Diversion programs shall be constructed to conserve the time, money and other resources of the criminal justice system, and to assure the protection of the public.

Standard 10.2(a)

Diversion may be considered in all cases in which the prosecutor has reason to believe that an accused person will benefit from such a program and that society will be adequately protected through the use of such a program.

Standard 10.2(b)

As an aid in determining whether a person is eligible for a diversion program, the prosecutor may enlist the services of other agencies including the Division of Corrections to do screening, investigation, program planning and follow-up services.

Commentary

Education about the possibilities for diversion is just beginning. Innovative diversionary programs are being molded into grant applications to funding sources throughout the United States. The research is in a nascent stage on the effectiveness of various programs. Within a given community, however, the prosecutor should be well informed as to what programs or appropriate services are available. In addition, limited experience combined with common sense points to special consideration of diversion for certain types of offenders. Diverting first offenders accused of property misdemeanors has been quite successful in Milwaukee and Dane County and apparently poses small threat to the safety of society. Non-violent crimes that are committed because of drugs or a psychological problem may be more appropriate for diversion than for prosecution, for humanitarian as well as for administrative reasons.

Subgoal 10.3: Continuing Studies in Diversion

Special resources for study of the inherent constitutional and administrative problems of diversionary programs shall be provided.

Standard 10.3(a)

Solutions shall be sought to determine the most desirable point within the criminal process for the use of diversion programs, to minimize the waiver of rights by the accused person entering such a program, and to detail the composition and uses of whatever records the diversionary process may generate.

Standard 10.3(b)

Empirical data and policy considerations shall be examined in order to determine what types of offenses and offenders are most effectively dealt with through the use of diversion programs.

Standard 10.3(c)

Procedures for the implementation of diversion programs shall be designed to minimize the administrative complexities of any such programs so as to encourage their use by prosecutors while clarifying the process and its consequences for potential participants.

Commentary

Some of the problems associated with diversion have already been suggested in this commentary. Before extensive use of diversion programs for all types of offenders can be endorsed, these problems must be addressed and studied. A difficult balancing test must be constructed to determine, for example, how to best protect the rights of an accused person without establishing a mini-criminal justice system which is too cumbersome to be attractive to prosecutors. Informality is to be valued, but not at the expense of the constitutional rights of the accused. Definite procedures must be developed to reconcile the troublesome question of records: their compilation, dissemination, and destruction.

Facts and histories, in detail, are necessary to know for what kind of offender and for what kind of offense diversion is most effective. While diversion offers great promise of flexibility, individual treatment, and work decrease to the criminal justice system, it is not a panacea to be used without caution.

GOAL NO. 11: PRETRIAL RELEASE

Every effort shall be made by the prosecutor, defense attorney, and the judge to assemble sufficient facts about the defendant as early in the proceedings as possible so that pretrial release can, with some assurance of success, be permitted in the maximum number of cases. (cf. Goal 17)

Subgoal 11.1: Presumption in Favor of Release

Release on one's own recognizance shall be presumed for all defendants unless there is a finding of substantial risk of non-appearance, of the need to impose conditions, or of the likelihood the defendant will commit a serious crime, intimidate witnesses or otherwise interfere with administration of justice if released.

Standard 11.1(a)

In determining whether there is a substantial risk of non-appearance, the following factors should be taken into account concerning the defendant:

1) the length of the defendant's residence in the community;

2) the defendant's employment status, work history, and financial condition;

3) the defendant's family ties and relationships;

4) the defendant's reputation, character and mental condition;

5) the defendant's prior criminal record, including any record of prior release on recognizance or on bail;

6) the identity of responsible members of the community who would vouch for the defendant's reliability;

7) the nature of the offense presently charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance;

8) whether in the past the defendant has forfeited bail, been a fugitive from justice, or is currently on bail;

9) any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

Standard 11.1(b)

In evaluating the factors to be considered for release, care should be taken not to give inordinate weight to the nature of the present charge.

Standard 11.1(c)

In the event that it is determined that release on one's own recognizance is unwarranted, the record shall include a statement of the reasons for this determination.

Subgoal 11.2: Release With Conditions

Upon a finding that release with conditions is necessary, only the least onerous conditions reasonably likely to assure the defendant's appearance in court may be imposed.

Standard 11.2(a)

Where conditions of release are found necessary, one or more of the following conditions may be imposed:

1) release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting him or her in appearing in court;

2) impose reasonable restrictions on the activities, movements, associations and residences of the defendant;

3) release the defendant during working hours but require him to return to custody at specified times; or

4) impose any other reasonable restriction designed to assure the defendant's appearance.

Subgoal 11.3: Release on Money Bail

Money bail shall be set only when it is found that no other conditions of release will reasonably assure the defendant's appearance in court.

Standard 11.3(a)

The use of money bail shall be based on an individualized decision that takes into account the circumstances of each defendant and should not be set in felony cases by reference to a pre-determined schedule of amounts fixed according to the nature of the charge.

Standard 11.3(b)

Before money bail may be ordered, a full inquiry using the criteria set forth in Standard 11.1(a) shall be conducted and the reasons for setting money bail shall be stated on the record.

Standard 11.3(c)

Upon a verified application by the prosecuting attorney alleging that a defendant has willfully violated substantial conditions of his or her release, the court shall issue a warrant directing that the defendant be arrested and taken forthwith before the court of general criminal jurisdiction for hearing. A law enforcement officer having reasonable grounds to believe that a released felony defendant has violated substantial conditions of release shall be authorized, where it would be impracticable to secure a warrant, to arrest the defendant and take him or her forthwith before the court of general criminal jurisdiction. (cf. Standard 1.3(a))

Standard 11.3(d)

After hearing, and upon finding that the defendant has willfully violated reasonable conditions imposed on release, the court may impose different or additional conditions upon defendant's release or revoke his or her release.

Standard 11.3(e)

Where it is shown that a competent court or grand jury has found probable cause to believe that a defendant has committed a serious crime while released pending adjudication of a prior charge, the court which initially released this defendant should be authorized to revoke the release.

Standard 11.3(f)

Frequent and periodic reports shall be made to the court to which the defendant's case has been assigned as to each defendant who has failed to secure release within two weeks of arrest. The Sheriff shall be required to advise the court of the status of the individual. (cf. Standard 27.3(b))

GOAL NO. 12: PLEA NEGOTIATIONS

Where it appears that the interests of the state and the effective administration of criminal justice will be served, the State may engage in plea negotiations for the purpose of reaching an appropriate plea agreement.

Subgoal 12.1: Prosecutor's Role in Plea Negotiations

A prosecuting attorney shall enter the plea negotiation process, keeping in mind that he or she is responsible for promoting justice for the community, the victim and the defendant.

Standard 12.1(a)

Each prosecutor's office shall make available to the public a written statement of policies and practices governing plea negotiations.

Standard 12.1(b)

Each prosecutor's office shall make known a general policy of willingness to consult with defense counsel concerning disposition of charges by plea, and should set aside times and places for plea discussions, in addition to pre-trial hearings.

Standard 12.1(c)

All similarly situated defendants shall be given the same opportunity to enter into plea negotiations.

Standard 12.1(d)

All prosecutors in the same office shall be bound by the terms of a plea agreement or promise made by another prosecutor on which the defendant has relied and has entered a plea of guilty or no contest.

Standard 12.1(e)

Whenever possible, the prosecutor's office shall assign an experienced prosecutor to review negotiated pleas to ensure proper application of the written policy.

Standard 12.1(f)

The prosecutor, in reaching a plea agreement, may agree to any of the following dispositions, depending on the circumstances of the case:

1) To seek, or not to oppose, dismissal of the offense charged if the accused enters a plea of guilty to another offense reasonably related to the accused's conduct;

2) To seek, or not to oppose, dismissal of other charges or potential charges against the accused if the accused enters a plea of guilty; or

3) To recommend probation, conditions of probation or a short sentence of confinement as opposed to a long sentence.

Standard 12.1(g)

The prosecutor shall take into consideration various elements of the case as established by office guidelines before determining what plea, if any, to accept. These shall include, but not be limited to, information concerning:

1) The alleged offense;

2) The circumstances and attitude of the defendant;

3) The circumstances and attitude of the victim;

4) The strength of the evidence;

5) The circumstances of the arrest;

6) The attitude of the apprehending agency.

Standard 12.1(h)

The prosecutor shall be certain that all cases shall be determined individually on their own merits and he/she shall keep a file record of all plea negotiations.

Commentary

The decision to recommend the retention of plea negotiations was made with full cognizance of the serious criticisms being leveled against this process. This decision is not a condonation of the public image conjured by plea "bargaining" of behind-the-scenes wheeling and dealing. Nor does this decision reflect any desire to perpetuate what is publicly perceived as a usurpation of the judge's independent sentencing function. Because of these and other

recognized problems in the practice of plea negotiations, these recommendations are not an endorsement of what has existed. Rather, these standards and subgoals represent a carefully considered effort to correct current practices, to increase visibility and fairness, and to return the sentencing decision to the judge.

The practical effect of a total abolition of plea negotiating would be the creation of the greater evil of forcing this practice even further from public scrutiny. Discussion and exchanges between prosecutor and defense attorney will take place no matter what laudable standard is imposed upon them. Simply closing our eyes and stating that all plea negotiations must stop would result only in our not seeing the practice, not in its cessation.

Neither the public nor the defendant would be served by the abolition of plea negotiations, but both could benefit from reform of the serious drawbacks of the process. Reform is the subject of these recommendations. Considerable latitude still remains with the prosecutor to decide whether to make any dispositional recommendation, to reduce or dismiss a charge.

Written policies governing plea negotiations in each district attorney's office would work toward uniformity within each prosecutor's office and would open the negotiation process to public scrutiny. It is clear that no one benefits from allowing the individual personality traits of a particular prosecutor to dictate the state's position. The act of composing each office's policies may in itself force consideration of the goals and motivations behind negotiations. Direction as to what should be included in these policies is provided throughout this section.

Subgoal 12.2: Restrictions on Prosecutorial Recommendations

Plea agreements shall not include prosecutorial recommendations as to specific length of incarceration.

Commentary

The prohibition against prosecutorial recommendations as to length of incarceration is in keeping with the conclusion that the sentencing function must rest solely with the trial judge. The public view, in many instances an accurate perception, of the judge as a "rubber stamp" for the recommendations of the district attorney, is addressed in this subgoal. It is not, however, the intention of this restriction to deprive the prosecutor of all influence as to the disposition of the case. Recommendations in regard to whether the defendant should be placed on probation, conditions of probation or whether

confinement is preferable from the state's point of view are still permissible under this subgoal. General comments from the prosecutor reflecting whether the defendant should serve a short or long sentence would still be appropriate under this subgoal. Nonetheless, the prosecutor would be prohibited from presenting a "packaged deal" to the judge. Even though the law makes clear that the judge is not bound by the district attorney's plea agreement, defendants and judges alike are impressed by a specific recommendation from the prosecutor.

The defendant is hopeful, for example, that a promise to recommend 18 months incarceration represents a ceiling on how much time will be ordered. The judge may feel constrained if he or she assumes that the defendant has traded something for this recommendation. The judge is faced with the unpleasant choice of either rubber stamping the agreement or rejecting it in toto. The public is skeptical of the whole process. By restricting the prosecutor's recommendations, these standards reinforce the judicial role in sentencing and thereby attempt to engender public confidence in plea agreements.

Subgoal 12.3: Prohibited Prosecutorial Inducements

The prosecutor's conduct while engaging in plea negotiations shall give every appearance of fair-mindedness.

Standard 12.3(a)

The prosecutor shall avoid any expressed or implied misstatements to defense counsel or the defendant in connection with plea negotiations that may be relied upon by the defendant to his or her detriment.

Standard 12.3(b)

No prosecutor shall engage in, perform or condone any of the following:

1) Charge or threaten to charge the defendant with offenses for which the admissible evidence available to the prosecutor is insufficient to support a guilty verdict or which is charged to coerce the defendant into a plea;

2) Charge or threaten to charge the defendant, in order to unduly harrass that person, with a crime not ordinarily charged in that jurisdiction for the alleged conduct;

3) Fail to grant full disclosure of all exculpatory evidence material to guilt or sentence before the plea negotiations are concluded.

Commentary

Most of the specifics incorporated into these standards are simply good prosecutorial procedures, and the reasons behind them are self-evident. The section is included to reinforce the balance between prohibited prosecutorial coercion and the need to maintain prosecutorial discretion.

Subgoal 12.4: Defense Role in Plea Negotiations

A defense attorney shall approach the plea negotiation process in an adversary spirit, seeking the best possible resolution of the case from the client's perspective. The attorney's relationship with all parties shall be characterized by professionalism, mutual respect, and integrity.

Standard 12.4(a)

The decision of whether to plead guilty shall be made by the accused only after a full consultation with the defendant's attorney.

Standard 12.4(b)

Defense counsel shall inform the defendant of any proffered plea negotiation.

Standard 12.4(c)

Defense counsel shall advise the defendant of the collateral consequences of a plea of guilty as well as its effect as a waiver of various constitutional rights.

Standard 12.4(d)

Defense counsel shall advise the defendant that it is he or she, not the attorney, who enters the plea of guilty and that a judicial inquiry will be made as to whether the plea is voluntary.

Standard 12.4(e)

Defense counsel shall not seek to coerce a choice of plea by threatening to withdraw from the case or by using other means to coerce the client.

Standard 12.4(f)

Defense counsel shall not consider entering into plea negotiations until he or she has:

1) Thoroughly explored the factual and legal issues that are presented by the case;

2) Considered the various extra-legal issues that are likely to affect the choice of plea over trial;

3) Developed background information about the defendant;

4) Determined the defendant's eligibility for and willingness to accept various dispositional programs.

Standard 12.4(g)

Defense attorneys shall view each case on an individual basis. An agreement for one client must never be sought at the expense of another. If such a conflict arises, defense counsel shall disqualify himself or herself from that case.

Standard 12.4(h)

Regardless of the identity of the person paying the attorney's fees, defense counsel's primary obligation shall be to the named defendant he or she represents and defense counsel's actions shall be reflective of this defendant's wishes and best interest.

Standard 12.4(i)

Defense counsel should keep a file record of all plea negotiations.

Standard 12.4(j)

It is recommended that the defense attorney's files, especially in felony cases, should contain an easily understood form signed by the defendant prior to entry of a guilty plea which contains advice as to constitutional guarantees waived by the defendant through a plea of guilty, the nature of the charges and the plea agreement.

Commentary

As the counterpart to the prosecutor, the defense attorney should also be subject to guidelines defining the expectations and limitations of the role. Standard 12.4(d), reminding the defense attorney and the defendant that it is the defendant, not the attorney who will bear the consequences of any agreement, is of particular importance. Coercion from the defense attorney can be more subtle but equally as powerful as coercion from the prosecutor. Both types of coercion are condemned regardless of their motivation.

Subgoal 12.5: Judicial Participation

The judge shall not participate in plea negotiations.

Commentary

By prohibiting judicial participation in plea negotiations this section is consistent with the over-all goals of returning the sentencing function to the judge and of subjecting the process to more public scrutiny. Subgoal 12.5 strives to eliminate potentially conflicting roles for the judge. No judge can be an impartial plea taker and sentencer who has been part of the negotiating process. By removing the judge from this picture, these standards work to assure that there is no possibility of extra pressure being applied to the defendant from the judge.

A judge who hears the details of a plea agreement for the first time in open court will aid the public in understanding the process of negotiations and will remain uninfluenced by the give-and-take that produced the agreement.

GOAL NO. 13: SPEEDY TRIAL

Consistent with the fair administration of justice, all criminal cases shall be brought to trial as soon as possible after charging.

Subgoal 13.1: Right to Speedy Trial

Both the State and the defendant shall have the right to a speedy trial.

Standard 13.1(a)

Necessary judicial and prosecutorial personnel shall be provided to accommodate a speedy trial of all criminal cases.

Standard 13.1(b)

Deliberate delay without good cause by the State or the defendant or counsel to gain a tactical advantage shall be subject to judicial sanctions.

Subgoal 13.2: Ease of Access to the Courts and Convenience of Witnesses

Modifications shall be incorporated into the criminal justice system in order to provide the easiest possible access by the people and the minimum inconvenience to witnesses. (cf. Subgoal 30.2)

Standard 13.2(a)

Criminal cases shall be tried as soon as possible after the defendant has been charged while the events are clear in the witness' mind.

Standard 13.2(b)

Scheduling of cases shall be constructed to minimize the number of witness appearances. Adjournments shall be granted only when they are essential and only when a showing of good cause has been made to the court.

Standard 13.2(c)

The prosecutor shall be provided adequate resources to process felony cases with the same attorney handling a complaint from initiation through sentencing thereby facilitating witness contact, providing ongoing witness assistance as necessary, and minimizing witness inconvenience.

GOAL NO. 14: JURIES

The right to trial by jury should be maintained in all criminal cases unless waived by the defendant with the consent of the state and the court. Procedures shall be developed to broaden the sources from which prospective jurors are chosen and to improve the administration of juries.

Subgoal 14.1: Jury Size and Verdict

Unless the parties and the court stipulate to smaller number of jurors, juries in criminal cases shall consist of twelve members; in any event verdicts by juries in criminal cases shall be unanimous.

Subgoal 14.2: Jury Selection and Administration

Juries should be fairly and efficiently selected and administered in order to provide for selection of prospective jurors from as wide a cross-section of the population as possible, and to provide for administration which will economize use of funds and the time of the jurors. (cf. Goal 29, Subgoal 26.3)

Standard 14.2(a)

Juror source lists shall be compiled from several sources so as to maximize the potential for participation by all adult persons.

Standard 14.2(b)

Selection of prospective jurors shall be random from a fair cross section of the population of the area served by the court.

Standard 14.2(c)

Only objective criteria shall be used in determining juror qualifications.

Standard 14.2(d)

No qualified prospective juror shall be exempted or excused from jury service, except upon a showing of undue hardship, extreme inconvenience, or public necessity. Such excuse shall only be for a period deemed necessary by the court, after which the person shall be required to reappear for jury service. Jury fees should be increased to a reasonable level of compensation adjusted to cost-of-living.

Standard 14.2(e)

The responsibility for efficient management of juries including determining pool size, managing caseflow, scheduling of jury trials, utilizing improved juror screening procedures and developing better methods of reimbursing jurors, shall rest with the chief judge, who shall be assisted by professionally trained administrative staff when necessary.

GOAL NO. 15: ACCEPTANCE OF THE PLEA

The court shall not accept a plea of guilty from a defendant without first addressing the defendant personally and determining that the plea is voluntary and accurate.

Subgoal 15.1: Acceptance of a Plea

The court shall not accept a plea of guilty without first determining whether the tendered plea is the result of prior plea discussions and a plea agreement, and if it is, what agreement has been reached.

Standard 15.1(a)

If any of the following circumstances are found and cannot be corrected by the court, the court shall not accept the plea:

1) Counsel was not present during the plea negotiations but should have been.

2) The defendant was mistaken or ignorant as to the law or facts related to her or his case and this affected the decision to enter into the agreement.

3) During plea negotiations the defendant was denied a constitutional or significant substantive right that was not waived.

4) The defendant has been offered improper inducements to enter the guilty plea.

5) The admissible evidence is insufficient to support a guilty verdict for the offense for which the plea is offered.

Standard 15.1(b)

Whenever possible, a representative of the apprehending agency shall be present at the time a guilty plea is offered. This representative should insure that the prosecuting attorney is aware of all available information. (cf. Goal 1)

Standard 15.1(c)

Whenever possible, the victim or a representative of the victim shall be given the opportunity to be present at the time a guilty plea is offered. (cf. Standards 30.2(a), 30.3(b))

Standard 15.1(d)

When a plea is offered, the record shall contain a statement of the terms of the agreement and the underlying policies the parties considered.

Standard 15.1(e)

When a plea agreement is offered and the court either accepts or rejects it, the record shall contain a statement of the reasons for the acceptance or the rejection of the plea agreement.

Commentary

The critical nature of the procedures and standards governing the acceptance of a plea compelled departure from the general policy of not repeating established principles of law as standards and goals. Most of what is contained in Standards 15.1(a), (d) and (e) is premised on the requirements of good plea-taking as it now exists. Judicial inquiry at this stage has been expanded somewhat. Specific questions should be addressed to counsel and the defendant to determine whether counsel was present at all necessary negotiation and whether the defendant comprehends the facts and applicable law required for a finding of guilt.

Standards 15.1(b) and (c) recommend the attendance of the apprehending officer and the victim or the victim's representative. These appearances may be mutually informative. Both these groups of people oftentimes feel disenfranchised by the plea agreement process. Each of them may, in the end, agree with the result if informed of the reasons behind it. At least, even if their concurrence is not achieved, each of them will have had an opportunity to hear why this agreement was reached and to react, if so requested by the judge. It may also be that the presence of the victim or a representative of the victim will have an impact on the defendant. This presence may serve to remind the defendant that someone was injured (either physically or financially) because of his or her law violation.

Subgoal 15.2: Withdrawal of Pleas

The defendant shall be permitted to withdraw a plea because of the court's rejection of the terms of a plea negotiation.

Standard 15.2(a)

After a plea agreement is stated on the record by both the prosecutor and defense counsel, the judge shall state whether the plea agreement will be rejected. If the judge states that the agreement will be rejected, the defendant shall be given an opportunity to withdraw the plea.

Standard 15.2(b)

If the judge states that the plea agreement will be accepted but in fact does not accept the plea later in the proceedings, then the defendant shall be given the opportunity to withdraw that plea.

Standard 15.2(c)

If a plea is withdrawn by a defendant, pursuant to Standards 15.2(a) and 15.2(b) above, the defendant shall be granted one substitution of the trial judge upon request.

Commentary

Because these recommendations prohibit any judicial participation in negotiations, fairness to the defendant demands generous opportunity to withdraw the plea upon judicial rejection of the agreement. Automatic substitution of judge in such a situation was not endorsed since the defendant may still exercise the right to a jury trial on the question of guilt.

GOAL NO. 16: SENTENCING

Rationally-based sentencing shall be promoted, and disparity in sentencing shall be reduced.

Subgoal 16.1: Primary Sentencing Authority

The primary sentencing authority shall reside in the trial judge and shall be based on the following standards.

Standard 16.1(a)

Every effort shall be made to effect a disposition without the use of confinement in the state prison system and with the use of alternatives to such confinement which shall be provided through state resources directed toward the establishment and development of community-focused programs. (cf. Goal 20, Subgoals 18.1, 18.2, 18.3, and 23.5)

Standard 16.1(b)

When placing the defendant on probation or when sentencing, the judge shall consider the following:

1) the defendant's criminal conduct did or did not cause or threaten serious harm;

2) the defendant did or did not contemplate that the criminal conduct would cause or threaten serious harm;

3) the defendant did or did not act under a strong provocation;

4) there did or did not exist substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

5) the victim of the defendant's criminal conduct did or did not induce or facilitate its commission;

6) the defendant did or did not compensate or does or does not intend to compensate the victim of the criminal conduct for the damage or injury that the victim sustained;

7) the defendant does or does not have a history of prior delinquency or criminal activity or has or has not led a law-abiding life for a substantial period of time before the commission of the present crime;

8) the defendant's criminal conduct was or was not the result of circumstances unlikely to recur;

9) the character and attitude of the defendant do or do not indicate the likelihood of his or her committing another crime;

10) the defendant is or is not likely to comply with the terms of a period of mandatory supervision;

11) the imprisonment of the defendant would or would not entail excessive hardship to his or her dependents;

12) the crime, the facts surrounding it, or the defendant's history and character do or do not justify deviation from statewide sentencing practices relating to persons in circumstances substantially similar to those of the defendant;

13) such other factors as may have a reasonable bearing on the determination of a sentence.

Commentary

Clear lines of authority and responsibility emanating from the judge and ultimately returning to the judge are the foundation upon which this sentencing structure is based. These lines are reinforced by the enumeration of the appropriate considerations that should dictate the sentencing decision.

First and foremost, the judge must direct attention to non-confinement alternatives. Only when the factors listed in Standard 16.1(b) reasonably convince the judge that no other disposition protects the public, should imprisonment be ordered. Each offender must be considered as an individual; each disposition must reflect such consideration.

The goal of rationally-based sentencing demands the establishment of specific guidelines against which sentencing decisions can be evaluated. Standard 16.1(b) presents the minimum criteria for rational sentencing. It is neither exhaustive or exclusive. It is not intended to restrict the creative and concerned judge, but to offer guidance. These standards and goals are directed toward addressing serious flaws within our current sentencing system itself. They are not presented as a springboard or justification for harsher treatment of criminal offenders.

Subgoal 16.2: Procedures for Sentencing and Placing on Probation

The sentencing process shall be conducted to provide the judge with the greatest amount of relevant information about the defendant and to convey to the defendant a sense of fairmindedness and deliberation over the most appropriate disposition consistent with the needs and resources of society. The placement of the defendant on probation shall be the first dispositional alternative considered by the sentencing judge and shall be preferred over sentences imposing imprisonment.

Standard 16.2(a)

After all felony convictions, a confidential pre-sentence report shall be prepared for and considered by the sentencing judge. Each pre-sentence report shall include but not be limited to information as to the defendant's family background, educational history, employment record, past criminal record and an evaluation of the alternative dispositions available for this defendant. Also included in this report shall be information concerning statewide sentencing patterns relating to persons in circumstances substantially similar to those of the defendant. Within a reasonable time prior to sentencing a copy of this report shall be provided to the prosecutor, the defense attorney, and to the defendant if unrepresented. Defense counsel shall make the pre-sentence report available for the defendant's review. Defense counsel shall discuss the contents of the report with the defendant in detail. All copies of the report shall be returned to the court at the conclusion of the sentencing. Violations of the confidentiality of the report shall be subject to judicial sanctions. (cf. Goal 26, 27)

Standard 16.2(b)

Probation shall be imposed only through the procedure of withholding sentence and then placing the defendant on probation.

Standard 16.2(c)

If the imposition of jail time is a condition of probation, the judge may permit release for work, for seeking employment, for family visits, for treatment, for schooling and such other purposes as the court may deem reasonable. (cf. Standard 17.5(h))

Standard 16.2(d)

Probation may include reasonable conditions individually suited to the needs of the defendant or the facts of the offense. Innovative conditions such as public service time, victim restitution, and residence in special facilities should be encouraged. (cf. Subgoal 30.3)

Standard 16.2(e)

Restitution may be ordered by the court only as a condition of probation. The amount of restitution and payment schedule shall be based on the actual, pecuniary damages sustained by the victim, the financial resources and future ability of the defendant to pay and the likely adverse effect payment of restitution will have on those dependent upon him or her. An order of restitution may provide for payment to the victim up to but not in excess of actual losses caused by the defendant. (cf. Subgoal 30.3, 19.3)

Standard 16.2(f)

Failure to pay restitution shall result in a return of the defendant to the original sentencing court which upon proof of failure to pay may: (cf. Subgoal 19.3)

1) modify the amount of restitution;

2) extend the period of probation;

3) order the defendant committed to jail with work release privileges; or

4) revoke probation and impose sentence.

Standard 16.2(g)

Each sentence imposing incarceration shall include a statement by the judge on the record of the reasons for the sentence and for the length of the sentence imposed.

Standard 16.2(h)

All time spent incarcerated prior to sentencing for the offense that is the subject of the sentencing, or awaiting the placement mandated by the sentence, shall be credited to diminish the sentence imposed.

Standard 16.2(i)

No sentence extending a defendant's term of imprisonment beyond the basic statutory maximum classification for the crime shall be imposed unless the defendant is found to be in need of an extended term by reason of being found to be either an habitual offender, a dangerous offender, or a professional criminal. An extended term is an additional period of imprisonment which may be imposed but which is limited to no more than twice the maximum for the classification in which the crime is placed and may be imposed only after:

1) notice of the State's intention to seek an extended term is effected through a statement included in the complaint or in the information;

2) a hearing; and

3) a factual determination that the defendant meets the criteria defining one of the three types of offenders for whom the extended term is permissible.

No more than one extended term may be imposed for each conviction.

Standard 16.2(j)

A dangerous offender is one who has been convicted of a felony in which was inflicted or attempted to be inflicted serious bodily harm, and the defendant is not suffering from mental disease or defect but possesses a psychological or emotional disturbance as evidenced by prior overt conduct such as would endanger himself or herself or others, and the court finds that an extended term is necessary to protect the public from the defendant's further criminal conduct.

Standard 16.2(k)

An habitual offender is one:

1) who was convicted of one felony or three separate misdemeanors during a five-year period immediately preceding the commission of the crime for which he or she is presently being sentenced, which convictions remain of record and unreversed. In computing the preceding five-year period, time which the offender spent in actual confinement serving a criminal sentence shall be excluded;

2) who is at least 21 years of age, as of the commission of the present offense; and

3) for whom the court finds that an extended term is necessary to protect the public from the defendant's further criminal conduct.

Standard 16.2(l)

A professional criminal is one who stands convicted of a felony that was committed as a part of a continuing illegal activity in which the defendant acted in concert with other persons or occupied a position of management in this illegal activity, or was an executor of violence for this illegal activity. An offender should not be found to be a professional criminal unless the offense for which he or she stands convicted and other evidence demonstrates that this offender knowingly devoted himself or herself to criminal business activities as a major source of livelihood, or unless it appears that this offender has a substantial income or resources that appear to be from a source other than from legitimate business activity. An offender shall not be found to be a professional criminal unless the court finds that an extended term is necessary to protect the public from the defendant's further criminal conduct.

Standard 16.2(m)

Consecutive sentences may be imposed only when the defendant is convicted of another crime which was committed while incarcerated, serving a sentence, released on bail or on probation.

Standard 16.2(n)

When sentencing a defendant who is under 21 years of age, the judge shall give every consideration to the utilization of the Youthful Offenders Act if there is reason to believe the defendant could benefit from its provisions and that society would be adequately protected.

Standard 16.2(o)

Good time shall diminish the length of sentence on an unchanging ratio. Credit shall be given for all time served without infraction of the reasonable rules of the holding institution. Regardless of whether the time spent incarcerated is prior to sentencing, good time shall be uniform and shall be computed on a constant basis throughout the period the defendant is incarcerated. (cf. Standard 20.1(k))

Standard 16.2(p)

The sentencing court may grant an offender's petition for reduction of sentence at any time after the imposition of sentence on the grounds of extraordinary and unusual hardship not known to the judge at the time of sentencing.

Standard 16.2(q)

When consistent with the protection of the public, the Division of Corrections shall make every effort to utilize less secure facilities and transitional residences for offenders sentenced to a term of imprisonment. (cf. Standard 30.3(a))

Standard 16.2(r)

The State shall have the responsibility for collecting and compiling information of statewide sentencing practices and patterns. This information shall be regularly disseminated to the courts through the state court administrator's office. (cf. Subgoal 30.3, 30.4, 18.2, 18.3, 23.5, Goal 20, Standards 18.2(a), 18.2(b))

Commentary

Improvement in the sentencing process will occur only with improvement in the provision of relevant information about the defendant to the judge. The deliberations called for by these standards can only enhance the defendant's perception of the process. It is axiomatic that decisions based on the best information will also be decisions in the best interest of society as well as of the defendant. In addition, the subgoal reflects a belief that better informed judges will see the advantages probation holds for the great majority of convicted defendants.

By requiring a pre-sentence report after all felony convictions, Standard 16.2(a) substantially increases the use of this informational tool. Current law leaves the decision as to the advisability of a pre-sentence report to the discretion of the judge. (Wis. Stat. s.972.15) The difficulty with such a method is that without a pre-sentence report, the judge may not be apprised of sufficient facts necessary to determine whether a pre-sentence report would be helpful.

Differences of opinion exist as to the advisability of making the pre-sentence report available to the defendant. Those opposed to the defendant's access argue that unless the sources of the information can be assured anonymity they will not be candid with the writer of the report. Those arguing for defendant access respond

that such protections preclude the defendant from challenging the veracity or motivation behind the statements of those sources. Clearly the defendant must have access to the report if he or she is not represented by counsel. However, self-representation is rare in felony cases. Using counsel as the conduit for the presentation of this information to the defendant may have the advantage of explaining the adverse comments that may be contained in the report. Through such a mechanism, the attorney may become aware of any danger to a source and take steps accordingly. This standard permits defendant participation in the sentencing process and opens the possibility of refutation when necessary.

Nonetheless, Standard 16.2(a) preserves the confidentiality of the report. Distribution of the report or its contents to others than those identified in this standard should be dealt with firmly by the trial judge.

The procedures detailed in this section begin with those applicable to probation as yet another demonstration of the priority of probation as a dispositional alternative. Consistent with Subgoal 16.1, the recommended form of placing on probation is through the mechanism of withholding sentence. This method assures that the trial judge will have on-going decision-making authority and responsibility concerning this defendant. The practice of imposing and then staying the sentence when placing on probation is rejected because the defendant's circumstances may greatly change prior to any revocation. The staying of a sentence can result in untold consequences. Upon revocation of probation, the Division of Corrections is forced to impose the sentence that was stayed and has no jurisdiction to modify the conditions of probation or to subject the defendant to an original term of imprisonment less than that named in the stayed sentence. Time and experiences of the defendant could well have intervened to make the stayed sentence inappropriate. The basis of the revocation could well be a technical violation of a condition of probation that could be more effectively dealt with through a modification of the condition. To permit continuation of imposing and staying sentences when placing on probation would be to jeopardize the implementation of Subgoal 16.1.

Standard 16.2(c) expands the permissible reasons for release from jail when time there has been imposed as a condition of probation. It also changes the Gloudemans decision (1976) mandating that defendants in jail, as a condition of probation, be released during work hours. Even the decision as to release during work hours should be fitted to the situation of the defendant. It is possible that a judge would not use probation unless the defendant had to serve time in jail for an uninterrupted period prior to beginning the probationary period. Such an alternative should be possible.

Additionally, this standard clarifies that release from jail when imposed as a condition of probation can be permitted for a myriad of reasons. In keeping with the perspective of community focused correctional programs, such releases allow an offender to maintain community ties. Family visits and personal business should be continued to reinforce the defendant's contact with and investment in the community to which he or she will be returning.

The view of probation reflected in these standards is that of a flexible, malleable disposition. The judge should not be restricted to the more mundane uses of probation (i.e., regular visits with a Division of Corrections agent who is laboring under an oppressively large caseload). Instead, options permitting creative and appropriate forms of probation are endorsed. Care should be taken, however, to insure that whatever conditions are imposed are reasonable and appropriate.

Special attention is devoted to restitution as a condition of probation because of the value such a disposition may have for both the defendant and the victim and because restitution must be subject to relatively strict guidelines to avoid possible abuses. Standard 16.2(e) establishes that restitution may not be imposed as a sentence. The basic inequity of depriving a defendant of freedom and then requiring payments from the defendant is apparent. Realistically, very few imprisoned defendants have any means to accumulate funds for the payment of restitution.

Even in cases in which restitution, viewed from all other perspectives, seems appropriate, the financial situation and future of the defendant must also be considered. This recommendation reinforces the general direction of these standards and goals in requiring the specific circumstances of the defendant to be recognized.

Because the penalty for failure to pay restitution may be as severe as imprisonment, only the actual damages to the victim may constitute the amount ordered as restitution. Recompense for pain and suffering and damages of that nature is more appropriately the province of the civil branch of our court system.

The reasons behind Standard 16.2(g) are well-grounded. It requires a statement by the judge as to why he or she is ordering a specific disposition. Without such a statement the review called for in Subgoal 16.6 would be limited to speculation as to what considerations dictated the disposition. Such a statement will also be helpful in determining whether the guidelines proposed have been followed and the information recommended has been obtained.

Standard 16.2(h) is a conscious modification of existing law. Cases such as Byrd v. State (1974) permit judicial discretion regarding credit for time spent incarcerated prior to sentencing unless that time, in conjunction with the sentence served, exceeds the statutory maximum. Kubart v. State (1975) contains similar reasoning regarding credit for time spent in jail after sentencing awaiting reception at a correctional institution. Since most of the time spent in jail before sentencing is due to financial inability to raise bail money, the current law is discriminatory against people of limited monetary resources. Failure to give credit for time spent incarcerated can breed strong feelings of injustice once an inmate realizes that he or she has spent extra months behind bars in comparison to another inmate who received the same sentence. A similar feeling can be generated in an inmate who is doing more time than others because transfer from the jail to the correctional institution was not effectuated as quickly. Such results have no place in a system of sentencing premised on a goal of "rationally-based sentencing."

Standards 16.2(i), (j), (k) and (l) provide for the imposition of an extended term under certain explicit circumstances. The requirements for a factual determination that a defendant is in need of an extended term were made rigorous so that these categories did not become a standard circumvention of the maximum penalties. It is admitted that labeling may be an unfortunate by-product should these particular recommendations be implemented. That, however, is not the purpose of providing for extended terms; it is only a reflection of the constraints language and identification dictate when specifying exceptions.

Inclusion of provisions for extended terms is for the purpose of insuring an additional period of imprisonment when required for the protection of society and should not be misconstrued as carte blanche for an automatic doubling of terms. In no event, should these provisions bring about an increase in average time served. Extreme care was taken in drafting the standards for extended terms, and extreme care should be taken in their implementation.

Extended sentences obviate almost every need for consecutive sentences. The exceptional instances in which consecutive sentences may still be needed are those in which the defendant commits another crime while he or she is in the criminal justice system. Without such exceptions, there is concern that an offender may engage in law violations because of an awareness of a prohibition against consecutive sentencing. Standard 16.2(m) offers protection against such a possibility. Use of the word "bail" in this standard is meant to include release on one's own recognizance.

In keeping with the over-all philosophy of individually tailored sentences, Standard 16.2(n) clarifies that special treatment of younger people through the use of the Youthful Offenders Act is consistent with these standards and goals. A similar reference can be found in Standard 16.1(b)(7).

Good time, the reduction of time served in proportion to the amount of time spent incarcerated without violation of the disciplinary rules, is retained in these recommendations. It is recognized as a necessary mechanism for maintaining order and for rewarding reasonable behavior. To fulfill those functions, however, good time must be consistent and fairly administered. The nearly incomprehensible method now employed for the computation of good time generates great confusion. (Wis. Stats. s.53.11, (1973)) As it works now, those people serving long sentences earn extra good time credit only after years of incarceration while offenders serving shorter sentences earn only a fraction of this good time.

Standard 16.2(o) calls for the computation of good time on a constant basis throughout the period of the defendant's incarceration. Good time should not be credited until earned, and then it should vest without the possibility of reduction. Although further study is needed to determine how much good time should be credited for each day served without infraction of the institutional rules, the intention of Standard 16.2(o) is that whatever simplified schedule is adopted be generous in its computation of good time. Generous application of good time combined with a simplified method of computation can only benefit the judge in setting an offender's sentence, the defendant in estimating time of release, and the public in understanding the real meaning of the sentences imposed.

Rarely, but undeniably, an offender's circumstances change so radically that continued imprisonment would impose an extraordinary and unusual hardship for the defendant or for his or her family. Standard 16.2(p), while not changing current provisions for motions to reduce sentence within 90 days of the imposition of sentence, expands this right indefinitely for the cases of extraordinary and unusual hardship. It is envisioned that such reductions will occur seldom and only when the most compelling circumstances have been proven.

Standard 16.2(q) appears for the purposes of clarity. Early public reaction to these proposals suggested that some people saw them as a way of imposing longer prison terms for offenders. Opportunities are taken throughout these standards and goals to dispel any such impression. This standard is one such opportunity in that it encourages continued use by the Division of Corrections of minimum security and transitional facilities. Nothing contained in these recommendations speaks for exclusive or increased use of prisons, or for the elimination of non-traditional holding facilities.

The information called for in Standards 16.1(b), (k), (l) and 16.2(a) as to statewide sentencing practices and patterns is considered so crucial as to require Standard 16.2(r) and its provisions for the collection and dissemination of these facts. Knowledge of statewide practices is essential in working toward the elimination of disparity. Information on the use of probation must also be included in these facts. Judges are not kept informed as to how their sentences compare with those of their colleagues. The effort to make this information available is not an attempt to force judges to adhere to a statewide average for a certain offense. Rather, the knowledge of how others are handling similar situations might bring about consideration of how this defendant differs from those represented in the statistics. The anticipated result is that those judges whose sentences deviate considerably from the state figures might reconsider their dispositional decisions. Such information may well give pause to a judge and facilitate added consideration of the factors listed in Standard 16.1(b).

Subgoal 16.3: Revocation of Probation

In order to insure due process and to provide the opportunity for modification of conditions of probation rather than revocation, the final decision to revoke a defendant's probation shall be made by the original sentencing court. (cf. Subgoal 19.2)

Standard 16.3(a)

The Division of Corrections shall be responsible for an initial determination as to whether an offender's alleged violation of the conditions of probation constitute grounds for revocation of probation. Upon such a determination, the Division of Corrections shall make application to the original sentencing court for a hearing on the question of revocation. All revocation of probation shall be in accordance with due process of law and shall be conducted and determined by the original sentencing court.

Standard 16.3(b)

The same sentencing standards that governed initial sentencing should be applied to the current circumstances of the defendant when deciding whether to revoke probation.

Standard 16.3(c)

Probation shall not be revoked solely for a new criminal offense until the defendant has been convicted of the new offense.

Commentary

The continued responsibility of the trial court judge for sentencing decisions is reflected in this subgoal. Revocation hearings should be at the initiation of the Division of Corrections, but the revocation decision should be the judge's. Standard 16.3(c) is an effort to curb the anomalous practice of revoking probation on the grounds of a new law violation that either isn't subjected to the scrutiny of proof beyond a reasonable doubt or wouldn't stand up to such scrutiny. It is anticipated that one of the more frequent results of bringing revocation decisions back to the court will be modification of the conditions of probation in line with the defendant's current situation rather than revocation and imprisonment.

Subgoal 16.4: Classification of Crimes

All crimes should be classified for the purpose of sentencing into categories which reflect substantial differences in gravity, but in no event should the overall average amount of time being served in correctional institutions be increased beyond that currently being served.

Standard 16.4(a)

The classification system should include several classes of felonies and classes of misdemeanors. Certain minor crimes should be reclassified into civil offenses carrying monetary forfeitures as the only penalty.

Standard 16.4(b)

The monetary amounts determinative of whether a crime is a misdemeanor or a felony or of whether a greater penalty provision is applicable shall be increased to reflect inflation.

Standard 16.4(c)

No statutory minimum or mandatory sentences shall be established.

Commentary

Rationally-based sentencing must be predicated upon laws relating the permissible length of the sentence to the seriousness of the offense. Disparity of sentences cannot be eliminated without similar penalties being statutorily provided for similar kinds of offenses. The classification of crimes works toward both of these goals. Subgoal 16.4 and its standards are addressed to the legislature.

In fact, the mere act of classifying crimes is one of the best methods of re-examining the relation between the type of crime and its penalty. (Wisconsin Legislative Council, 1973) Wisconsin's criminal code is in need of extensive review so that unequal crimes are not equated.

For example, under our present criminal code, the forger of a five dollar check faces a maximum sentence of ten years, (Wis. Stats. s.943.38(1) 1973) while the shoplifter of a five dollar item faces only a six month maximum. (Wis. Stat. s.943.50(4) 1973) The distinction between a paper and a personal transaction is of questionable justification for a nine year six month difference in potential penalty.

Standard 16.4(a) proposes a system of classification with several levels of delineation within the broader categories of felonies and misdemeanors. The delineation would be determined by the maximum sentences that could be imposed. The result would be along the lines of the establishment of Class "A", "B", "C", etc., felonies, with the same maximum penalty for each class, and the crimes in each class considered of equal seriousness by the classifiers. The task is monumental and must be conducted with extreme care. It is beyond the scope of this Committee, but the genesis of such a system is a priority essential to the implementation of the sentencing structure endorsed by these standards and goals.

The decriminalization of certain minor crimes called for in Standard 16.4(a) is addressed to such offenses as: "Mooring watercraft to railroad tracks" or "Possession, use or control of a flouroscopic shoe fitting machine" (Wis. Stats. s.941.04(1) and 941.34, 1973). Criminal sanctions for such breaches may be overkill, and civil forfeitures could well be very effective enforcement tools.

Standard 16.4(b) simply recommends an increase in the monetary cut-off points used to determine the applicability of sentences. For example, the $100.00 distinction that determines whether a crime is petty or grand theft and subject to a six month or a five year sentence (Wis. Stats. s.943.20(3), (1973)) does not reflect the diminished value of $100.00 over years of inflation.

Subgoal 16.5: Restrictions on the Use of Fines

Fines may be used as a sentencing alternative to confinement only if the defendant did not harm the victim, did not threaten physical injury to the victim, or did not expose the victim to potential physical danger, and only if the offense was not burglary. Revenue production is not a legitimate basis for imposing a fine. Every effort shall be made to avoid allowing wealthy defendants to circumvent incarceration imposed upon poorer defendants because of inability to pay a fine.

Standard 16.5(a)

Fines shall be imposed in felony cases only if the defendant is a corporation or if the defendant has gained money or property through the commission of the offense.

Standard 16.5(b)

Conditions of payment of a fine shall be tailored to the means of the particular offender.

Standard 16.5(c)

The court shall consider the following in determining whether to impose a fine and the amount of the fine:

1) the financial resources of the defendant and the burden that payment of a fine will impose, with due regard to other obligations;

2) the ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court;

3) the extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime;

4) whether there are particular reasons which make a fine appropriate as a corrective measure for the defendant; and

5) whether the circumstances of the defendant necessitate the court's authorizing installment payments of any imposed fine.

Standard 16.5(d)

The length of a sentence of incarceration for nonpayment of a fine shall not be inflexibly tied, by practice or by statutory formula, to a specific dollar equation, but the court shall be authorized to impose a term of confinement or a sentence to partial confinement for nonpayment not to exceed one year. Service of such a term shall discharge the obligation to pay the fine and payment at any time during its service shall result in the release of the offender.

Standard 16.5(e)

The methods available for the collection of a civil judgment for money shall also be available for the collection of a fine, and shall be employed in cases in which the defendant has the financial means to pay the fine and refuses to pay.

Standard 16.5(f)

In the event of nonpayment of a fine by a corporation, the courts shall be authorized to proceed against the assets of the corporation under Standard 1.5(e).

Commentary

The use of fines can play an important role as an alternative to confinement. Care must be taken, however, so that the setting of fines does not become an alternative available only to the wealthy. Additional caution must be exercised so that the correctional value of fines is not measured by the prospect of fuller public coffers. In any event, the use of fines was not deemed appropriate for violent or threatening crimes. Burglary was also excluded from the offenses punishable by fines because of the financial circumstances of most convicted burglars and the potential for violence that burglary sometimes involves. Property offenses will be those most effectively dealt with through the imposition of fines.

As with other sentencing standards, those providing for the imposition of a fine require that the judge determine its appropriateness and amount as a result of a consideration of the particular circumstances of the defendant. Failure to pay the fine may result in only a one-year sentence of incarceration, which may limit the use of this alternative to less serious offenses.

The standards on the use of fines are relatively self-explanatory and are based on comparable models (i.e., A.B.A.). Nonetheless, it should be noted that, as with restitution, use of this alternative to benefit only the financially privileged offender is in direct contravention of purpose for its inclusion.

Subgoal 16.6: Review of Sentences

The court of appeals shall review all sentences imposing incarceration in felony cases and all other dispositions when either party petitions for review.

Standard 16.6(a)

The court of appeals shall have jurisdiction to:

1) affirm the sentence under review;

2) substitute for the sentence under review any disposition that was open to the sentencing court; or

3) remand the case for further evidentiary proceedings if additional information is required.

Standard 16.6(b)

The scope of the sentencing review shall include the full record of the sentencing and shall not be limited to determinations of abuse of discretion. Modification of trial court sentences shall be based on a determination of whether:

1) the sentencing court misapplied the sentencing standards and goals;

2) the sentencing court deviated from the sentencing standards and goals; and having regard to the nature of the offense and the offender, the sentence imposed is disproportionate to sentences imposed for similar offenses on similar offenders or is otherwise inadequate, excessive, unreasonable, or inappropriate under the circumstances;

3) the sentence was not imposed in accordance with the procedures required by these standards or existing case or statutory law;

4) the evidence in the sentencing record presented a factor relevant to sentencing which was not taken into account by the sentencing guidelines or the sentencing court;

5) the sentencing court considered an improper factor; or

6) application of the sentencing guidelines will result in a substantial injustice to the person or the public.

Standard 16.6(c)

All proceedings to review sentences shall be based upon the trial court record except that any proposed increase in sentence shall entitle the defendant and defendant's counsel to an automatic right to appear before the court of appeals.

Commentary

This subgoal and its standards are key to the workability of the structure presented in these recommendations on sentencing. This is the section which, if implemented, insures that the ideas expressed about sentencing become the practice if adopted in the State of Wisconsin.

All current post-conviction motions and appeal rights of a defendant are undisturbed by Subgoal 16.6. What this section guarantees, in addition, is an automatic review of every sentence imposing incarceration for a felony conviction. The creation of this procedure is aimed toward achieving both parts of our dual goal: rationally-based sentencing and reduction in disparity. One body, the court of appeals would be applying these guidelines on a statewide basis.

The choice of a court of appeals as a reviewing body is consistent with this subcommittee's recommendations for court organization (Goal No. 7). Use of this review process has two primary advantages: 1) greater legal impact and status than a citizen review board, and 2) ease of administration through the court system. Concern that judges ruling on the decisions of other judges may result in deference to peers rather than enforcement of these recommendations, is alleviated by the fact that the judges reviewing sentences will not be equal in status to the sentencing judges. Members of the court of appeals will exercise superior jurisdiction over that of the trial court judges. The purpose of the court of appeals will be the review of all civil and criminal trial court decisions brought before

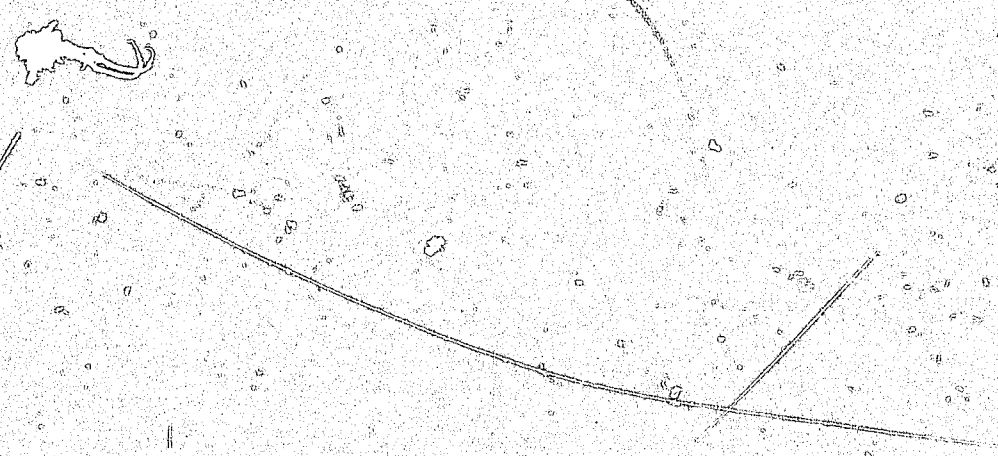
it, and the experience of reversing or modifying lower court decisions will not be unusual for the members of a court of appeals. Comparable review bodies have demonstrated the fact that trial court decisions do get full scrutiny and are often changed through this process.

Standard 16.6(b) clearly establishes that the review anticipated is far more than a reading of the record for "abuse of discretion." These guidelines for the review of sentences require a detailed examination of the circumstances of the defendant, the reasoning of the trial judge, and a comparison of these factors to sentences being imposed statewide.

Nonetheless, the concept of a statewide sentence review body is not irrevocably tied to the creation of a court of appeals. In lieu of the establishment of a court of appeals, a statewide sentencing review body should be created with the same duties and standards as those placed with the court of appeals in this subgoal. Certain legal problems attendant on the creation such a body could be worked out so that this group might include citizen representation as well as judicial membership.

Regardless of the composition or structure of the reviewing body, it is essential to the realization of these sentencing recommendations that a statewide overseer of the actions of individual judges be constituted and empowered to act according to the standards of Subgoals 16.6.

CORRECTIONS STANDARDS AND GOALS



"In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws."

Cesare Beccaria
1764

INTRODUCTION

The field of corrections is in a state of transition; there is a realization that sentencing all offenders to maximum security institutions to be rehabilitated does not work. The current trend is toward the increased utilization of community-focused corrections. The offender under this model remains in the community where diversified resources are at the disposal of corrections personnel. Building prisons outside of our cities to store offenders is no longer a viable approach to the crime problem. The community must be actively involved.

Goal 17 recommends that jails should not be utilized in holding pretrial detainees unless there is good reason to expect that the person would flee the jurisdiction or be an overt threat to the safety of others. Subgoal 17.2 provides for the promulgation of standards and guidelines for jails. These guidelines are to be compiled by the Department of Health and Social Services (DHSS) and should include consideration of programs, facilities, and internal policies affecting health, welfare, and safety of the inmates, staff, and community. Whenever the Department finds violations of its standards, it may order the change or demand closing of the inadequate jails. Several of the standards contained in this report necessitate the allocation of funds. Subgoal 17.1 provides that the state shall provide financial aids for the implementation of programs mandated by this report.

Community-Focused Corrections

Goal No. 18 recommends the reorganization of the correctional system through the removal of the camps, workfarms, and metro centers from the administrative control of the Bureau of Institutions. Minimum security correctional units would be merged with the Bureau of Probation and Parole to create a Bureau of Community-Focused Corrections. (Subgoal 18.2) This recommendation seeks to emphasize the close relationship that should exist between minimum security facilities and those offenders on probation or parole

To facilitate the expansion of community-based residential facilities this report encourages the Department of Health and Social Services to fund, through purchase of services a series of public and private residential facilities. (Subgoal 18.3) These facilities should serve as alternatives to incarceration for those offenders needing only minimum supervision and those who are revoked from probation or parole. (Subgoal 18.3)

Goal 19 deals with the control of offenders on probation and parole. Probation is viewed as the preferable disposition in most cases as it provides supervision while allowing maximum freedom to the offender. Agents should refer clients to specialized, community-based services for two reasons: 1) individual agents cannot possess the diverse levels of expertise that their positions require; and 2) agents as brokers of community services, can more actively involve the community with the client.

Institutions

Goal 21 deals with the rights of incarcerated offenders. In all cases the principle of the least restrictive alternative should govern placement decisions concerning offenders. Inherent in this principle is the notion that not all offenders need to be held in maximum security institutions, and those who do not require that level of supervision should be immediately transferred to a lower security institution.

Subgoal 21.2 recommends that designated inmates should be periodically granted furloughs so they can maintain community ties. This report stresses the belief that future reintegration of offenders into society is impossible unless ongoing communication with family, friends, and employers is maintained.

Another essential feature of these standards is the mechanism devised to get people out of prison. The standards contained in Goals 20-22 provide the following ways for inmates to gain release from prison:

1) The Mutual Agreement Program (MAP) will be expanded to include all inmates. Contracts will be written for the provision of services with release contingent on program completion (22.2).

2) Under these recommendations, a Parole Board will continue to exist, with some changes in composition, to provide broader representation. After lengthy deliberations, the Subcommittee recommended retaining a paroling authority because offenders can change while in prison and those persons who have changed should be provided a mechanism for release from the confines of prison.

Organization and Administration of the Correctional System

The standards contained in Goal 23 are issues that have general application throughout the correctional system. Subgoal 23.1 supplements and supports Subgoal 18.1 by providing for the organization under a "State Plan" of all agencies that provide services to offenders and ex-offenders. If community correctional facilities and

programs are to be viable alternatives to institutional incarceration, then they must be organized in a manner that provides maximum utilization of their services.

Subgoal 23.2 contains an offender grievance procedure which expands the current Inmate Complaint Review System to include offenders on probation and parole and ex-offenders receiving voluntary services. The creation of an Office of Jail Ombudsman is recommended in Sub-Goal 23.3 to handle grievances for persons detained or incarcerated in local jails. This recommendation is intended as an experimental program with possible future expansion to the State system.

Subgoal 23.4, Records About Offenders, outlines procedures which should be adopted to protect an offender's right to privacy while maintaining reasonable access for individuals with a legitimate right to view the records. The placement, assessment, and evaluation function is described in Subgoal 23.5. The Subgoal recommends that appropriate classification committees should utilize the principle of least restrictive alternatives.

Goal 24 provides that ex-offenders should have every reasonable opportunity to secure employment without being unduly hindered by a prior criminal conviction.

PHILOSOPHY OF CORRECTIONS

There is marked disagreement among even the most knowledgeable as to the ultimate purpose of the correctional system. In the opinion of many the name is a misnomer; they hold to the belief that correctional institutions do not correct. The predecessor appelation, "penal institutions," was a more accurate reflection of the public's perception. The newer terminology, reflecting the reform movement at the beginning of this century, would appear to have been a change in name only.

The Subcommittee concluded that there are several components to the underlying philosophy of corrections: safety of the community, punishment of the offender, deterrence to others, and rehabilitation. These components exist in varying proportions and with different emphases depending upon the nature of the crime, local community mores, and cyclical attitudes toward particular types of unacceptable behavior.

An element which has surfaced only recently is the protection of the prisoner while serving his sentence. Does the correctional system have an obligation to insure the safety and personal integrity of those who are under the custody of the state?

The Standards and Goals recommended by the Corrections Subcommittee are based on the existing system. They represent an effort to protect the safety of the community while utilizing to the best advantage services provided by the state to effect economy of tax dollars, humaneness, and the most effective use of the correctional system.

GOAL NO. 17: JAILS

No pre-trial detainee shall be incarcerated in a Wisconsin jail unless a court finds that the person is a danger to others or may flee the jurisdiction if not incarcerated. Confinement in Wisconsin jails should be used for the fewest number of convicted offenders consistent with a community's security. When incarceration in jail is necessary for either sentenced offenders or pre-trial detainees, local governments, with the cooperation of the Department of Health and Social Services, shall take all necessary measures to ensure humane treatment and utilization of community resources, whenever applicable. (cf. Standard 11.1(a))

Subgoal 17.1: Financial Incentives

Wherever possible, the State shall provide financial aids in the implementation of changes in jail standards. Such aid may be in the areas of jail facilities, personnel, operations, and programs.

Standard 17.1(a)

The State shall provide complete reimbursement of actual costs of confining probation and parole holds, escapees from penal institutions, persons awaiting transfer to a state penal institution, or any other person under state custody in any county jail for any length of time.

Standard 17.1(b)

When the State imposes a standard or a guideline upon a county with regard to jails, it shall provide financial, technical, or in-kind aid that may be necessary to minimize financial impact upon the county's fiscal capacity.

Commentary

In 1975, there were 70,564 adult confinements in county detention facilities. Included in this number were 15,399 adults sentenced to jails and detention facilities. (Department of Health and Social Services, 1975) The average population within Wisconsin's penal institutions in 1975 was approximately 3,000. This disparity in populations prompted the following statement in the 1977 Wisconsin Council on Criminal Justice, Criminal Justice Improvement Plan:

> While the number of offenders committed to county jails in Wisconsin is far greater than the number of offenders incarcerated in state correctional institutions, local county jails have remained for the most part outside modern trends in correctional innovation. The majority of county jail facilities in Wisconsin have limited or no opportunity for planned recreation, medical attention, education, employment counseling, family visitation and counseling. Few communities have made a commitment to diversion and bail review procedures and, until very recently, little or no systematic attention has been given to meaningful data collection systems for future jail planning. (WCCJ, 1976)

If county jails are to become an integral and meaningful part of an effective community corrections plan, they must, at a minimum, be able to provide or have access to the same services provided by state correctional facilities. One hindrance to improvement of local jail facilities and services is the financial burden it will place on the counties. The State can play a positive role in this issue by providing financial assistance whenever applicable.

One opportunity for the State to relieve the financial burden on local jurisdictions is Standard 1.1(a). Under present law, the county is responsible for costs involved in the incarceration of any person in the jail (Wis. Stat. 53.33) except those received from another county (Wis. Stat. 53.34). The State should assume financial responsibility for any direct costs resulting from the incarceration of any individual under the direct supervision of the Department of Health and Social Services, especially those on pre-parole release programs (See Standard 18.2(b))

The other opportunity for state support is outlined in Standard 17.1(b). Any cost incurred by a county or municipality for the improvement of jail services and facilities should be lessened with the use of technical and in-kind state aid or eliminated by direct financial aid. Counties may not see the need for upgrading jail facilities, programs, personnel, or operations. The State should be aware of the impact that its programs will have on local governments and take measures to minimize the fiscal impact. The State should make an effort to inform local officials of both the need for such programs and of the available financial aid for their support.

Subgoal 17.2: Jail Administration

The Department of Health and Social Services shall establish uniform standards and guidelines for the administration of county jails, city lockups, houses of correction, and forestry camps. The standards and guidelines shall be reviewed annually by the Department, subject to the provisions of the Administrative Procedure Act, Chapter 227, Wis. Stat.

These standards shall establish guidelines for the creation and operation of jails with regard to programs, facilities, and internal policies affecting health, welfare, and safety of the inmates, staff, and community.

Standard 17.2(a)

The State Legislature should increase the authority of the Department of Health and Social Services to enforce standards for local correctional facilities vis-a-vis county jails, social and rehabilitation programs, detention centers and community-based programs. The Department shall create a separate sub-unit whose responsibilities should include periodic inspection of such facilities, the enforcement of the standards, and the provision of technical assistance to local facilities.

Standard 17.2(b)

This sub-unit shall make periodic inspections of all facilities and shall issue a report to both the administrator, and with regard to local jails, to the local political jurisdiction specifying aspects in which the facility is not in compliance.

If, within a reasonable time, the local facility is not brought into compliance, the Department shall have the power to:

1) Close the facility, move the prisoners to another certified local facility, and bill the local jurisdiction for their care and transportation.

2) Close certain areas of the facility.

3) Seek administrative receivership by the Department.

4) Seek an injunction in Dane County Circuit Court.

Standard 17.2(c)

Every county jail with an average daily population of 24 or more inmates shall be required to have a full-time civilian administrator. The method of appointment and line of responsibility shall be subject to local option.

Options:

1) A civilian jail administrator responsible to the county sheriff:

2) A civilian jail administrator responsible to the county board in counties in which there is no county executive;

3) A civilian administrator responsible to the county executive.

If a county has a civil service system, the jail administrator shall be covered under that system.

Jails currently having a full-time sworn officer as jail administrator shall be given five years from the date of implementation of this standard to come into compliance. (see Goal 1)

Commentary

In 1975, the Department of Health and Social Services (DHSS) published revised standards on Jails, Lockups, Houses of Correction, and Rehabilitation Camps. These standards deal mainly with physical facilities, security, and health conditions in the jails and should be expanded to include issues related to jail personnel, program availability, and internal policies. These standards also do not include an effective enforcement mechanism for violation of standards by local jails. Standards 17.2(a) and 17.2(b) describe such a mechanism. While the Department has rule making, policy development, and enforcement power over local jails, administration of the jail will remain at the local level. Where jail size warrants, the law enforcement function should be separated from jail administration. Standard 17.2(c) describes a method for accomplishing this through the use of a civilian jail administrator. Coupled with Standard 17.3(b) which calls for civilian correctional officers, the law enforcement function in the local jail will be virtually eliminated. According to the 1975 Department of Health and Social Services County Jail and Detention Facility Report, fourteen local jails would currently meet the recommended standards to employ a civilian jail administrator.

Subgoal 17.3: Jail Personnel

State and local governments shall improve the recruitment, compensation, training, and promotion practices of employees in Wisconsin county jails, city lockups, houses of correction and forestry camps.

Standard 17.3(a)

The sheriff or the civilian administrator shall be required to work with community groups in providing needed services to jail inmates. (cf. Standards 5.4(b) and 6.1(b))

Standard 17.3(b)

Every county jail shall be staffed with full-time civilian correctional officers 24 hours a day, 7 days a week, and at least one civilian correctional officer for each floor of a multi-level jail facility when occupied by inmates.

Standard 17.3(c)

Minimum entry qualifications for civilian correctional staff members shall be set at the state level and include a requirement of a high school diploma or equivalent.

Standard 17.3(d)

County jail correctional staff, whether full-time or part-time, shall be required to complete 120 hours of formal correctional training within the first year of their employment. The required training should be in addition to the "Jail Operations Programmed Course" sponsored by the U.S. Bureau of Prisons. In-service training should be developed and offered by the state. This training should include training to staff sensitive to special needs of members of different sexes, races, social classes, and ethnic groups. (cf. Goal 29)

Standard 17.3(e)

Jail personnel shall be hired as correctional officers with salaries and benefits at least equal to law enforcement officers.

Standard 17.3(f)

The decision as to whether jail staff shall be deputized should rest with the jail administrator provided the members of the jail staff have successfully completed the recruit training required of police officers. (cf. Goal 1)

Standard 17.3(g)

Each sheriff or jail administrator shall maintain a roster of women correctional officers available for supervision when women are incarcerated. (cf. Goal 29)

Standard 17.3(h)

Male and female correctional officers should receive equal pay if their duties and responsibilities are similar.

Commentary

The National Sheriff's Association (1970) states that "of all the essentials of the operation of a jail, none is more important than personnel." Yet, the National Advisory Commission (1973) finds current patterns of jail staffing sadly deficient and calls for the restructuring of staff roles and the provision of pre-service and in-service training programs for all jail staff.

The above standards are supported, in substance, by the American Correctional Association, the Advisory Commission of Inter-Governmental Relations, the National Governors' Conference, the President's Commission on Law Enforcement and Administration of Justice, the Chamber of Commerce of the United States, and the National Advisory Commission on Criminal Justice Standards and Goals. In Wisconsin, about six hundred jail staff personnel work in the seventy-one county jails. The figure includes matrons, part-time jail officers, and deputies, many of whom are not assigned to the jail on a regular basis. Most jail personnel in Wisconsin are deputized. The staffing patterns, low pay, heavy work loads, insufficient training, and lack of a merit system in correctional employment are important factors which need improvement in the area of jail personnel.

Persons who have the most frequent contact with inmates have a significant impact on the nature and effects of incarceration. Many of the above standards envision a new and significant role for jail personnel. Wherever feasible, the role of jail administration should be separate from the role of law enforcement officer. Additionally, greater professionalism in jail administration can be achieved by developing personnel with a higher degree of specialization.

The treatment of prisoners is an important aspect of the criminal justice system and deserves a separate professional status. From this status, it is hoped that staffing of county jails will become as professional as other areas of the criminal justice system. The presence in the jail of personnel from the Department of Health and Social Services providing services in seeking employment, vocational training, mental health, and public welfare services should be encouraged. (NAC, Corrections Report, 1973)

Subgoal 17.4: Jail Facilities

Local jails should be designed with full consideration given to public safety and the right of the incarcerated individual to be held in secure, humane, and clean living conditions with space provided for institutional and community-based programs.

Standard 17.4(a)

Coordinated planning of new jail construction should involve representatives of the community and of the criminal justice system.

Standard 17.4(b)

The decision to design, remodel, or build a new jail should be made only after all alternative measures, pre-trial systems, and alternatives to jail detention have been studied. Before plans for remodeling or construction are executed, a written plan and evidence of an examination of alternatives for physical and programmatic development must be submitted to and approved by the Department of Health and Social Services.

Standard 17.4(c)

The Department of Health and Social Services shall provide technical assistance in the area of innovative design and construction methods for alternatives to incarceration and for programming aid.

Standard 17.4(d)

Counties shall have the authority to join with other counties to establish multi-county jail facilities provided such facilities are approved by the Department of Health and Social Services. (cf. Subgoal 5.3)

Standard 17.4(e)

The Department of Health and Social Services, in cooperation with local authorities, should establish "all purpose rooms" attached to county jails to be used to develop programs for jail inmates.

Standard 17.4(f)

Within three years from the implementation of this report, all "grandfather clauses" relating to the physical facilities of a jail including but not limited to architectural design, intake areas, public areas, residential areas, day rooms and program spaces shall be terminated.

Commentary

The attitudes in this country toward alleged or convicted criminals traditionally have been reflected in the correctional facilities built to hold them. Many Wisconsin jails are out-moded, archaic, lacking the most basic necessities, and inadequate for programs designed to encourage socialization. In general, there are jails that perpetuate a destructive rather than a reintegrative process. Significantly, it is in such facilities that the greatest number of persons have contact with the criminal justice system. As stated in the above standards, facility planning will be most effective when based on maximum utilization of alternatives to incarceration for diverting many minor offenders to more appropriate programs. Such planning is required particularly at the pre-trial level when innocence is presumed under law. In essence, the standards embody the principle that facility planning must recognize security requirements for the community as well as the need for the most efficient expenditure of limited public funds. At the same time, inmates should not be subjected to inhumane or unsafe conditions in jails.

At one time the emphasis was on detention; today there is increased recognition that the jail must serve many functions in the community. In this regard, the jail is being called upon by the courts and the community to become involved in correctional programs and to concern itself with the reintegration of prisoners who are serving sentences.

The fact that most sentenced prisoners are not serving felony sentences does not relieve the jail of correctional responsibilities. Correction of offenders does not begin with the felon. In fact,

correctional effort is a critical need where the misdemeanant is concerned. It is an area in which the jail has a particular advantage, since it is located in the community and can coordinate community resources to develop an effective program. (U.S. Bureau of Prisons, 1971)

Subgoal 17.5: Jail Programs

State and local authorities shall initiate and continue programs both within and outside the jail that will help to reintegrate the inmate into society. Those programs shall guarantee humane treatment for the inmate while protecting the community.

Standard 17.5(a)

Prior to the bail hearing, each pre-trial detainee shall be interviewed to determine background information for use by the court in assessing eligibility for bail, and within 48 hours to determine eligibility for other release programs. Pre-trial detainees shall then be informed of the range of programs. Work histories, training skills, and interests should be determined so that program recommendations may be developed.

Standard 17.5(b)

Pre-trial detainees shall be allowed all privileges and immunities without endangering safety or well-being of the jail or community.

Standard 17.5(c)

In providing services for inmates, local jails shall:

1) Attempt to maintain family ties, work responsibilities, and bonds with the community.

2) Develop or continue as high a level of health, education, job potential and sense of self-worth as possible and require maximum use of community services and continuation or development of supportive relationships.

Standard 17.5(d)

Work release, employment, and educational placement programs shall be developed by the Huber Law Officer or other specified individuals and should be available to all inmates, unless restricted by court order.

If a sentenced inmate was enrolled in a school program or employed prior to incarceration, efforts shall be made to continue such activity without interruption.

Standard 17.5(e)

If a sentenced inmate had not been employed prior to incarceration or if prior employment is no longer available, efforts shall be made to obtain employment subject to the following conditions:

1) The salary or wages paid shall be at least the federal minimum wage.

2) An inmate shall not be prohibited from or required to work for an employer involved in a labor dispute.

3) Wherever possible, the job should be available to the inmate after release.

4) The inmate shall receive the same fringe benefits and protections afforded to other workers doing the same job.

5) Volunteer work in the community should not be denied the inmate on the basis that it does not provide financial compensation.

6) Part-time employment by an inmate shall not be discouraged or prohibited because the earnings from the employment would not cover actual costs of room and board.

Standard 17.5(f)

Sentenced inmates who work within the jail shall not be required to work more than 40 hours per week. Safety and health conditions followed for workers employed in similar activities in outside employment shall be equally observed in the jail. If an inmate unsuccessfully seeks work outside of the jail, temporary work assignment within the jail may be substituted with consent of the inmate. The within-jail work, however, should be considered a last resort, temporary substitute for outside employment.

Standard 17.5(g)

All state-run and state supported service programs such as the Job Service shall provide services to jail inmates at a level comparable to the general public.

Standard 17.5(h)

The Department of Health and Social Services shall establish minimum written regulations governing granting of furloughs to sentenced offenders in order to maintain family ties, obtain medical treatment, attend to family emergencies, make civil court appearances, seek employment, or carry out other matters as deemed necessary by jail administrators. A written statement describing these rules shall be given to each prisoner upon admittance to a jail. (cf. Standard 16.2(c))

Standard 17.5(i)

The Department of Health and Social Services shall develop and enforce standards to assure that adequate health care and medical services are provided for all individuals detained in county jails. When appropriate, each inmate shall receive a health screening. Each jail shall submit a medical plan to the Department for approval.

Standard 17.5(j)

Deductions from Huber Law and work release earnings may be "actual cost" but shall not exceed fifty percent of after-tax earnings. The Department of Health and Social Services shall establish a procedure for the computation of "actual cost." Earnings above the actual costs or above the 50 percent level shall not be expended by the jail administration without the written consent of the inmate, except when ordered by the Court.

The jail administrator must maintain strict accounting of the inmate's earnings, and these records shall be open to inspection by the inmate.

Standard 17.5(k)

State and local jail authorities shall establish such programs as:

1) Education,
2) Recreation,
3) Commissary,
4) Library Services,
5) Religious services, and
6) Out-patient health services.

The programs shall be consistent with recommendations of the Advisory Committee on Revision of Standards for Jails Lockups, Workhouses, and Forestry Camps, July 1975, and should include as much community involvement as possible.

Standard 17.5(1)

Access to all services and programs available at the jail shall be based strictly on security classifications and under no circumstances on race, sex, national origin or religious preference. (cf. Goal 29)

Commentary

Social, educational, and recreational programs must be provided to jail inmates. The National Sheriff's Association, in its manual on Jail Programs (1976), defined the jail staff's role as "brokers" of services, that is, identifying persons or situations that indicate a need for a particular service and contracting with a representative of an appropriate agency for service delivery. The service brokerage approach to providing jail programs is an attempt to coordinate resources and avoid unnecessary duplication of services and waste of money. Above all, effective and creative jail programming is the first step to reintegrating the jail inmate into society. Meaningful jail programs compromise one of the highest priorities for improving the jail system in Wisconsin.

Subgoal 17.6: Jail Internal Policies

Internal jail policies shall be adopted to provide fundamental fairness and equitable treatment and shall be reasonably related to the need for safety and security for all inmates and jail personnel.

Standard 17.6(a)

Any inmate shall be allowed to consult with any attorney and with law students, para-professionals working with such attorney, alone and in private at the place of custody, as many times and for such period as is reasonable.

Standard 17.6(b)

All jail inmates in Wisconsin shall be provided with reasonable facilities for receiving visits from family and friends. Efforts should be made to provide as informal a setting as possible. Special arrangements should be made for providing an adequate and appropriate environment for visitation with children.

Standard 17.6(c)

Visiting periods of at least two hours, available at least four times a week, with at least two of the hours on weekends shall be scheduled at each jail. Care should be taken that hours are provided so that friends and relatives may visit without taking time off from work.

Standard 17.6(d)

The rules may require the inmate to submit a list of persons desired for visitation privileges. No person so designated shall be denied access unless the jail administrator reasonably believes that the person is a threat to institutional security. If the jail administrator denies access and if the inmate so requests, the jail administrator shall set forth reasons in writing, and the inmate shall have the right to have that refusal reviewed through a grievance procedure.

A procedure should be developed to provide for special visiting requests not anticipated by the inmate at the time the list was submitted.

Additionally, the prisoner may submit a list specifying persons that the inmate expressly does not want to see. Persons on that list shall not be permitted to see the inmate.

Standard 17.6(e)

If approved by the sheriff and the jail administrator, representatives of social service agencies, religious organizations, the news media, and other agencies shall be permitted to consult, counsel or interview a jail inmate during reasonable hours.

Standard 17.6(f)

Jail officials shall not open or read the contents of any of the inmate's outgoing mail.

No limits shall be placed on the number of incoming or outgoing letters, the length of such letters or the foreign language used. Neither the jail administrator nor correctional personnel shall delay any mail beyond

the time needed to inspect incoming mail for contraband. Inmates shall have unrestricted right to correspond or communicate with any person, whether they be outside or within the jail, unless there is probable cause to believe the communication will lead to a criminal offense or escape.

Incoming mail, including packages, shall be opened in the presence of an inmate representative and examined for contraband. Such mail shall not be monitored by reading, and attorney-client or other privileged mail shall not be opened by anyone other than the addressee.

Standard 17.6(g)

Telephones should be made available to inmates for free, private, and unmonitored local calls. Provisions should be made for emergencies and for long distance calls on limited occasions, through arrangements with the jail administrator.

Standard 17.6(h)

Jail inmates shall have the right to receive and read any publication, provided that publication does not represent a direct physical threat to the institution.

Standard 17.6(i)

Information shall be given to all inmates regarding access to community agencies and the services they provide.

Standard 17.6(j)

If an inmate is eligible to vote by absentee ballot and requests to do so, the jail administrator shall provide facilities sufficient to permit completion of absentee ballots. An inmate who is otherwise eligible shall be allowed to register and vote by absentee ballot and if he/she requests to do so, the jail administrator shall provide facilities to permit completion of registration materials and absentee ballot.

Standard 17.6(k)

The jail administrator shall adopt a set of written internal policies governing the operation of the jail. The policies shall be explained and a copy given to each jail inmate upon admission.

Standard 17.6(l)

Each jail shall establish a Jail Advisory Committee to advise the jail administrator and make recommendations as to jail operation. The Advisory Committee shall be composed of citizens and include inmates or ex-inmates.

Standard 17.6(m)

Each jail shall establish a grievance procedure at the county administrative level, open to any aggrieved party who may appeal decisions to a "Jail Ombudsman," attached to the Department of Health and Social Services. (cf. Subgoal 23.3)

Commentary

Inmates are generally incarcerated in county jails for less serious offenses and serve shorter sentences than those offenders confined in state prisons. However, this does not diminish the need to address and correct the injustices and inequities that exist in the jails. Despite the less serious nature of jail incarceration, the general conditions, facilities, programs, and personnel are not comparable with state institutions. Inasmuch as recent publicity has focused on state institutions, the inmates in those institutions are provided rights and privileges which are not provided to the jail inmates. It is a violation of fundamental fairness to treat the jail inmate less humanely than the state inmate.

Internal policies in Wisconsin's jails do not provide for adequate visitation, mail, library facilities, recreational facilities, and access to programs. Jails should be viewed as more than "holding tanks," particularly in light of the expanded role that jails assume with the shift toward community-focused corrections. If offenders are to be kept in the local community when possible in order to maintain family and employment contacts, then the local jails must be improved to provide the requisite programs.

The inequities are even more unjust when the inmates subjected to them may not have been convicted of any criminal activity. Pre-trial detainees are presently being subjected to a form of punishment merely by their involvement with the criminal justice system. The confined person awaiting trial is usually in a local jail which is the facility suffering most from neglect, lack of resource programs, and lack of personnel. Living conditions in these facilities are sometimes unbearable. Yet, the person awaiting trial is presumed to be innocent of the offense charged. In many jurisdictions detention occurs because of the inability to produce money for bail.

This inhumane form of punishment, while not widespread in Wisconsin, is unjust under the "equal protection clause" of the Fourteenth Amendment. This form of punishment should be minimized by ensuring that policies governing jails be of a standard which maintains humane treatment of all incarcerated individuals. The policies recommended in this report governing prisoners' rights and privileges, rules of conduct, right to communicate with the outside, and adequate levels of sanitation and safety will move in the direction of humane treatment.

To further provide humane and fair treatment, each jail administrator should promulgate a set of written and explicit rules and operating procedures for jails. Inmates in jails should be given copies of these rules and be provided access to a grievance procedure to test the legitimacy of a general rule or a specific application of a rule.

Although the jail population consists of pre-trial detainees and convicted offenders, all inmates are entitled to the same basic rights and privileges as are ordinary citizens, except those necessarily limited by virtue of confinement. Confinement should not, however, serve to deny the inmate access to medical and dental care, counseling and welfare services, food, clothing, shelter, recreation, education, and the pursuit of family and social relationships. (NAC, Corrections Report, 1973)

GOAL NO: 18: COORDINATED COMMUNITY-FOCUSED SERVICE DELIVERY

Community-focused corrections shall serve as an integral part of the correctional system. Social service providers shall be coordinated through a comprehensive plan, with correctional clients being integrated into the service delivery programs on an equal basis with other citizens. The programs shall serve clients such as those on probation, parole, and pre-trial diversion; offenders in camps, farms, metro centers, pre-release centers, and local jails as well as those recently released from supervision who request service.

Subgoal 18.1: Administration

Wisconsin shall develop a comprehensive coordinated system of community-focused correctional services consisting of public and private agencies. The system shall develop personal, organizational, and social situations conducive to reintegrating offenders into socially acceptable life-styles.

Standard 18.1(a)

The Department of Health and Social Services shall organize and administer a comprehensive community-focused corrections delivery system integrating state, local, and volunteer agencies which provide services to offenders.

Standard 18.1(b)

The Department of Health and Social Services shall develop a plan to implement the delivery of community-focused correctional services. That plan shall include:

1) data on the number, type, and location of the service population of the community-focused corrections system;

2) an assessment of the scope, target populations, and capacity of the various services available in each area of the state; and

3) an action plan which links the needs of the client with services available.

Standard 18.1(c)

To the maximum extent possible, the comprehensive system of community-focused corrections delivery shall involve balanced participation by private agencies and local governments.

Standard 18.1(d)

Community-focused programs and facilities shall be located near the service receiving population.

Standard 18.1(e)

The community-focused corrections system shall effectively coordinate private and public agencies dealing with employment, education, social welfare, and other relevant community resources.

Standard 18.1(f)

All publicly-funded agencies shall serve correctional clients on an equal basis with all other clients. The system shall provide independent publically supported advocacy to ensure adequate and equal services for correctional clients.

Standard 18.1(g)

The Department of Health and Social Services shall be responsible for compiling a comprehensive manual detailing information about local and state, public and private agencies which provide services to correctional clients. The manual shall be prepared and updated at the local level under the supervision of the district offices of Probation and Parole with the aid of interested citizens.

Standard 18.1(h)

Probation and Parole Agents and employees of community-based facilities shall have personal manuals listing services provided by local agencies.

Commentary

Maximum utilization of community resources, facilities, and services and maintenance of correctional clients near home, family, and friends should be the major objective of our correctional system. While 85% of Wisconsin's offenders are currently on field supervision, additional coordination is needed in order to improve service delivery to correctional clients. A comprehensive system of community-focused correctional services should be designed to include the many public and private agencies which could provide services for offenders. That system includes programs such as probation, parole, pre-trial diversion, educational and vocational releases, and similar programs operated from local jails.

Correctional clients enter the social service delivery system with a number of problems. Many service-providers specifically exclude offenders with the rationale that the state already expends resources specifically geared to the particular needs of correctional clients. That attitude ignores the right to those services that correctional clients have as citizens. A greater effort should be made to organize and direct available resources in order to ensure the correctional client access to services on an equal basis with other citizens. An effective way to accomplish this goal is to increase the planning and coordinating effort and to build a mechanism into the correctional system which will advocate for the needs of correctional clients.

The coordinated community-focused correctional service delivery system should gather information on existing services and coordinate the delivery of these services to correctional clients. If information about existing community-focused corrections is better organized, accountability can be improved and gaps, weak points, and overlapping services can be identified. Under the proposed standards, management of the overall system would be improved, and state-wide planning would be facilitated, thus creating a more effective program. (Mikulecy, 1974)

The Department of Health and Social Services is responsible for incarceration of offenders, supervision of probationers and parolees, and provision of social services to both offenders and non-offenders. The Department is the logical focus of correctional programs and ought to provide leadership in expansion of services to correctional clients. This central location in the service provision network makes the Department the logical point for increased coordination of existing services.

Publicly supported advocacy is often necessary to guarantee the delivery of services to correctional clients. This program would advocate for correctional clients and demand that they be served at a level equal to that of non-correctional clients. Correctional clients could then use the legal process as a last resort to demand services for which they qualify.

Subgoal 18.2: Minimum Security Correctional Centers

The Department of Health and Social Services shall develop and maintain a system of community-based minimum security correctional centers. (cf. Standards 16.1(a), 16.2(q))

Standard 18.2(a)

The Department of Health and Social Services shall create a "Bureau of Community-Focused Corrections" which shall include, but not be limited to, the following:

1) The Bureau of Probation and Parole.

2) All minimum security facilities supervised by Division of Corrections personnel.

3) Community-based residential facilities where short-term services may be provided for needs such as psychological problems and chemical dependency.

Standard 18.2(b)

Local jails should be utilized to permit participation in work or study-release programs. The state shall reimburse the local jurisdiction for costs not covered by work release earnings.

Standard 18.2(c)

Direct placement in a minimum security facility shall be an alternative for revocation of probation or parole.

Commentary

Minimum security facilities should provide an alternative to high security institutional incarceration, vocational, educational, and other community-focused services. Those facilities should serve clients whose security classifications require some supervision, control, or services but who do not require a maximum security institution. Minimum security facilities can provide a range of pre-release alternatives and can house offenders who can live in less restrictive settings.

In this section on minimum security, and in subsequent sections dealing with community-based residential facilities and probation and parole, the standards recommend a reorganization of the correctional system in Wisconsin. As presently organized, minimum security work camps, farms, and metro centers are in the Bureau of Institutions. Since the minimum security facilities and the probation and parole function operate under different circumstances than do the maximum security institutions, the subcommittee concluded that they should be administratively and organizationally distinct within the Division of Corrections. The operation of those various alternatives ought to be guided by different philosophical foundations. Minimum security facilities should contain a different classification of prisoners and should have different concerns for prisoners than would a maximum security institution. The separation of the two types of programs is necessary to ensure both the implementation of the philosophy of minimum security and the flexibility of programs.

The geographic location of minimum security facilities in Wisconsin does not allow for a regionalized community correctional system. To achieve the goal of keeping correctional clients close to their home or eventual community of release necessitates the occasional use of local jails as bases for state-run work or educational release centers. In these cases the state should reimburse local jails for expenses not met by inmate earnings. By using local jails, the correctional system can put more offenders into community-based services.

By recommending that minimum security facilities be used both for initial placement and in probation or parole revocations, these standards would ensure that offenders who do not need maximum security supervision can be kept in the correctional system without necessarily "passing through" maximum security institutions on their way to a minimum security facility.

Subgoal 18.3: Community-Based Residential Facilities

The State of Wisconsin shall stimulate further development of the system of community-based residential facilities for offenders. (cf. Standards 16.1(a), 16.2(g))

Standard 18.3(a)

The Department of Health and Social Services shall support through purchase of services and technical assistance a variety of privately operated residential facilities. The Department shall consider the creation of public operated residential facilities.

Standard 18.3(b)

The Department of Health and Social Services shall license community-based residential facilities.

Standard 18.3(c)

Standards or regulations promulgated by the Department of Health and Social Services bearing on the creation or operation of a community-based residential facility shall take into account:

1) Size of the residential alternative.

2) Types of clients served.

3) Level of available community resources.

Standard 18.3(d)

Zoning ordinances which have the effect of prohibiting all licensed community based facilities from a municipality shall be eliminated. Reasonable restrictions on the total number of facilities in any one municipality and reasonable restrictions to assure that such facilities are not concentrated in one area may be enacted.

Standard 18.3(e)

Whenever possible, community-based residential facilities shall provide services to a wide range of correctional clients on an out-client basis. Clients can include probationers, parolees, and ex-offenders seeking voluntary service.

Standard 18.3(f)

Direct placement in a community-based residential facility shall be an alternative to revocation from probation or parole.

Standard 18.3(g)

These residential facilities shall clearly state in writing their purposes, programs, and services offered. This shall be done in a form suitable for distribution to staff, clients, referral sources, funding agencies, and the general public.

Standard 18.3(h)

Residential facility services shall include, but not be limited to, the following:

1) Shelter

2) Food service

3) Temporary financial assistance

4) Individual counseling

5) Group counseling

6) Vocational counseling

7) Vocational training referral

8) Employment counseling and referral.

Standard 18.3(i)

Residential facilities shall provide, or insure access to:

1) Medical services, including psychiatric and dental care

2) Psychological evaluation

3) Psychological counseling or therapy

4) Vocational training

5) Vocational and/or employment evaluation

6) Employment placement

7) School programs, (e.g., G.E.D. and college courses)

8) Any other services as needed by the type of program operated and the particular needs of individual clients.

Standard 18.3(j)

Residential facilities shall establish clearly defined and written intake policies and procedures. Such policies and procedures shall state the type of client acceptable for admission to the program.

1) Intake policies will be disseminated to all referral sources.

2) Clearly defined age limits for admission to the program will be established by the agency.

3) Any category or categories of potential clients not eligible for admission into the program must be stated clearly in the intake policies.

4) Clients ineligible for admission for services, and their referral sources, must be informed of the reasons for their ineligibility. When possible, the ineligible clients should be referred to other agencies for services.

Standard 18.3(k)

Residential facilities shall develop procedures for evaluation of their clients in order to determine client progress in the program. Conferences, formal or informal, should be held regularly to review progress and to alter or develop further treatment plans. For the greatest effectiveness, clients must be deeply involved in their own evaluation process.

Standard 18.3(l)

The residential facility shall actively participate in community planning organizations as they relate to the halfway house's field of service and should conduct a program of public information using appropriate forms of communication such as the news media, brochures, and speaking engagements.

Standard 18.3(m)

The residential facilities shall collect and maintain accurate and complete case records, reports, and statistics necessary for the conduct of its program. Appropriate safeguards shall be established to protect the confidentiality of the records, and minimize the possibility of theft, loss, or destruction. (cf. Goals 26 and 27)

Commentary

An important goal of community-focused corrections is to integrate the many existing voluntary residential alternatives such as halfway houses and treatment centers into a coordinated system.

The uneven geographic distribution of community-based residential facilities in the state must be corrected so that services can be provided wherever they are needed. The Subcommittee recommends that the State of Wisconsin, through the Department of Health and Social Services, upgrade present privately operated facilities, stimulate the growth of new private facilities, and consider the creation of publicly-operated facilities where necessary.

While private community-based residential facilities will receive money from and be licensed by the Department of Health and Social Services, they will continue to be administered and staffed by non-Division of Corrections personnel. Their regulation shall be guided by the philosophy that residential facilities are not institutions and should not be regulated as such. This philosophy extends to a consideration of the many situations peculiar to a specific community. Inflexible state-wide standards should be avoided because a wide variety of positive contributions are possible with the use of diverse community-based facilities.

Community-based residential facilities serve as another choice available to the correctional system within a range of alternatives. That choice may be exercised by the Division of Corrections or correctional clients who need minimal or occasional supervision or who have treatment needs not requiring intensive supervision. The alternatives discussed in this section may also serve as a substitute for revocation, or a probation requirement as a condition of sentencing. The system provides a series of incremental incentives to clients and more alternatives to correctional personnel. Additionally, correctional clients who are no longer under supervision could utilize those facilities on a voluntary basis.

As corrections becomes increasingly more community-based, the range of possible alternatives available to courts and correctional officials will offer increased flexibility for treatment of offenders and will allow for the flow of offenders from one alternative to another, as need dictates. (NAC Corrections, 1973)

The community-based residential facility has the advantage of helping the client cope with stressful situations under real-life circumstances as opposed to the isolated and insulated atmosphere of closed institutions. If the client has difficulties with chemical dependency or any other problem, the staff can immediately respond to

problem situations as they develop on a day-to-day basis. Even other forms of community-based treatment such as probation and parole do not have the distinct advantage of close supervision and treatment which is a part of the residential facility structure. If a client does not get up for work in the morning, the facility staff knows it immediately. The Probation and Parole Agent may find this out after the client has lost a job. If the client is abusing alcohol or other drugs, the facility staff will know and be able to deal with these situations almost immediately. The Probation and Parole Agent may find this out only after the client has been arrested.

If the client is reverting to criminal behavior, the community-based residential facility staff is in the same position of knowing and acting with great speed. No matter what the situation, there does not seem to be any other form of supervision and treatment currently in existence which is as responsive to the clients' needs. (McCarty, 1973)

If community-based residential facilities, public or private, are truly to be a part of the criminal justice system and serve their clientele most effectively, then strong relationships must be developed with the other components of the system, both at the administrative and line staff levels. This means the whole spectrum of the criminal justice system; chiefs of police and police officers, prosecutors, defense attorneys (especially public defenders), jails, judges, probation and parole authorities (both adult and juvenile), houses of detention, prisons and reformatories, training schools, and other community treatment center programs in the same geographical area. (McCarty, 1973)

The community-based residential facility is a vital link between the offender and the community. Of the entire correctional system, the residential facility is the most "in the community." As such, residential facilities must involve citizens and community leaders in all aspects of operations. The residential facility needs community support just as the community needs the facility to serve correctional needs.

Subgoal 18.4: The Role of Probation and Parole Agents

The role of Probation and Parole Agent shall be redefined to encompass assisting correctional clients in obtaining a wider range of community-focused services. (cf. Subgoal 30.3)

Standard 18.4(a)

The Division of Corrections shall recruit as Probation and Parole Agents persons with a minimum educational requirement of a bachelor's degree. Persons possessing less than a bachelor's degree shall also be recruited for other responsibilities, with promotional possibilities to Probation and Parole Agent.

Standard 18.4(b)

The Division of Corrections shall seek to recruit and hire ex-offenders as Agents and other staff members.

Standard 18.4(c)

For purposes of advancement, academic training need not be confined to social work but may include other relevant advanced work. Acquisition of special skills shall be adequately compensated, and separate career tracks for advancement shall be established.

Standard 18.4(d)

Persons promoted to adminstrative positions within the Bureau of Probation and Parole shall have an understanding of the nature of institutions, which would preferably include institutional work experience.

Standard 18.4(e)

A client placed on probation or parole shall have the right to receive one change of Agent as long as there is another Agent within a reasonable distance. Changes of residence from one geographic area to another shall not be refused except when there is direct evidence that the transfer would constitute a clear danger or would violate a condition of the court or the Parole Board or if the client fails to demonstrate good cause for such a move.

Standard 18.4(f)

A client may be transferred to the supervision of another Agent within a supervisory zone, if the client does not oppose and appeal such action.

Standard 18.4(g)

A client may appeal classification decisions, conditions of supervision, denial of purchase request, or other decisions made by an Agent. Appeals shall be to the Agent's supervisor, the Regional Chief, and then to the Director of the Bureau of Community-Focused Corrections.

Standard 18.4(h)

The Division of Corrections shall inform clients of their right to apply for pardons. However, it shall be explained to the client that the grant of executive clemency is an extraordinary remedy.

Standard 18.4(i)

Each client shall have a primary contact Agent whose role shall include that of supervision and placement of the client in contact with specialized services. The Agent may provide direct services, refer to community resources, or to other Probation and Parole Agents specially trained in services needed by the client.

Standard 18.4(j)

The caseloads of Probation and Parole Agents shall be reasonably comparable in all areas of the state.

Commentary

The central figure in any community-focused correctional system is the Probation and Parole Agent who embodies both the demands for the protection of the community from renewed criminal activity and the need to reintegrate the offender into the community. Thus, the role of the Probation and Parole Agent is complex and often contradictory. In certain situations the Agent has a quasi-judicial role in determining how a sentence is to be carried out. (Czajkoski, 1973) The Agent also has a prosecutorial role when a person must be recommended for probation revocation or return to prison. The Agent has a counselor's role and is responsible for the diagnosis and treatment of the many problems clients may have. In this

welfare model of probation and parole, the Probation and Parole Agent must be a job counselor, financial counselor, family problems counselor, educational counselor, and psychologist and possess a myriad of other skills and specialized knowledge. The Agent has far-reaching and general responsibilities to both clients and to society. An Agent should not be expected to possess all of those skills at a level of proficiency sufficient to aid all clients, especially in view of heavy caseloads and time-consuming paperwork. Specialized caseloads such as sexual offenders and alcohol and other drug related offenders add to the complexity of the Agent's role.

To improve the service delivery facets of the role of the Probation and Parole Agent, the Division of Corrections must encourage the specialization of Agent skills. With various Agents possessing specialties or with community-based services offering specialized services, an Agent may refer a client needing specialized services to another Agent, a community-based treatment facility, or treat the client directly.

The career development system of the Division of Corrections must reflect this emphasis on specialization. The Division must recruit as Agents persons with a wide variety of skills and must remunerate the acquisition of those skills. Separate career tracks for specialists has been recommended by the Subcommittee as a method to achieve greater specialization.

The specialization of skills also demands a greater use of community-based services. Wherever possible, the Agent should refer a client to community services. The Agent's time is valuable, and efforts in service provision should not duplicate existing community services.

The quality of the relationship between Agent and client is an essential concern. Unless this relationship is a viable one, the client is denied a crucial link to the community. In recognizing the importance of the client-Agent relationship, provision should be made to allow either the client or the Agent to request the transfer of the client to the supervision of another Agent if a personality conflict develops.

Subgoal I8.5: Volunteer Participation

The Department of Health and Social Services shall encourage and facilitate citizen participation in community-focused correctional programs.

Standard 18.5(a)

Each Regional Probation and Parole Office shall have a citizen participation unit whose tasks shall include securing and coordinating voluntary public involvement in community correctional alternatives.

Standard 18.5(b)

The citizen participation unit shall be assigned to:

1) recruit, screen, and select appropriate volunteers and volunteer agencies;

2) design and coordinate volunteer tasks;

3) provide orientation to the system and training as required for specific tasks; and

4) develop appropriate personnel practices for volunteers.

Standard 18.5(c)

Volunteers shall be given orientation and training covering such subjects as:

1) objectives of the corrections system;

2) objectives of the specific community-based volunteer programs and their relatioships to other correctional objectives and programs;

3) correctional rules and regulations;

4) specific rules and guidelines for volunteers; and

5) the volunteer's relationship to the client.

Commentary

Reintegration of offenders into community life can be an extremely difficult task unless the community is actively involved. All too often, citizen reaction to criminal behavior has been to call for the removal of the offender from the community and for the community to be absolved from further responsibility. However, much criminal behavior stems from maladaptive social activity brought about by problems in the family or the community. By reaching out and interacting with correctional clients, the community can help protect itself from renewed criminal activity by an offender who, if not integrated, would not have a stake in maintaining positive relationships with the community. To give only professionals the responsibility for solving correctional problems ignores the fundamental nature of the problem of crime in our society which ultimately requires citizen participation for solutions.

Correctional administrators have the responsibility to recruit, train, and utilize interested community volunteers. They must encourage public participation in all aspects of the correctional system. They can be helped in fulfilling responsibilities to clients and to society, through programs including active citizen involvement.

Community volunteer programs broaden the alternatives available within the correctional system. Volunteers can provide necessary alternatives to bureaucratic programs and the insensitivity that often accompanies formal organizations. The community volunteer can provide needed aid and friendship without an institutional role to restrict that aid.

Subgoal 18.6: Pre-Release Community Linkages

Prior to release, the Division of Corrections shall provide incarcerated offenders access to representatives of community resources.

Standard 18.6(a)

Community-based correctional programs shall be encouraged to create and maintain institutional liaison with incarcerated offenders.

Standard 18.6(b)

Prior to release, an incarcerated offender shall be permitted to transfer to a local facility closest to the ultimate release destination. That may be a minimum security facility, residential alternative, local jail, or other facility which would allow greater access to community services. The Department of Health and Social Services should be provided with funds to develop, construct, and put into operation those local facilities.

Standard 18.6(c)

Probation and Parole Agents shall coordinate their activities with services provided by community-based programs to the pre-release offender.

Standard 18.6(d)

The State Legislature should enact necessary statutory changes to permit the Department of Health and Social Services to release for limited periods of time incarcerated offenders to the custody of representatives of community-based programs. Releases shall be for the purpose of enabling contact with community resources, particularly those providing employment, education, and professional treatment.

Standard 18.6(e)

As part of their regular services to citizens, agencies such as Job Service, Vocational Rehabilitation, and institutions of higher learning shall provide counseling at correctional institutions.

Commentary

The period between release from an institution and adaptation to an unrestricted situation following incarceration can often be a difficult and costly time for both the offender and society. Except for a parole agent, a released offender may not know anyone. The offender may not have a place to stay, a job, or any idea of how to obtain necessary supportive skills.

Early planning for this critical period after release may help an offender avoid many problems. By minimizing the impact of a changing situation, a much smoother adjustment may be possible. If incarcerated offenders have access to representatives of community-based programs before release, the offender may be able to build

positive relationships which will continue after release. This early access would allow for offenders and the representatives of community-based programs to plan for the post-release period.

A goal of the correctional system must be to make the transition from prison to parole as smooth as possible. Programs should not end or change when an offender is released from incarceration but should flow smoothly into continued programming within the community. This section provides for several alternatives to make that transition. A significant strategy for planning the transition is release from the institution to allow offender planning with representatives of community-based programs.

Subgoal 18.7: Intergovernmental Cooperation

The community-focused correctional system shall be aware of and respond to the need for services and the demand for participation from other levels of government.

Standard 18.7(a)

When the community-focused system is operational, provisions shall be made to allow inmates of county jails to use the services.

Standard 18.7(b)

The Department of Health and Social Services shall be provided sufficient personnel to establish liaison with locally operated correctional institutions. The staff shall provide training, information and assistance to local governments in developing and utilizing the community-focused corrections system.

Standard 18.7(c)

The Division of Corrections shall provide for liaison with federal correctional personnel for purposes of coordinating community-focused correctional goals. A procedure shall be established whereby correctional clients could be eligible for both state and federal programs.

Commentary

In achieving the goals of the community-focused correctional system, the use of local jails or federal facilities may be necessary. Barriers to one level of government's using other level's facilities must be eliminated. Often the facility of another level of government would aid in providing access to a particular locality or a particular service. Access to local jails would provide some incentives for the state to aid certain localities in upgrading facilities and programs. The net result will be a correctional system which has more consistency. (cf. Subgoal 25.4)

Subgoal 18.8: Diversion

The comprehensive community-focused correctional system shall make its resources and facilities available to prosecutors to divert selected types of offenders. This shall apply particularly to the less-secure facilities and those providing services for alcohol, sex-related, and psychological needs and services for persons convicted of minor offenses.

Standard 18.8(a)

Capacity to conduct evaluation and assessment of potential diversion clients shall be locally developed and made available to prosecutors.

Standard 18.8(b)

The Division of Corrections shall make available to prosecutors appropriate copies of the Agent's manual listing available community-based services.

Standard 18.8(c)

Prosecutor referrals to community-based programs shall include an agreement between the program administrator, the client, and the prosecutor's office which specifies the goals of the diversion, any restrictions upon the client, and the responsibilities of all relevant parties. Upon completion of the agreement, the administrator of the program shall submit a report to the prosecutor's office certifying completion. The program administrator shall notify the prosecutor's office of any failure on the part of the client to complete the agreement.

Standard 18.8(d)

A client who is considering a diversion program shall be informed of the right to counsel at the earliest possible point. A client, on advice of counsel, shall be able to terminate a diversion program at any point in the diversion process. Consideration of, or participation in, a diversion program shall not be considered an admission of guilt in subsequent judicial proceedings. (cf. Standard 10.1(a))

Commentary

Diversion is a procedure whereby a prosecutor may intervene in the normal criminal justice process and divert alleged offenders who need some form of assistance but who do not merit criminal prosecution. Intervention in the criminal justice system can occur before the adjudication process; however, if it does, adjudication remains an alternative to be utilized upon failure of the diversion action. The function of the diversion program is to avert stigma on clients, clear court dockets, avoid costs of complex and specialized adjudication procedures, and provide specific aid to clients in need.

A community-focused correctional system provides a ready-made diversionary system. Its utilization requires linkages between the community-based correctional system and the prosecutor's office. However, diverted clients should be treated differently from convicted offenders who are also in the community-focused correctional system. Persons involved in a diversion program have not been convicted of a crime; thus they have different rights from convicted offenders.

Diversion is not a new phenomenon in the correctional system. Judges, police departments, prosecutors, and other professionals have been doing informal diversion programs for years. By making informal agreements with offenders in lieu of prosecution, these officials have accomplished correctional goals similar to a more formalized diversion program.

Diversion programs are not a cure-all for problems in the correctional system. In order to be successful, diversion programs must carefully choose the offenders which they serve. Care must be taken to ensure that offenders or accused offenders selected for diversion programs have a reasonable chance of being aided by the programs.

Care must also be taken in the construction of the agreement among the alleged offender, the diversion program, and the prosecutor's office. By short-cutting the criminal justice system in a diversion program, many guarantees and protections might be ignored. An ill-considered diversion program will lead to more problems than use of the full system.

GOAL NO. 19: CONTROL OF NON-INSTITUTIONALIZED OFFENDERS

An offender on probation or parole should be afforded every opportunity to demonstrate socially acceptable behavior even though the state must maintain some supervision and accountability over the events of the client's life.

Subgoal 19.1: The Relationship Between the Agent and the Offender

The supervisory relationship between the Agent and the client on probation or parole shall be clearly communicated to both parties. The Probation and Parole Agent shall make every effort to involve the client actively in program planning and evaluation.

Standard 19.1(a)

The rules governing the conduct of an offender on probation or parole shall be written in a manner that maximizes the client's ability to function in the mainstream of society. Those rules shall be limited to relevant aspects of explicit conditions of the supervision.

Standard 19.1(b)

The Department of Health and Social Services shall negotiate the conditions of probation and parole with clients. A standardized parole agreement shall be the starting point for this negotiation. This agreement shall specify the minimum rules required by law. (cf. Subgoal 30.3)

Standard 19.1(c)

The Department of Health and Social Services shall develop mechanisms to enable clients and staff to submit proposals relating to the rules of Probation and Parole.

Standard 19.1(d)

When the Department of Health and Social Services comtemplates adopting, amending, or repealing a rule which directly or indirectly affects the status of an offender under supervision, it shall give reasonable advance notice by mailing or by otherwise distributing written notice to clients prior to adoption, amendment, or repeal.

Commentary

Probation today is viewed as the most enlightened method devised for working with the majority of offenders. It is generally accepted as an affirmative correctional tool used not only because it is of maximum benefit to the offender, but also to society. For the period of probation and parole to have maximum potential value, all participants must be aware of the rights, obligations, and rules governing periods of supervision. Formalized rules, which either relate directly to the goals of field supervision, or are mandated by law, should be explicitly communicated to offenders.

Standard 19.1(b) recommends that conditions of Probation and Parole which are more inclusive than the requirements of law be determined by contracting between the Department of Health and Social Services and the client. Basic rules of supervision should be clearly relevant to the client's individual needs.

Standards 19.1(c) and 19.1(d) provide clients on probation and parole with a method of input into changes of the rules of supervision.

Subgoal 19.2: Revocation

Revocation procedures of probation and parole shall include as a minimum all rights and procedural due processes defined through court decisions. (cf Subgoal 16.3)

Standard 19.2(a)

The hearing portion of revocation proceedings shall be conducted by a hearing examiner from outside of the Division of Corrections. Hearing examiners shall be rotated among a wide number of agencies that need examiners specialized in standard hearing procedures. The decision shall be a presumptive opinion.

Standard 19.2(b)

Appeals of a revocation hearing shall be only on matter of record in the revocation procedure. If the appeal reverses the original ruling, the appeal officer shall state in writing the substantive reasons prompting the reversal.

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Standard 19.2(c)

Revocation hearings shall be held promptly. Any administrative revocation decision shall be subject to judicial review.

Standard 19.2(d)

The rules governing revocation proceedings shall be written, explicit, binding, and public.

Standard 19.2(e)

The State Legislature should enact necessary statutory changes so that probation or parole shall not be revoked solely for an alleged criminal offense until the offender has been convicted of that new offense, or unless the offender otherwise requests a prior hearing on the advice of counsel.

Standard 19.2(f)

Whenever a criminal proceeding results in a determination based on finding of fact or law in favor of the offender, that determination shall be conclusive in a revocation proceeding. The revocation proceedings shall not permit use of any evidence surpressed in a judicial proceeding.

Standard 19.2(g)

Unsubstantiated evidence offered by an offender in a revocation proceeding shall not be admitted as evidence in subsequent criminal proceedings.

Standard 19.2(h)

Commission of a criminal offense by an offender serving a term of probation or parole shall not automatically constitute grounds for instituting revocation proceedings.

Commentary

The revocation proceeding is quasi-judicial. It should contain all protections of rights and due processes consonant with court decisions. In cases involving possible criminal violation by an offender under supervision, the revocation proceedings may parallel the criminal process. Since both processes are focused upon the same acts, a possibility arises that revocation proceedings may either interfere with criminal proceedings or may compromise the rights of the accused. To avoid this problem, Stan-

dard 19.2(e) recommends delay of the revocation process until the normal judicial proceedings are completed. Standard 19.2(f) prohibits evidence supressed in one proceeding from being used in another.

The creation of outside hearing examiners, Standard 19.2(a), with a wide variety of experiences, will avoid routinizing the hearing process and the consequent lack of objectivity. Additionally, the conduct of hearings ought to be more a matter of following a standardized procedure rather than one of substantive expertise in a particular area.

The separation of the prosecution through the criminal process and the revocation process is necessary to avoid placing an offender in double jeopardy. Not all actions which are covered in the criminal statutes ought to be grounds for revocation. Certain actions may be criminal violations but may not be considered serious by current social norms. Thus, Standard 19.2(h) addresses those cases in which ordinary citizens would not be prosecuted and in which parolees or probationers should not have parole or probation privileges revoked.

Subgoal 19.3: Discharge from Probation and Parole

The State Legislature should enact specific legislation to enable the Department of Health and Social Services to discharge offenders under supervision before their mandatory release date. (cf. Standards 16.2(c) and 16.2(f))

Standard 19.3(a)

The State Legislature should amend Section 973.09(5) to add the word "substantially." The section would then read: "When the probationer has substantially satisfied the conditions of his probation, he shall be discharged and the department shall issue him a certificate of final discharge, a copy of which shall be filed with the clerk."

Standard 19.3(b)

For clients meriting a release from supervision with a pardon, the Department of Health and Social Services shall increase utilization of Section 973.01(2) of the Wisconsin State Statutes. The Office of the Governor should develop standards for increasing utilization of that statute.

Standard 19.3(c)

The State Legislature should review Section 53.11(a) and make provision for the discharge of an offender from parole supervision before the mandatory release date.

Standard 19.3(d)

The State Legislature should enact necessary legislation to allow the Department of Health and Social Service to contract with probationers or parolees providing an early release from supervision contingent upon completion of specified programs.

Commentary

In some instances an offender is required to remain under supervision longer than is necessary for reintegration into the community or to ensure against future criminal behavior. Often, an offender will undergo a radical change in attitude toward society or behavior during incarceration or supervision, and that circumstance should militate against continuing that offender under a long parole period. In other situations, community norms might radically change, making a previously imposed, onerously long sentence unjust and incompatible with current sentencing. In still other situations, the statutory sentence length might be reduced and previously-sentenced offenders' parole or probation length must be adjusted. In these and other cases there might be wide agreement that continuation under supervision would not improve significantly an already-excellent record and merely create additional costs to the correctional system. To relieve that problem, the standards suggest possible statutory solutions to provide early discharge. Each discharge would occur only when there is agreement that continuation under supervision would serve no further purpose and that there is substantial merit for early release.

GOAL NO. 20: INCARCERATION AND RELEASE

Confinement in a penal institution shall be utilized only as a disposition of last resort by all state sentencing authorities. A mechanism shall be created to minimize any disparity of sentencing, and release from incarceration shall be provided at the earliest possible time consistent with protection of the rights of the public and the offender. (cf. Standards 16.1(a), 16.2(q))

Subgoal 20.1: Discretionary Release from Incarceration

The discretionary release function shall be performed by a Parole Board which shall review the continued incarceration of an offender and may recommend release.

Standard 20.1(a)

The Parole Board shall be located in the Office of the Secretary of the Department of Health and Social Services and shall be appointed by the Secretary.

Standard 20.1(b)

Members of the Parole Board shall have fixed terms of not more than six years and shall not succeed themselves. The Board shall be composed of members with diverse backgrounds, training, and experiences. Any state employee appointed to the Board shall not lose civil service status or seniority rights.

Standard 20.1(c)

The function of the Parole Board shall be to:

1) negotiate contracted release dates with offenders in conjunction with contract programming;

2) consider petitions for discretionary release.

Standard 20.1(d)

The Board may entertain a petition if the inmate's behavior taken as a whole during incarceration has demonstrated that the inmate would probably no longer constitute an overt threat to society.

Standard 20.1(e)

In making a release determination, the Board shall review the following:

1) information submitted by the inmate;

2) reports and recommendations which the institution staff may make;

3) official reports of the inmate's prior criminal record, including a report or record of earlier probation and/or release experiences; (cf. Goal 26)

4) presentence investigation reports; and

5) letters relating to the inmate's post-release opportunities.

Standard 20.1(f)

If release is denied, an inmate shall be provided the reasons in written narrative form.

Standard 20.1(g)

The Parole Board shall not consider alleged offenses for which the inmate was not convicted, or which were not read into the court record.

Standard 20.1(h)

Summaries of Parole Board proceedings shall be part of the offender's permanent file.

Standard 20.1(i)

The Board shall be provided with sufficient staff in order to enable a complete review and evaluation of the inmate's record.

Standard 20.1(j)

Good time shall be computed at a rate of one day good time per one day served. Good time earned shall become vested if not forfeited within thirty days. (cf. Standard 16.2(o))

Commentary

The value of the Parole Board and the paroling function has been the subject of much discussion and debate throughout the country. In its Preface to Corrections, the Subcommittee expressed its belief that "corrections" is a misnomer and rehabilitation generally a failure. However, the Subcommittee also maintains that incarcerated offenders, for whatever reason, can change while in prison. The person who is able to change ought not be incarcerated any longer than necessary. The Subcommittee therefore recommended that a mechanism, such as the Parole Board, must be retained to release those individuals who are capable of returning to society.

These standards reflect a basic assumption of the Subcommittee. Persons will be sentenced to periods of incarceration only in those cases where it is absolutely required as the alternative of last resort. Therefore, parole is seen as a process utilized less frequently than now, since it is anticipated that most individuals will utilize the contract release process as outlined in Standards 22.2(a) through 22.2(f).

Wisconsin's Parole Board has been noted in a recent nationwide study of parole (Parker,1975) because of its civil service appointment of full-time members. The Subcommittee recommends in Standard 20.1(b) that the Parole Board be composed of persons with diverse backgrounds, training, and experience. The Secretary of the Department of Health and Social Services should make a concentrated effort to appoint individuals who have training and/or experience in areas other than corrections, and who can bring a broad spectrum of views and perspectives to this important decision-making process.

Standard 20.1(f) points to the need for a reasoned explanation to the inmate when parole is denied. It is no longer sufficient to check off arbitrary dates for reapplication eligibility without supplying rational and reasonable explanations for denial that can be understood by the inmate.

Standard 20.1(j) simplifies the procedure for earning and computing good time. The current system will be replaced by a day for a day allocation of good time which will be vested if not forfeited at the end of each month. This will allow inmates to understand the good time system and compute for themselves their discharge date.

GOALS NO. 21: RIGHTS OF INCARCERATED OFFENDERS

An incarcerated offender shall retain as many rights and privileges as are consistent with current legal status. Insofar as possible, rights or privileges unrelated to institutional security shall be retained.

Subgoal 21.1: Administration

The Division of Corrections shall actively seek to improve communication between Division personnel and inmates by involving both in developing institutional rules. Those rules shall be distributed to inmates, Division personnel, and the public.

Standard 21.1(a)

The Division of Corrections shall develop mechanisms to enable inmates and staff to submit proposals relating to rules or conditions of confinement.

Standard 21.1(b)

When the Division of Corrections or any institution adopts, amends, or repeals a rule which affects the status, activities, or conditions of confinement, it shall provide reasonable advance notice of the intended action. Prior to changing a rule, interested inmates shall have reasonable opportunity to submit data, views, or arguments in writing to the Division. The Division shall consider all submissions related to the proposed action and if the proposed action is adopted, shall issue a concise statement explaining its decision.

Standard 21.1(c)

If the Division finds that there is imminent peril to the health, safety, or welfare of inmates or the public which requires the adoption of a rule without inmate participation, the rule shall be enacted but shall be effective only for the duration of the emergency.

Standard 21.1(d)

The Division of Corrections shall maintain a current manual of all rules of the Division which affect the status, activities, or conditions of confinement of inmates. This manual is a public document, and it shall be available for inspection by inmates and the general public. At least one copy of the manual shall be kept in the inmate library of each facility of the Division.

Standard 21.1(e)

The Division of Corrections in promulgating rules of conduct shall not attempt to duplicate criminal law. When an act is referred for criminal prosecution, the administrative disciplinary process shall be deferred pending the filing of a complaint. When the state files a criminal complaint, the Division of Corrections shall not take any disciplinary action.

Commentary

The thrust of these standards is toward a strengthening of due process and equal protection rights of persons confined in the state's correctional institutions. The view of inmates as "slaves of the state" is totally rejected in favor of an analysis based upon "inmate retention of a residue of rights." (Morales v. Schmidt, 1971) Any restriction that correctional authorities place upon the exercise of inmate rights must be justified by the nature of incarceration and/or the correctional system. It is expected that this twin-parallel emphasis on due process and equal protection will eventually translate into a single goal of the right of every convicted criminal to a fair chance at re-socialization.

Administration of the correctional system must be based upon standard guidelines which are written and are adhered to by all the institutions and personnel in the system's jurisdiction. Adherence is crucial since much litigation is the result of accusations that the institution staff did not abide by its own rules and regulations. The Subcommittee recognizes that discretion is necessary if the correctional system is to make a rational and effective choice between its goals and the resources that are available. Thus, these standards do not gainsay the need for discretion but recognize that discretion is potentially destructive to individual rights when more than necessary is used and when the exercise of discretion is not guided by policies, rules, and regulations. (Davis, 1969)

Public participation in the correctional rule-making process is viewed as a vital first step toward the humanization of correctional institutions. The public should and must be involved in corrections. The public should be invited into the correctional institutions, not just for a meaningless tour of the place where criminals are locked in but to hold classes and discussions and to entertain and to re-create with the inmates.

The humanization of correctional institutions must not overlook institutional staff. Therefore, the Subcommittee views staff participation in the rule-making process as an essential component of the "retained rights" approach to correctional operation. Such involvement will promote a better understanding by line staff of their role in the correctional process.

Subgoal 21.2: Furloughs

The State Legislature should empower the Secretary of the Department of Health and Social Services to grant furloughs.

Standard 21.2(a)

The Administrator of the Division of Corrections may grant furloughs to inmates for any of the following purposes:

1) To visit close relatives or friends who are seriously ill or to attend funerals of any such persons;

2) To obtain medical, psychological, psychiatric, or other treatment services;

3) To make contacts for employment, admittance to an educational institution, or participation in other bona fide activities;

4) To locate a residence;

5) To visit family or friends;

6) Any other purpose the Administrator of the Division of Corrections determines to be in the best interests of the offender and the public.

Standard 21.2(b)

An offender who knowingly fails to return to a correctional facility pursuant to the conditions of furlough shall be considered an escapee.

Standard 21.2(c)

The Assessment and Evaluation Committee shall consider furlough applications after affording the inmate an opportunity to present pertinent information. The Committee shall grant a furlough of at least 24 hours unless it finds:

1) The person has violated a condition of furlough within the prior year;

2) The person has a recent history of persistent violation of other conditional release programs;

3) The offender has a recent history of persistent violations of institutional rules; or

4) The release of the offender would not be in the best interest of either the offender or the public.

Standard 21.2(d)

If a furlough application is denied, the offender shall be given written reasons for the denial.

Standard 21.2(e)

Inmates may appeal furlough denials through the Offender Grievance procedure.

Commentary

The Subcommittee was of the opinion that a legislatively mandated furlough system would provide the best method of bringing about the speedy re-socialization of convicted criminals. The scope of reasons for which a furlough can be granted greatly increases the chance of re-socialization. Employment, educational possibilities, family illness, medical treatment, and family visits are among legitimate reasons for granting a furlough.

Standard 21.2(a) acknowledges the importance of maintaining family ties and for the offender physically to be available in many situations. Furloughs for those inmates who can and would benefit from temporary release could drastically alter many of the most negative and destructive aspects of incarceration.

Subgoal 21.3: Communication

Inmates shall be allowed to communicate with whomever they choose unless prohibited by a court or unless such communication would constitute a threat to the security of the institution, the community, or others.

Standard 21.3(a)

The institution shall provide postage for correspondence with:

1) Legal counsel;

2) Any federal or state court;

3) The Governor;

4) A member of the State Senate or a member of the State Assembly;

5) The Administrator of the Division of Corrections;

6) The Office of Correctional Mediation;

7) The Secretary of the Department of Health and Social Services; or

8) Any body empowered to review sentences.

Standard 21.3(b)

All outgoing correspondence shall be sealed by the writer and deposited in locked mail boxes which shall be positioned in accessible locations. All correspondence so deposited shall be forwarded to the United State postal authorities at least once every business day unless there is probable cause to believe that the correspondence contains contraband

Standard 21.3(c)

No incoming or outgoing correspondence shall be read by a correctional official without probable cause to believe that evidence of a criminal offense exists. Whenever a letter or package is opened, it shall be done only in the presence of an inmate representative, unless there is reason to believe that the correspondence is physically dangerous.

Standard 21.3(d)

Cash, checks, or money orders found in incoming correspondence shall be removed and promptly deposited in the inmate's account, and immediate written notice given to the inmate.

Standard 21.3(e)

No written communication or package shall be returned to sender, held by the institutional staff, or otherwise delayed for any reason except judicial authorization or probable cause of a criminal offense or an escape plan. If a written communication is returned or delayed for the above reasons, the institution shall provide immediate written notification of this action to the addressee and addressor.

Standard 21.3(f)

If incoming mail contains contraband, the addressee shall be immune from prosecution unless it was material that was found to be clearly and convincingly requested by the inmate.

Standard 21.3(g)

Correspondence that is found to contain contraband shall be forwarded immediately with the contraband to the administrator of the institution who shall immediately give written notice of this action to the intended recipient, including the name and address of the sender and the nature of the confiscated contraband.

Standard 21.3(h)

Offenders shall be allowed to correspond as often as they wish at their own cost in any language of their choice.

Standard 21.3(i)

Each facility shall make stationery and stamps available for purchase by the inmate.

Standard 21.3(j)

The Division of Corrections shall permit inmates, at their own expense to make telephone calls in private to any person except those to whom communication is prohibited.

Standard 21.3(k)

Inmates shall be allowed to order, receive, or purchase a single copy or subscription of reading material or recorded communication, except those that advocate a clear and present danger to institutional security.

Standard 21.3(l)

The following factors shall not constitute an immediate threat to the safety or security of the facility for the purpose of excluding reading material:

1) Criticism of a correctional facility, its staff, or the correctional system;

2) Views that correctional officials deem not conducive to rehabilitation or correctional treatment;

3) Racial or ethnic identity; or

4) Indecent language.

Standard 21.3(m)

The Division of Corrections shall allow an inmate to order, receive, or purchase a radio, television set, phonograph, tape recorder, or other audiovisual equipment and allow the use of the equipment unless its use adversely affects the rights of other inmates. The Division of Corrections shall be the intermediary for all transfer of any valuable property and shall register all possession of such property.

Standard 21.3(n)

Inmates may submit to the institution's administrator a list of persons they do not wish to see. No person on this list shall be granted visiting privileges.

Standard 21.3(o)

All institutions shall provide sufficiently flexible visitation schedules so that working visitors and visitors who must travel long distances may meet with incarcerated offenders. At least some visitation hours shall be available in the evening and during weekends.

Standard 21.3(p)

Supervision of the visiting area shall not interfere with the actions or physical contact of inmate or visitors unless such actions are a threat to the safety, security, or good order of a facility. Supervision of the visiting area shall not include any surreptitious surveillance.

Standard 21.3(q)

An incarcerated offender shall be permitted to meet with more than one visitor at a time, and a visitor shall be permitted to meet with more than one inmate at a time.

Standard 21.3(r)

The chief administrative officer may deny, limit, or revoke the visitation rights of any inmate or visitor only if and for as long as there is reasonable cause to believe that such action is necessary to maintain the safety, security, and good order of a facility. A determination to deny, limit, or revoke visitation rights must be made in writing and shall state the specific facts and reasons underlying the determination. A copy of this determination shall be given to any person affected by the determination.

Standard 21.3(s)

The Division of Corrections shall allow inmates to participate in visits in a private setting. The Division shall set aside adequate private facilities for these visits which may exceed regular visiting hours.

Commentary

Standards in this area are addressed to changing allegedly arbitrary prison rules that place restrictions on inmate communication for what are often paternalistic, punitive reasons. Corrections officials have been reluctant to grant inmates the full protection of the First Amendment and have espoused the idea that inmates have only those First Amendment rights that officials think they should have. (Southern California Law Review, 1967) This type of reasoning leads to a conclusion that the corrections system has an inherent right to promulgate and enforce rules promoting its views of prisoner access to these fundamental rights. The Subcommittee rejected this view and suggests that a defense of "an inherent right" along with the time and precedent honored correctional defense of "security requirements" are not enough to justify curtailment of these fundamental fights. Further, current litigation in the field of correctional law lends credence to the Subcommittee's view that speculative arguments have too often been used for punitive behavior on the part of prison officials who are in the position of having no statistics or empirical data to support their position. (Morales v. Schmidt)

Standards in this area emphasize a need for a specific, non-arbitrary rationale for curtailment of these rights. While the security of the institution is recognized as a legitimate concern of correctional officials, a rational relationship between curtailment of First Amendment rights and the objectives of incarceration is the outcome which the subcommittee hoped to see demonstrated.

Standards 21.3(n) through 21.3(s) relate to an area seen as having major significance--that of visiting rights. Current facilities and procedures for visiting are often inadequate and non-conducive to a positive family experience for the inmate and his or her visitors. The Subcommittee supports the establishment of appropriate facilities for private visitation to enable the inmate to visit friends and family in an atmosphere that promotes strengthening of human relationships and privacy of communication.

Subgoal 21.4: Searches of Inmates

No searches of the person or the living quarters of an inmate shall be undertaken unless there is probable cause to believe a violation of institutional rules has occurred. The administrator of the facility must authorize searches and articulate circumstances prompting the searches to the inmate.

Standard 21.4(a)

The administrator of an institution shall establish procedures to protect against the presence of contraband in the facility. The procedures may include the use of any device or animal which can detect the presence of controlled substances or the use of a scanning device.

Standard 21.4(b)

When a correctional employee has reasonable grounds to believe that contraband or evidence of a criminal offense or escape plan will be uncovered, written application shall be made to the administrator of the institution for an order directing a search or patdown. The application shall include the name and title of the person making the application and shall specify:

1) The inmate against whom the order is to be directed;

2) The specific reasons for requesting the search; and

3) The name of any person providing information.

Standard 21.4(c)

Searches authorized by the administrator shall be conducted, when possible, in the presence of the inmate by an employee of the facility who is specifically authorized to conduct searches.

Standard 21.4(d)

In any search of an inmate's quarters, no written communication shall be read or recorded communication intercepted unless probable cause is established that a criminal offense or institutional rule infraction has occurred.

Standard 21.4(e)

When authorization is obtained to conduct a strip search, the search shall be conducted in private, by an employee of the facility who is of the same sex as the inmate and among those specially authorized by the administrator. When an authorization for a body cavity examination is obtained, the examination shall be conducted by medically trained personnel in the medical facility.

Commentary

In Subgoal 21.4 related to inmate searches, the Subcommittee rejected the idea that an inmate forfeits all Fourth Amendment rights upon conviction of crime. The standards speak to "probable cause to believe" as the touchstone of administrative authority when searches of an inmate or an inmate's quarters are to be undertaken. While the precise ambit of probable cause is not spelled out, the placing of a modicum of burden on correctional officials to justify searches is wholly consistent with the 'retained rights' analysis that the Subcommittee adopted.

Subgoal 21.5: Religion

Institution rules and staff conduct shall not inhibit the practice of any recognized religion or religious practice insofar as the practice of that religion does not threaten the security of any person or of the institution.

Standard 21.5(a)

The correctional institution shall make every effort to comply with the dietary, holy days, or dress laws of an inmate's religion.

Standard 21.5(b)

The institution shall not release individually identifiable information about religious practices or affiliation of inmates.

Standard 21.5(c)

When the number of inmates within a particular institution warrants, the Division of Corrections shall make every effort to provide religious services for them.

Standard 21.5(d)

When the Division of Corrections determines that a group or organization shall not be considered a bona fide religious group or organization, it shall set forth in writing specific facts and reasons underlying the determination. A copy of such determination shall be given to those concerned.

Standard 21.5(e)

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

1) Whether there is substantial literature supporting the practice.

2) Whether there is a formal, organized worship of a shared belief by a recognizable and cohesive group supporting the practice.

3) Whether there is a group of persons who share common ethical, moral, or intellectual views supporting the practice.

4) Whether the belief is deeply and sincerely held by the offender.

Standard 21.5(f)

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

1) The belief is held by a small number of individuals.

2) The belief is of recent origin.

3) The belief is not based in the concept of a supreme being or its equivalent.

4) The belief is controversial or unpopular.

Commentary

The exercise of religious freedom is a cornerstone of American democracy, and courts have been quick to strike down any restrictions on the free exercise therof. This is an area where correctional authority has been restricted to a considerable degree by court decree, and the subcommittee's standards are consistent with the direction that such court action has taken.

Diverse life styles and extra-ordinary religious practices are not viewed as reasons to curtail or restrict the practice of any religion among inmates unless a "clear and present" danger is presented to institutional or personnel safety.

Standards in this area are loosely drawn in order that all inmates may be given the maximum amount of freedom of religion. However, the standards contemplate that officials will balance the delicate concern for institutional security against a policy of free exercise and give inmate religious groups the benefit of any doubt. The Subcommittee was aware that a lack of this attitude of "doubt resolved in favor of free-exercise" has been a major cause of inmate unrest. (WCCJ Special Subcommittee on Causes of Riot at Green Bay, 1972)

Subgoal 21.6: Media Access

Incarcerated offenders shall be allowed to express their views to the media in any form of communication.

Standard 21.6(a)

Media representatives shall be permitted to meet with one or more inmates at any reasonable time not unduly disruptive of facility routine.

Standard 21.6(b)

Any time that inmates spend visiting with representatives of the media shall not be deducted from time allotted for personal visits.

Standard 21.6(c)

Whenever possible, representatives of the media shall give prior notice to the administrator of the facility of an intent to visit specified inmates. Where possible, the representative shall obtain permission of the inmate in advance of the interview.

Standard 21.6(d)

The administrator of an institution may refuse to allow an inmate media interviews only if a determination is made that such interviews would present a clear and present danger to the safety or security of the facility. Any determination not to allow an interview shall be made in writing and shall state the specific facts and reasons underlying the refusal. Copies of this determination shall be forwarded to any affected person.

Standard 21.6(e)

Each facility shall provide for confidential, unmonitored prisoner-media representative interviews, though visual supervision may be maintained.

Standard 21.6(f)

When the inmate feels that it is necessary, a photograph or film may be taken that does not reveal the identity of the inmate.

Standard 21.6(g)

No reprisal or retaliation of any kind may be inflicted upon an inmate because of statements made to the media or for requesting an interview with the media.

Commentary

Inmate access to media is totally consistent with a philosophy that incarcerated inmates be allowed to participate in community activities and that the community be brought inside the walls as a necessary ingredient of the re-integration process.

Further, a policy of open access to the media will do much to educate the general public as regards correctional issues and operations.

Additionally, such a policy provides the best method of illustrating to inmates that society really does care about persons who have been convicted of crime. (NAC, Corrections, 1973)

Subgoal 21.7: Rules of Conduct and Disciplinary Procedure

The rules of conduct of institutions shall follow the philosophy that every inmate retains all rights except those expressly related to the preservation of security and order of an institution.

Standard 21.7(a)

The Division of Corrections shall classify all conduct rules in the Manual of Resident Status Rules and Penalties so that a penalty range for each violation is established. Only those rule violations described in the Manual shall be punishable.

Standard 21.7(b)

Penalties shall be reasonably related to the offense for which they are imposed.

Standard 21.7(c)

Penalties shall be on an ascending scale according to the threat that the behavior poses to the maintenance of order.

Standard 21.7(d)

Every institutional rule shall be drafted in reasonable and not overly broad language. Specifically, concepts such as "disrespect" and "indecent language" shall be narrowly defined to reduce subjectivity.

Standard 21.7(e)

No accumulation of minor violations or rules of conduct may be considered a major violation.

Standard 21.7(f)

All inmates shall be given personal copies of the Manual of Resident Status Rules and Penalties and the rules of conduct of the institution in which they are incarcerated. Copies of the Manual shall be available in Spanish.

Standard 21.7(g)

No physical isolation shall be permitted except for emergency medical observation.

Standard 21.7(h)

The penalty of disciplinary segregation shall be limited to acts of violence, attempts to escape, physical resistance to authority, or possession of a dangerous weapon or other dangerous contraband.

Standard 21.7(i)

No inmate shall be held in any segregated status for more than three days without a hearing by a disciplinary committee.

Standard 21.7(j)

There shall be an upper limit not to exceed ninety days on the length of time that any inmate will be kept in disciplinary segregation.

Standard 21.7(k)

Loss of good time in lieu of segregation shall be imposed at a rate not to exceed two days for the first major infraction, four days for the second, and eight days for the third and each subsequent major infraction. (cf. Standard 20.1(k))

Standard 21.7(l)

For an alleged major violation, someone other than the reporting officer shall conduct a complete investigation into the facts of the alleged misconduct to ascertain if there is probable cause to believe the inmate committed a violation.

Standard 21.7(m)

Disciplinary hearings shall include, as a minimum, all rights and procedural due process defined through court proceedings.

Standard 21.7(n)

All due process disciplinary proceedings shall be heard by a panel, one member of which shall be from Assessment and Evaluation.

Standard 21.7(o)

In preparation for the hearing, the inmate may receive assistance, if desired, from a member of the correctional staff, another inmate, or other authorized persons, including legal counsel.

Standard 21.7(p)

The Disciplinary Committee shall render its decision in writing, setting forth its findings as to controverted facts, its conclusions, and the sanction imposed.

Standard 21.7(q)

If the Disciplinary Committee finds that the inmate did not commit the violation, all reference to the charge shall be removed from the inmate's files.

Standard 21.7(r)

An inmate shall be able to appeal a decision of the Disciplinary Committee to the Program Review Committee.

Standard 21.7(s)

The Division of Corrections shall maintain a current file of all rules of the Division which affect the status, activities, or conditions of confinement of inmates. This file is a public document.

Commentary

Rules of conduct and procedures for addressing the breach of these rules have been the greatest source of complaints emanating from correctional institutions. (WCCJ, Inmate Complaint Review System Evaluation, 1975) The Subcommittee saw no conflict between the operation of a safe correctional institution and an allowance for humanistic conduct rules and disciplinary procedures. Indeed, the Subcommittee was inclined to apply a "real world approach" to this most important area.

Specific insight was gained by the Subcommittee in this area as a result of institution visits and inmate input. Thus, overbroad rules and vague concepts have been addressed to reduce institutional callousness.

The standards speak to both procedural and substantive due process. They attempt to allow for the ultimate amount of inmate self expression while balancing a need for security within correctional institutions. It is in this area that the Subcommittee displayed a total rejection of the "slave of the state" concept of institutional operation and attempts to implement the ideas and principles of a "retained rights" concept of institutional operation.

Standard 21.7(a) calls for an end to any segregation that requires physical isolation. Such practices are viewed by the Subcommittee as inhumane and violative of the principles that underlie these recommendations.

GOAL 22: INSTITUTIONAL PROGRAMS AND PERSONNEL

Institutional programming and personnel practices shall integrate the goals of the correctional system such as the security needs of the institution, the protection of the community, and the preparation of the inmate for re-entry into society.

Subgoal 22.1: Institutional Programs

Program development shall be based upon inmate needs. Emphasis in programming shall be upon utilizing community resources where possible.

Standard 22.1(a)

The Division of Corrections shall make every effort to meet inmate needs for programs, and resources shall be so allocated.

Standard 22.1(b)

Whenever possible, institutional programs shall coordinate and integrate with community-based programs.

Standard 22.1(c)

In its evaluation of vocational programs, the Division of Corrections shall consider the employability of a graduate of any vocational or education programs. Vocational programs shall be discontinued if inmates are not readily employable with those skills.

Standard 22.1(d)

Federal minimum wage shall be paid to inmates employed in institutional industries. Similar considerations shall be given to inmates employed in other institutional employment. Wages above the minimum wage shall be based upon job classification.

Standard 22.1(e)

The Legislature should provide that no correctional industry programs should be prohibited because of possible competition with private enterprise.

Standard 22.1(f)

Labor organizations shall be encouraged to recruit membership from within institutions in order to assure employability after release.

Standard 22.1(g)

All vocational training programs shall have a set of measurable objectives. These objectives shall comprise a portion of the instructor's performance evaluation.

Standard 22.1(h)

Both educational and vocational programs shall teach social adjustment skills as well as provide basic academic competency.

Standard 22.1(i)

The Department shall provide for the transfer of offenders to community facilities in order to utilize a wider range of program services.

Commentary

It is the intent of Subgoal 22.1 to emphasize the importance of basing institutional programs on the actual and realistic needs of the inmates, rather than on the needs of the correctional system. Due to lack of adequate resources and personnel, institutional programs are often geared to provide for practical operational necessities rather than the individual needs of the inmate. This is particularly evident in the areas of prison industries and vocational training where inmates are frequently assigned work that corresponds to the requirements of institutional maintenance and operation. Industries where skills learned have little relevance to the job market the inmate will face upon release should be discouraged.

A study of 1974 releasees from Wisconsin's prisons reflects the difficulties faced by the parolee in finding and keeping employment. While the unemployment rate for the general population was 6.4% for white males and 12.8% for non-whites, the rate for inmates at point of release was 43.3% for white males and 49.6% for non-whites. Twelve months after release the rates remained high, at 32.5% and 48.4% for the two racial groups. In general, the study indicates the following: (1) the unemployment rate for ex-offenders is substantially above that of the general population; and (2) the large majority of offenders released do not benefit from institutional training and work experience. (Feyerherm, 1975)

Standards 22.1(d) through 22.1(f) acknowledge the importance of providing realistic economic incentives to inmates and for the necessary involvement of business and organized labor in any attempt to aid the offender in the area of employment. While a direct causal link between crime and unemployment has not been established, it seems clear that, in our society, a job, producing an adequate living and allowing for some level of self-satisfaction, is central to our lives and our respect for ourselves and others. Most offenders enter institutions with little successful experience in the world of work, inadequate educational backgrounds, and low-level skills. Efforts must be directed toward improving these areas while the individual is incarcerated. It is unrealistic to expect that a man or woman will achieve a better perspective toward employment if appropriate experience and recompense is not provided while in prison. This requires an entire re-thinking of prison industries, vocational training programs, and efforts to involve organized labor and employers.

Corrections alone cannot solve the problems generated in our economic system. These standards call for the payment of the federal minimum wage to inmates involved in production, for the encouragement and involvement of organized labor in the institutions, and for competitive industries to be established to teach realistic job skills.

The United Auto Workers has a set of twelve principles related to improvement of our criminal justice system, one of which calls for payment to inmates engaged in productive work at a rate no less than the minimum wage standards of the state. They have acknowledged the relationship between unemployment and crime as indicated by the remarks of the UAW Vice President:

> This country will not endure if we keep on sending the ex-offender back to prison. It will not progress until it has eliminated the correlation between crime and employment. Unless we can do this, it is clear to me that society is going to pay and continue to pay for the cost of crime in many painful ways. (Stepp, 1976)

Subgoal 22.2: Contracted Programming

The present system of contracted programming shall be continued and expanded in scope to permit the continuation of programming after discretionary or mandatory release from an institution.

Standard 22.2(a)

All incarcerated offenders, regardless of release date, shall be eligible for contracted release agreements. Participation in such contractual release programs shall be voluntary, and a participant may withdraw at any time without penalty.

Standard 22.2(b)

The contractual agreement should focus primarily on programmatic participation of the offender and provision of services. Individual actions subject to disciplinary sanctions shall not be considered unless they go to the essence of the contract.

Standard 22.2(c)

A summary shall be kept and made available to all parties of the contracted program agreement.

Standard 22.2(d)

The State Legislature should provide the Department with adequate financial and staff resources to implement the contract program agreements.

Standard 22.2(e)

Contracts shall be negotiated as legally binding agreements. Offenders shall be informed of their right to bring suit for breach of contract in the event of the Department's default.

Standard 22.2(f)

Any inmate denied eligibility to participate in institutional programming shall be given specific and substantial reasons in writing.

Commentary

As outlined under Goal 20, these standards recommend possible mechanisms for determination of a release date including parole and a system of contractual programming and release.

The Wisconsin correctional system has been testing the concept of a contracted release program since 1972. Currently this program, referred to as MAP or Mutual Agreement Program, operates in all state institutions with the exception of the Camp system. An inmate may, based on certain eligibility criteria, contract with the institution and the Parole Board for a guaranteed release date in return for agreeing to participate in certain programs and living up to specific behavior objectives.

The primary value of the program is that the offender and the correctional system know what is required of both and when, if all conditions are met, release will occur. Historically one of the major concerns of inmates has been the unpredictability of the parole process and their inability to know what was required of them to gain release. Under a contractual release concept, both the offender and the correctional system must, theoretically, agree to meet certain expectations; the institution should provide programs and resources, and the inmate should participate as agreed to in the contract.

These standards call for an extension of the contractual release program to all inmates with the focus of the contract being on participation in programs and not on behavioral requirements.

In order for such a concept to be successful, financial and staff resources must be made available to corrections. Inadequate availability of services and programs makes the contractual process meaningless. If, for instance, an inmate requires college courses and all the institution offers is a G.E.D. program, the agreement cannot provide for inmate needs.

The contract idea should be extended to cover post-release services in order to provide the released offender with guaranteed assistance after leaving the institution. If the parolee is expected to live up to certain conditions, the State has a responsibility to provide the necessary aid that will, to the greatest extent possible, assure success. Such services could include employment, continuation of a training program, counseling, or assistance in finding housing and financial aid.

The Division of Corrections should modify the contractual release program where there is evidence of problems with the current program as indicated in the 1976 WCCJ evaluation of MAP. Participation in a contract release program should have as its major goals the reduction of time spent in an institution and the provision of meaningful and appropriate programs and services that adequately respond to the needs of the inmates that choose to participate.

Subgoal 22.3: Personnel Policy

In recruiting and training personnel, the Division of Corrections shall include consideration of security needs, correctional objectives, and human relations skills.

Standard 22.3(a)

The Division of Corrections shall evaluate institutional staff periodically to ascertain adequacy of job performance.

Standard 22.3(b)

The Division of Corrections shall establish and maintain an ongoing personnel training program to be divided into interrelated segments:

1) "Pre-placement" training at the Corrections Training Center;

2) Compulsory in-service training at the Corrections Training Center and at the institutions; and

3) Voluntary in-service training at the Corrections Training Center and at the institutions.

Standard 22.3(c)

The attainment of academic or non-academic training shall be considered in promotions and salary increases.

Standard 22.3(d)

Correctional employees shall be eligible for educational release time or sabbatical for the purpose of pursuing an educational degree or other employment related training.

Standard 22.3(e)

The personnel policies of the Division of Corrections shall be in conformity with the Affirmative Action goal (See Goal 29) recommended by the Critical Issues Subcommittee.

Standard 22.3(f)

Segregation staff shall receive special training in crisis intervention techniques and other methods of handling behavior problems.

Commentary

The key to any successful program is the quality of the personnel involved. Historically, corrections has suffered from a lack of a systematic manpower strategy and an adequate assessment of guidelines and qualifications required for correctional personnel.

While Wisconsin is recognized as having, in general, highly professionalized corrections personnel standards, more attention is needed in the area of training and upgrading for institutional staff.

The position of correctional officer is one of great importance in our criminal justice system. These individuals are required to work under extremely difficult situations utilizing mature judgment, crisis-oriented decision-making, and a high level of interpersonal skills. Officers have the great majority of day-to-day contact with inmates and can determine to a great extent the mood and atmosphere of institutional life. Such duties and responsibilities require the recruitment, hiring, and training of individuals who are qualified and interested in the important work of corrections.

These standards call for three levels of training for institutional staff. Consideration should be given to existing bargaining agreements and adequate time and compensation given for all required time spent in training. The Division should encourage and reward all efforts in continued education for institutional staff and develop policies and procedures that allow staff members to achieve additional training and education.

It is of primary importance that there be additional efforts to recruit minorities and women for correctional work. As recommended in the National Advisory Commission on Criminal Justice Standards and Goals (1973) there should be an elimination of any personnel practices that are: (1) unreasonable age or sex restrictions; (2) unreasonable physical restrictions; (3) questionable personality tests; (4) legal or administrative barriers to hiring ex-offenders; (5) unnecessarily long requirements for experience in correctional work.

Standard 22.3(f) makes a special point of the importance of having specially trained staff in all institutional segregation units. Recommendations contained in the study done by the Bureau of Clinical Services (Bureau of Clinical Services, 1976) of the segregation unit at Waupun merit implementation and should be given high priority concern by correctional personnel.

GOAL NO. 23: THE ORGANIZATION AND ADMINISTRATION OF THE CORRECTIONAL SYSTEM

The correctional system shall be organized and administered to maximize comprehensive planning and service delivery to clients.

Subgoal 23.1: Interagency and Community Cooperation

The Department of Health and Social Services shall improve communication and cooperation within the Department, other state agencies, local units of government, Indian tribal governments, and citizens.

Standard 23.1(a)

The Governor should create a permanent inter-agency committee which shall be chaired by the Department of Health and Social Services and include representatives of all state agencies that provide services for which correctional clients are eligible. The committee's mandate shall be to further the coordination in the provision of services among the various agencies.

Standard 23.1(b)

The Division of Corrections shall create a citizen advisory council. This council shall have regional components which shall comprise a centralized state committee.

Standard 23.1(c)

The citizen advisory system shall organize study committees, conferences, and task forces on issues of concern.

Standard 23.1(d)

The Department of Health and Social Services shall provide staff for the citizen advisory committee council. This staff shall be organizationally separate from the remainder of the Department.

Commentary

The shift to decentralized community-focused correctional services as set forth in Goal 18 of this section necessitates the establishment of precise coordination between the elements involved in that system. The Subcommittee examined several community-based correctional system models, all of which advocated the need for centralized coordination as service provision becomes diversified.

The Department of Health and Social Services retains the responsibility for services to and supervision of correctional clients and thus should assume leadership in coordinating services, as set forth in Subgoal 23.1. Standard 23.1(a) creates the means for the Department to fulfill this leadership role. The inter-agency committee will oversee the system which provides services to correctional clients and will ensure that appropriate services are available. The various Divisions within the Department, e.g., Corrections, Vocational Rehabilitation, should cooperatively plan specifically for persons in the correctional system.

Standards 23.1(b), (c), and (d) advocate the use of a citizens advisory body in the administration of the correctional system. Traditionally, involvement of citizens in correctional administration has been limited. Since the state correctional system operates on behalf of the citizens, their involvement in decision-making processes is essential. The Subcommittee concluded that a citizens advisory system would provide legitimate impact on the service delivery system for corrections clientele.

The proposed increase in community-based correctional services agencies will give additional visibility to the corrections system and will require public support if it is to be effective. A strong, statewide citizen advisory system could lend this needed support.

Subgoal 23.2: Offender Grievance Procedure

The existing Inmate Complaint Review System (ICRS) shall be expanded to include probationers, parolees, and persons receiving voluntary services.

Standard 23.2(a)

The procedures of the ICRS shall be modified by abolishing the intermediate decision-making by the Corrections Complaint Examiner, the Administrator of the Division of Corrections and the the Secretary of the Department of Health and Social Services. The final decision-maker within the system shall be an individual appointed by

the Secretary of the Department of Health and Social Services for a term of five years. Such individual may be removed by the Secretary only on grounds of disability, neglect of duty, incompetence, or malfeasance in office.

Standard 23.2(b)

The institutional and community complaint examiners shall be administratively responsible to the Director of the Bureau of Institutions and the Director of the Bureau of Community Corrections respectively.

Commentary

The need for administrative responsiveness to grievances from correctional clients stems from many factors, including the rising level of institutional violence, the time and resources required to pursue a case through the courts, the reluctance of judges to deal with problems that fall short of constitutional dimensions, and the difficulty of enforcing court orders in closed systems.

The Subcommittee thus recommended the retention of a modification of the present Inmate Complaint Review System. In addition to informal handling of grievances, the present system functions as follows: An inmate submits a sealed complaint form to an Institutional Complaint Investigator (ICI) who screens all complaints within twenty-four hours. The ICI then files an investigative report of the complaint to the warden within five days. The warden has seventeen days to return a written decision to the inmate and others involved. The warden may refer the complaint to the Complaint Advisory Board (CAB), consisting of two institutional staff members and two inmates. This Board must make a recommendation to the warden within seven days. Inmates or staff members may appeal decisions of either the warden or the CAB to a special assistant Attorney General, to the Administrator of the Division of Corrections, and finally to the Secretary of the Department of Health and Social Services.

In reviewing this process, the Subcommittee concluded that there are too many steps in the review process and that confidence in the system is eroded because resolution of complaints is very slow. Thus the Subcommittee recommended that the final three steps in the present system (i.e., Assistant Attorney General, Administrator of the Division of Corrections, and Secretary of the Department) be replaced by a single decision-maker who would have the authority to make the final decision on the grievance. Under this model, the complaint mechanisms in the institutions would remain intact.

The Subcommittee, in recommending the modification and expansion of the present complaint system, concluded that present limitation to inmates of institutions denies the grievance rights of approximately 85% of Wisconsin's correctional clients. (Division of Corrections Statistical Bulletin C-60B, 1976) The Subcommittee concluded that persons on Probation and Parole and those receiving voluntary services have a legitimate right to grieve issues such as the availability of services, change of agent, and conditions of supervision.

In 1972, the American Assembly, a non-partisan educational institution, initiated public examination of the American Correctional system. In a report prepared by a group of representatives from government, medicine, communications, the legal profession, business, labor, education, and the clergy, it stated:

> "There should be adequate grievance procedures to safeguard the rights of prisoners in confinement or under supervision in the community. Governors and legislators should establish independent ombudsmen offices. Correctional systems should employ such devices as inmate councils or other forms of prisoner representation."
> (Prisoners In America, 1972)

Expansion of the complaint system would necessitate the creation of a review process in Probation and Parole which would parallel the institutional system. Standard 23.2(b) provides for the administrative responsibility for field and institutional complaint investigators to reside within their respective Bureau Director's office, not within the specified district or institution which they serve. This standard attempts to allow the investigators independence in conducting investigations of complaints.

Complaints from community correctional system clients would be processed in a system which closely parallels the inmate system. A complaint would be submitted to a Field Complaint Investigator (FCI) who would file an investigative report to the District Probation and Parole supervisor. The procedure would have the same time limitations and requirement of written decisions as is presently utilized in the Inmate Complaint Review System. A complaint advisory board, consisting of two correctional clients and two probation and parole staff members could perform the same function as its institutional counterpart. Correctional clients or probation and parole staff could appeal a decision to the independent final decision-maker. (Standard 23.2(a)) Implementation of the field complaint system would require at least one Field Complaint Investigator for each Probation and Parole District. It is assumed that less complaints per capita would be filed by field clients because of the less restrictive nature of their supervision.

Subgoal 23.3

An office of Jail Ombudsman should be established by legislative action.

Standard 23.3(a)

The Office shall be directed by an Ombudsman appointed by the Secretary of the Department of Health and Social Services for a term of five years. The Ombudsman may be removed by the Secretary only on grounds of disability, neglect of duty, incompetence, or malfeasance in office.

Standard 23.3(b)

The Ombudsman shall receive and respond to any request for assistance or petition of grievance from any person within the jurisdiction of the Office, regarding any action or lack of action by local authorities. Such requests and petitions may be made orally or in writing.

Standard 23.3(c)

After considering a petition or conducting an investigation, the Ombudsman may recommend that local authorities:

1) Consider the matter further;

2) Modify or cancel a practice or policy; or

3) Explain to the petitioner the practice or policy in question.

Standard 23.3(d)

In responding to a request for assistance or petition of grievance, the Ombudsman shall acknowledge receipt of such request or petition in writing and periodically inform the petitioner of its status.

Standard 23.3(e)

The Ombudsman shall take appropriate action to answer a request or resolve a grievance, including, but not limited to the following:

1) Conduct an investigation;

2) Refer the matter to other administrative channels;

3) Refer the matter to any legal services; or

4) Hold hearings.

Standard 23.3(f)

During the performance of the duties of the Office, the Ombudsman shall have full access to all relevant persons, records, or other information. No local authority or employee shall:

1) Discourage or limit an offender from filing a petition with the Ombudsman; or

2) Open, read, refuse to forward, or delay the forwarding of any letter or other correspondence directed to the Office of the Ombudsman.

Standard 23.3(g)

The Ombudsman shall file an annual report with the Governor and the Secretary of Health and Social Services. This report shall contain a statistical summary of the activities of the office and any appropriate policy recommendations based upon the experience of the Office.

Standard 23.3(h)

If a number of grievances constitute a class of grievance, the Ombudsman shall forward a report to the Secretary of the Department and the petitioners.

Standard 23.3(i)

An evaluation of the jail Ombudsman Program shall be performed by an outside evaluator within eighteen months of implementation.

Commentary

Currently there is no formal system for those incarcerated in Wisconsin county jails to file grievances, yet in 1975 our jails held over 65,000 individuals. The Subcommittee emphasizes that county jails are holding facilities for persons awaiting trial; the right to submit a petition of grievances is a basic right that must be extended to those in the county jails.

The Office of Jail Ombudsman will be the grievance mechanism for individuals incarcerated in the county jail. Standard 23.3(a) provides that the Ombudsman will be appointed by the Secretary of the Department of Health and Social Services and will respond to all grievances by jail inmates regarding facilities, physical treatment, medical care, and Huber Law programs, among others.

The Office of Jail Ombudsman will incorporate the two best features of the Scandinavian models: independence and impartiality (Keating, et.al., 1975) Since the Ombudsman has the power only to recommend and advise the Secretary of the Department of Health and Social Services, the Office should be held by a person of unquestioned integrity and experience. Standard 23.3(g) provides that the Ombudsman is to prepare an annual statement to the Governor which will outline the major problems of the county jails. This can then be utilized for decisions regarding subsequent allocations of resources to county jails. Innovative and successful jail programs will be identified for continued funding while unsuccessful programs will be eliminated.

The Jail Ombudsman program is envisioned as an experimental program to test the concept's viability as a tool for the entire correctional system. Therefore, Standard 23.3(l) provides for an independent evaluation of the program after 18 months. The Subcommittee recommends that if the Jail Ombudsman Program is successful, it be expanded to the state system to include incarcerated offenders as well as those on probation and parole.

Subgoal 23.4: Records About Offenders

An offender shall have both the right of privacy of information and the right of access to records comparable to non-offenders. Exceptions shall be based upon security needs of an institution, the criminal justice system, and the offender. (cf. Goal 27)

Standard 23.4(a)

The Division of Corrections shall not collect or maintain information concerning an offender unless it is placed in offender's files. These files shall not include information

related to pending investigations of alleged criminal activity. Whenever an investigation is completed the information shall be placed in the files or disposed of. Offenders shall be provided a complete list of files that are kept.

Standard 23.4(b)

The Division shall disclose the contents of an offender's files only upon receipt of written authorization from the offender. Permission is not needed for information reasonably related to the duties of the following persons or agencies:

1) A request pursuant to an order of a court of competent jurisdiction;

2) A researcher who has provided the Division with advance adequate written assurance that the record will be used solely for statistical research or reporting recorded in a form that is not individually identifiable;

3) Any agency, instrumentality, or governmental jurisdiction for authorized civil or criminal law enforcement activity, and if the head of the agency or instrumentality has made a written request to the Administrator of the Division of Corrections specifying the particular portion requested and the reason for which the record is sought; or

4) The offender's attorney of record or the attorney's representative. The attorney may be authorized to view the record in whole or in part.

Standard 23.4(c)

All offenders shall be able to:

1) Gain file access and make a copy at reasonable cost of portions other than those specified in Standard 23.4(e), infra, except if that material contains diagnostic opinion which shall be disclosed only in the presence of a person with appropriate professional experiences;

2) Designate in writing a person to assist them in reviewing their files;

3) Request to the Division amendment or deletion of records contained in the file on the basis that the material is erroneous, deceptive, not relevant, or not necessary for the functions of the Division of Corrections; and

4) Add to the file material which is not clearly extraneous to the exercise of the functions of the Division of Corrections.

Standard 23.4(d)

Whenever an offender or attorney requests an amendment or deletion of material from the file, said file shall be reviewed by the Division, and the offender shall have the right to incorporate into the file his/her version or explanation of the disputed material.

Standard 23.4(e)

Notwithstanding Standard 23.4(c) of this section, the Division of Corrections may deny an offender access to portions of the file which the sentencing judge has indicated in writing, or the Division has determined, contain:

1) Sources of information obtained only upon a promise of confidentiality; or

2) Other information which if disclosed might result in physical harm to the offender or other persons.

Standard 23.4(f)

The Division of Corrections shall develop a procedure whereby an offender may receive a written summary of information to which the offender has been denied access. If the accuracy of the information cannot be adequately challenged without further disclosure, the offender may request that the files be opened to an attorney, or the attorney's representative, to enable investigation as to the accuracy of the information. The attorney shall not disclose the information to the offender. Adequate procedures shall be developed for challenge of the accuracy of information contained in the record.

Commentary

The standards related to offender records reflect the belief that the individual offender has the right to have the records accurately set forth the details of his or her life. Access to these records, except in very specific and narrow circumstances, is seen as necessary and important.

Current practice does not allow the offender to view files if, in the opinion of correctional personnel, information contained therein such as diagnostic opinions or observations may be psychologically or emotionally harmful to the individual. The Subcommittee ultimately rejected this view and suggests that the right to know what is contained in written records about one's self supersedes, however humanitarian and well-intended, the objective of protection of the offender "for his/her own good." These should be discussed in the presence of someone competent to explain and interpret what has been stated. The only basis for denial of access should be when information was secured based upon a promise of confidentiality, or if disclosure could result in physical harm to the offender or others. (Standard 23.4(e))

The ability to add material to a file is seen as important if that record contains information that the offender believes is erroneous or requires additional explanation. The opportunity to review and amend written records is consistent with the rights extended to non-offenders and consistent with the intent of the Subcommittee's general view that offenders should not be denied any right of other citizens without a compelling state interest.

Subgoal 23.5: Placement, Assessment, and Evaluation

The placement, assessment, and evaluation unit shall implement the principle of the least restrictive incarceration alternative. The unit's function shall be to provide initial and continuing coordination of inmate programming. (cf. Standards 16.1(a), 16.2(q))

Standard 23.5(a)

Wisconsin shall develop the capacity to assess and evaluate within 30 days of sentencing those offenders sentenced to imprisonment. Local resources should be utilized in making assessments and evaluations.

Standard 23.5(b)

All correctional facilities shall be utilized as receiving centers for offenders sentenced to incarceration for more than one year.

Standard 23.5(c)

The Assessment and Evaluation function shall be performed by a committee composed of individuals from diverse experiences, training, and backgrounds.

Standard 23.5(d)

The appropriate facility for the assignment of inmates after Assessment and Evaluation shall be determined on the basis of factors including the following:

1) The facility which can best meet the program and social service needs of the inmate;

2) The desirability of keeping the inmate in a facility near the area in which the inmate lived prior to arrest or the area to which the inmate is likely to return upon release; and

3) The requirements of security necessary to assure the continued confinement of the offender.

Standard 23.5(e)

The assessment and evaluation function shall be separate organizationally from the Bureau of Institutions but within the Division of Corrections.

Standard 23.5(f)

The Assessment and Evaluation Committees shall be responsible for:

1) Initial placement of inmates;

2) Consideration of furlough requests; and

3) Oversight of the actions of Program Review Committees.

Standard 23.5(g)

Within each institution there shall be a Program Review Committee which shall have continuing review responsibility for:

1) Inmate program progress;

2) Inmate transfers; and

3) Administrative segregation.

Standard 23.5(h)

Whenever an inmate disagrees with a decision by the Program Review Committee, that inmate may seek review by Assessment and Evaluation.

Standard 23.5(i)

If the inmate continues to disagree with the decision, that inmate may appeal to the Program Appeal Committee. The Program Appeal Committee shall be:

1) Composed of individuals from diverse backgrounds;

2) Appointed by the Administrator of the Division of Corrections;

3) The appeal committee for Assessment and Evaluation decisions; and

4) The appeal committee for furlough decisions.

Standard 23.5(j)

An inmate who is not satisfied with a decision of assessment and evaluation may appeal through offenders grievance procedures.

Standard 23.5(k)

The Division of Corrections shall promulgate written rules and procedures for determining and changing offender status including classification, transfers, and participation in education and work programs.

Standard 23.5(l)

All decisions regarding inmates shall be governed by the principle of the least restrictive alternative. Placement in a more restrictive institution shall be made only upon evidence of an intent to escape or a demonstrated threat to the security of an institution or other inmates.

Commentary

The process by which assessment and evaluation (classification) of individuals sentenced to incarceration is carried out is extremely significant in our correctional system, both for practical, prison population concerns and, most importantly, for the appropriate placement of the individual inmate. Currently, the Assessment and Evaluation (A&E) process takes place at the three designated reception institutions; the Wisconsin State Prison at Waupun, the Wisconsin State Reformatory at Green Bay, and the Taycheedah Correctional Institution.

These standards recommend that, as an ideal, the assessment process should be in the community without the necessity for an individual's entering a maximum-security institution. With sufficient staff and resources, individuals who have been sentenced to incarceration could remain in their communities and be evaluated as to their security and programmatic status and needs. A decision then could be reached as to the appropriate institution for initial placement.

Standards 23.5(c) through 23.5(f) describe the recommended modifications deemed appropriate in the A&E process. It is suggested that A&E be located organizationally outside the Bureau of Institutions in order to utilize all resources of the Division and without confining the A&E committee to an institutional population-control framework and orientation. The criteria for determining institutional placement should at all times be governed by the "least restrictive alternative" philosophy, with program and location needs given major consideration. (Standard 23.5(k))

Each institution should have a Program Review Committee (PRC) which, after initial placement by A&E, reviews inmate progress, makes determinations as to transfers, and monitors and can modify decisions related to administrative segregation. Inmates may appeal decisions by the PRC to the A&E procedures, thereby insuring a Division overview and control of individual institutional decisions.

These standards are based on those recommended in other areas of this report that call for the establishment of a wide range of facilities with a variety of levels of security, so that individuals who are sentenced to a period of incarceration will have a much greater range of locations, facilities, and services available than is now in existence in our correctional system. The committee's overriding concern was that no one receive a higher level of security than necessary or be placed in an institution unrelated to his or her needs or security status due to lack of bed-space or program availability.

Standard 23.5(j) calls for the promulgation of written and precise rules for the determination of change in an inmate's classification as to institution, program, work assignment, etc. Such decisions can drastically affect an inmate's institutional experience and perception of the correctional system and the individual's status relative to release potential.

The standards in this section generally reflect and are supported by those recommended in the NAC Report (1973) which stated:

> Each correctional agency, whether community-based or institutional, should immediately re-examine its classification system and reorganize it along the following principles:
>
> 1. Recognizing that corrections is now characterized by a lack of knowledge and deficient resources, and that classification systems therefore are more useful for assessing risk and facilitating the efficient management of offenders than for diagnosis of causation and prescriptions for remedial treatment, classification should be designed to operate on a practicable level and for realistic purposes, guided by the principle that:
>
> a. No offender should receive more surveillance or 'help' than he requires; and
>
> b. No offender should be kept in a more secure condition or status than his potential risk dictates...

GOAL NO. 24: COMMUNITY ACCEPTANCE OF THE EX-OFFENDER

Ex-offenders shall be entitled to all of the rights, privileges, and responsibilities that are enjoyed by the general public.

Subgoal 24.1: Employment and Licensing of Ex-Offenders

Ex-offenders shall be eligible for all employment opportunities that are not directly precluded by their previous conviction. (cf. Standards 3.1(d) and 29.3(a))

Standard 24.1(a)

Employers, labor organizations, licensing agencies or employment agencies shall be prohibited from requesting applicants to supply information regarding conviction unless specifically relevant to the employment and so stated in writing.

Standard 24.1(b)

Discrimination by private or public employers on the basis of an arrest record which was not followed by a conviction shall be subject to legal action under the Wisconsin Fair Employment Law or any other appropriate remedy.

Standard 24.1(c)

Under no circumstances shall information be requested on convictions which occurred more than five years prior to the date of application, exclusive of periods of incarceration.

Standard 24.1(d)

When determining whether a criminal conviction directly relates to a position of employment, the employer or licensing board shall consider:

1) Length of time since commission of the offense;

2) Relationship of the crime to the ability and capacity required to perform the duties and discharge the responsibilities of the position;

3) Type of crime for which the applicant was convicted; and

4) Age of the person at the time of the offense.

Standard 24.1(e)

Labor unions shall be encouraged to secure employment for those offenders who participated in an apprenticeship program while incarcerated.

Standard 24.1(f)

Insurance companies shall not discriminate against ex-offenders in the issuance of insurance or in the rates charged, unless the actuarial basis for the classification is established.

Standard 24.1(g)

All licensing boards shall eliminate or clearly, concisely, and reasonably define qualifications such as; "good moral character," "fitness," "good reputation," "worthiness," "temperate habits," and "trustworthiness." An arrest not followed by conviction shall not be considered as being contrary to any of the above.

Standard 24.1(h)

When an agency or employer denies a job or license to an ex-offender, it shall explain the reasons for denial and the appeal procedure under law. The agency or employer should also give the applicant a date to reapply for reconsideration.

Standard 24.1(i)

There shall be no statutory restriction on an ex-offender's employment opportunities.

Commentary

Every year thousands of ex-offenders are released from supervision by the Department of Health and Social Services and endeavor to return to society. Many find that societal attitudes will not allow them to rejoin their communities without prejudice. Post-release difficulties center around the reluctance of the community to accept as individuals ex-offenders who have paid their debt to society.

Wisconsin has not provided statutory protection to ex-offenders such that it would be illegal for private employers to discriminate against applicants with criminal records. Private employers provide a major obstacle to ex-offenders because they are not protected under the Fair Employment Act. These standards point to the necessity of creating a separate class under Affirmative Action programs to protect ex-offenders against discrimination.

The Center for Public Representation has stated:

> To continue a policy of a denial of legislative protection to the ex-offender from discrimination in the private employment sector would be contrary to the general welfare of the state. The effect of continued discrimination against the ex-offender in the private sector places a heavy burden on the remainder of society in supporting the ex-offender in the form of welfare or reinvolvement in crime. The denial of the right to the ex-offender to be involved in the world of work robs him of the opportunity to acquire a stake or a sense of belonging in our society--thus deprived, he becomes a source of strife and unrest. (Center for Public Representation, 1975)

This is not to suggest that Wisconsin's Legislature has ignored the plight of ex-offenders. In 1975 the Legislature heard debate on three different bills which would have removed civil disabilities from ex-offenders; however, none of these efforts was successful. These standards contain most of the provisions of those bills, as the Subcommittee wished to emphasize to the Legislature the need for these reforms.

They also indicate the State's recognition of the crucial role of employment in the process of reintegrating former offenders into society. However, effectuation of these policies is often thwarted by the erection of unreasonable and unnecessary barriers to the employment and licensing of ex-offenders. The resources which the State devotes to vocational training and education for inmates are of questionable utility if the resulting skills and knowledge cannot be put to use on the outside. Moreover, when the

implicit promise of such programs is broken by the absence of adequate job opportunities for ex-offenders, the predictable result is an increase in recidivism. Thus, the adverse consequences of job discrimination against former offenders include an increase in the magnitude of the problem of crime itself.

It is the intent of these standards to ensure that all trade, occupational, vocational, business and professional licensing bodies and all public employers apply uniform and easily ascertainable character requirements if character requirements must be met before licensure or employment.

An analysis of Assembly Bill 928 (1975) by Milwaukee Legal Services, Inc., discusses this same problem in terms of court action:

> A number of courts have interpreted the United States Constitution and federal civil rights statutes as limiting the authority of public and private employers and agencies to impose arbitrary job restrictions which may discriminate against persons with arrest and conviction records. For example, it has been held that the Due Process Clause of the Fourteenth Amendment prohibits government agencies from denying occupational and professional licenses on the basis of an arrest or conviction record unless there is a rational connection between the applicant's prior conduct and his or her present fitness to perform the particular job. Schware v. Board of Bar Examiners, 353 U.S. 232 (1956); Miller v. D.C. Board of Appeals and Review, 294 A.2d 648, 97 Cal. Rptr. 320 (1971). Cf. Thompson v. Gallagher, 489 F. 2d 443 (5th Cir. 1973). The Due Process Clause may also be violated by the operation of an irrebuttable presumption that an ex-offender is unfit for public employment or licensing. See Pordum v. Board of Regents, 401 F.2d 1281, 1287 n.14 (2d Cir. 1974). Cf. Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). In addition, the exclusion of ex-offenders as a class from public employment has been held to constitute an arbitrary classification which violates the Equal Protection Clause of the Fourteenth Amendment. Butts v. Nichols, 380 F. Supp. 573 (S.D. Iowa 1974) (three-judge district court). Cf. In re Griffiths, 413 U.S. 717 (1973); Sugarman v. Dougall, 413 U.S. 634 (1973)
> (Milwaukee Legal Services, 1973)

These standards focus attention upon the difficulty ex-offenders have in finding post-release employment. It is incumbent on the Legislature, the various state licensing boards, and private employers to treat the offender equitably and fairly.

Subgoal 24.2: Public Employment

An individual who has been discharged from Division of Corrections supervisions shall not be prohibited from public employment.

Standard 24.2(a)

Constitutional barriers which serve to limit the individual's participation in public service should be abolished.

Standard 24.2(b)

The restoration of civil rights shall not be interpreted to include only the right to vote but other civil rights as well.

Commentary

Prohibiting ex-offenders from having public employment serves no purpose other than the unnecessary punishment of individuals who have paid their debt to society. We deny offenders a chance to become productive members of a community when we arbitrarily preclude them from holding public employment.

The Subcommittee could find no compelling reason arbitrarily to exclude ex-offenders from holding jobs of public trust. Some of the experiences of ex-offenders could easily make them more efficient and successful in a variety of public employment positions. Standard 24.2(b) points to the need to give ex-offenders all of their rights upon release from supervision.

The State Attorney General's Office maintains that Article XIII, Section 3 of the Wisconsin Constitution prohibits ex-offenders from holding office. This section states:

> No member of Congress, nor any person holding any office of profit or trust under the United States (postmasters excepted) or any foreign power; no person convicted of any infamous crime in any court within the United States; and no person being a defaulter to the United States or to this state, or to any territory within the United States, shall be eligible to any office of trust, profit or honor in this state.

To this date there has been no clear Wisconsin court decision on the issue of an ex-felon holding public office, but there have been numerous Attorney General opinions. The latest opinion (March 27,

1974) by the Attorney General in response to a request by the Secretary of State on the status of an ex-felon's ability to become a notary reads as follows:

> A convicted felon who has been restored to his civil rights pursuant to section 57.078 of the Wisconsin Statutes is barred from the office of notary public, by Article XIII, Section 3, unless he has been pardoned. (63 OAG 75, 1974)

In this opinion, the Attorney General separates a "defaulter" from a person "convicted of an infamous crime" and creates separate standards for the two classes. He has ruled that the right conferred to ex-felons by section 57.078 of the Wisconsin Statutes is only the right to vote.

Thus Wisconsin continues to prohibit ex-felons who are not pardoned from holding public office without regard for the length of the time since conviction or evidence of rehabilitation.

CRITICAL ISSUES STANDARDS AND GOALS

"We must not make a scarecrow of the law,
Setting it up to fear the birds of prey,
And let it keep one shape,
till custom make it their perch,
and not their terror."

William Shakespeare
"Measure for Measure"

INTRODUCTION

There are areas of concern to the criminal justice system which are not in the exclusive jurisdiction of the police, the courts, or corrections. The Committee chose to address the following six topics exhibiting such areas of concern: 1) the effective allocation of resources, 2) information systems, 3) protection of individual privacy, 4) gun control, 5) Affirmative Action, and 6) victim/witness services.

Goal 25, "The Effective Allocation of Criminal Justice Resources," was originally titled, "Victimless Crimes," for working purposes. However, during the course of the Committee's study and discussion, it became apparent that the common denominator underlying the controversy over these subjects was actually the fact that the criminal justice system plays a disproportionate role in these matters, when considering the time, manpower, and resources utilized in the control of certain behavior

Non-commerical gambling (Subgoal 25.1) is a social activity engaged in by most people at some time in their lives. Although aspects of gambling lend themselves to exploitation by predatory elements of our society, for most gamblers it is either recreation, socializing, or a pastime. Gambling itself is not a criminal activity. By removing criminal justice involvement from control of non-commercial gambling, those resources now devoted to efforts to enforce gambling statutes can be redirected toward criminal activities which have a more serious impact upon persons and property.

The Committee believes that issues related to adults engaged in private, consensual sex acts (Subgoal 25.2) are not a proper concern of criminal justice officials. The judgment as to whether these acts are right or wrong is clearly a private choice, not the Legislature's. Investigation of matters of individual morality which affect no one other than the participants are a waste of limited criminal justice resources. Those matters of individual sexual morality which touch the public sector (Standards 25.2(b), (c), and (d)) should be carefully scrutinized before resources are committed to them over more serious criminal justice concerns.

Prostitution (Subgoal 25.3) is a social phenomenon that borders on delicate ground as regards criminal justice involvement. There is justification for criminal justice attention to aspects of the phenomenon, but there are probably more equitable ways to approach the problem than are presently employed.

Use of alcohol and other drugs (Subgoal 25.4) is a medical problem, not a criminal justice problem. This is not to say that certain aspects of the problem, such as public possession (Standard 25.4(a)), use of a motor vehicle under the influence (Standard 25.4(e)), or large-scale illicit distribution (Standard 25.4(f)), are not criminal

justice problems. The intent of the subgoal is to use the criminal justice system to identify abusers and direct them to sources of help (Standards 25.4(b), (c), and (d)). Punishment of a person with an alcohol or other drug problem does not eliminate his or her problem. It may in fact keep that person from sources equipped to deal with the reasons for the problem.

Adequate information (Goal 26) is essential to the effective operation of the criminal justice system. In the last decade, Wisconsin has seen the beginnings of modern aids to the apprehension of wanted persons and the location of stolen property through the efforts of the Crime Information Bureau (CIB) and its counterparts at the federal level and in other states. Administration and research can also benefit from accurate, easily accessible data. Standard 26.1(a) charges the Legislature with the establishment of a planning unit to assure the coordination of efforts to develop an integrated system for the uniform collection and use of criminal justice information locally and statewide. Each component of the criminal justice system -- police (Subgoal 26.2), courts (Subgoal 26.3), and corrections (Subgoal 26.4) -- has unique needs for information, and some of those needs overlap (Standards 26.2(f), 26.3(c), and 26.4(d)). Adequate allowance also should be made for the use of these data for continuing research and planning.

The protection of individual privacy (Goal 27) goes hand-in-hand with sophisticated information systems. Modern systems technology has made it easy to probe the background of an individual. The subgoals and standards under Goal 27 charge a Wisconsin Privacy and Security Council (Standard 27.1(e)) with the establishment and monitoring of regulations to assure the accuracy of criminal justice information (Subgoals 27.2 and 27.3) and restrict the use of such information to criminal justice purposes (Subgoals 27.4 and 27.5).

Gun control (Goal 28) is one of the concrete ways in which the criminal justice system can reduce the suffering caused by criminal acts. Subgoal 28.1 sketches a course of legislation which will deal with the gun problem more efficiently in Wisconsin.

The criminal justice system is presented in Goal 29 as a leader in Affirmative Action efforts. The elimination of the effects of discrimination is crucial to the establishment of social justice. While the law is explicit in its intent, the application of equal employment opportunities has unearthed deep-rooted inequities that require special, concentrated efforts to eliminate past practices in recruitment (Subgoal 29.3), advancement (Subgoal 29.4), and working conditions (Subgoal 29.5) that tend to perpetuate discriminatory effects. In order to identify, analyze, and correct those practices, Subgoal 29.1(b) directs agencies to sources of assistance to accomplish

these complex tasks. Standard 29.5(c) and Subgoal 29.6 reflect the Committee's realization that Affirmative Action is not an isolated endeavor. Criminal justice agencies can lead their communities and other organizations in the struggle to secure fair treatment regardless of race, color, national origin, sex, age, religion, or handicap.

Victims and witnesses (Goal 30) are being recognized across the nation as the forgotten figures in the criminal justice system. Specific programs can be implemented easily by police (Subgoal 30.1), courts (Subgoal 30.2), and corrections (Subgoal 30.3) to correct this situation. In addition, the criminal justice system must work with other community social service agencies to provide continuous services to special victims and targets of crime (Subgoal 30.4).

GOAL NO. 25: EFFECTIVE ALLOCATION OF CRIMINAL JUSTICE RESOURCES

The increase in crime in Wisconsin requires that the resources of the criminal justice system be concentrated on criminal activity which has a direct impact on persons or property. Offenses where the direct harm done is almost exclusively to the offender should receive fewer criminal justice resources than those committed against other people. The statutes defining this type of offense often exhibit one or more of the following qualities: they interfere with privacy of personal conduct or choice of life style; penalties are inequitable or discriminatory on the basis of sex; they are vague in relation to constitutional rights; they have no complaining victim.

Subgoal 25.1: Gambling

By 1977, the Wisconsin Statutes should be revised to legalize non-commerical gambling.

Standard 25.1(a)

945.01 Wis. Stat., labeled Definitions relating to gambling should be amended to read:

"(7) Commercial Gambling. Commercial gambling is that gambling conducted by other than a non-profit, charitable organization wherein (a) one or more players has a scheduled advantage in chance over the other players; or (b) part of the sums bet is diverted from distribution as winnings; or (c) any consideration other than a fixed, initial fee is charged for admission to gamble."

Standard 25.1(b)

945.01(4) Wis. Stat., labeled Definitions relating to gambling should be:

"Gambling Place. A gambling place is any building or tent, any vehicle (whether self-propelled or not) or any room within any of them, one of whose principal uses is to materially aid in the establishment or operation of commercial gambling."

Standard 25.1(c)

By 1977, 945.02 Wis. Stat., labeled Gambling, should be repealed.

Standard 25.1(d)

192.16 Wis. Stat., labeled Gaming in cars, forfeiture, arrest of offenders, should be repealed.

Standard 25.1(e)

District attorneys and police agencies are urged to place the enforcement and prosecution of non-commercial gambling violations as a low priority.

Standard 25.1(f)

Regulation shall not extend to the persons allowed to gamble. Local governments shall be given the express right to adopt zoning ordinances to keep gambling out of their municipality, town, or county, as authorized by enabling legislation.

Commentary

Experience has demonstrated that certain laws are difficult to enforce, have little deterrent effect, and do not prevent illegal behavior. Offenders are seldom rehabilitated by probation or incarceration. These laws may also tend to violate constitutional rights and civil liberties. Therefore, when a choice must be made as to the effective use of limited criminal justice resources, emphasis should be placed on crimes which have a direct impact on persons or property.

The law has practical limits of effectiveness. The price for exceeding these limits is a "cheapening of all the laws of the land, and of all the procedures of justice." (Sinclair, 1962) Wisconsin laws prohibiting non-commercial gambling exceed those limits.

Wisconsin has about twenty statutory provisions pertaining to gambling. In Wisconsin, seemingly innocent actions may constitute violations of 945.02 Wis. Stat. (Gambling):

> In fact, a person who initiates and handles a 25 cent office pool on the State High School Basketball Tournament is likely committing a felony in Wisconsin, punishable by a fine or up to one year imprisonment. Thus, the prohibition against simple, non-commercial gambling in Wisconsin is probably honored more in breach than the observance. (Wisconsin Citizens Study Committee on Judicial Organization, 1973).

It has been estimated that 8 out of 10 persons in the United States participate in gambling to some extent. (Pazen, 1973) Though widespread and difficult to conceal (Morris, 1973), the 1975 Wisconsin Crime and Arrest Statistics show only 346 arrests were made that year for gambling, and those arrests took place in only 17 of the 240 jurisdictions reporting. Small law enforcement agencies already give a low priority to gambling enforcement with only 8% of the reporting agencies showing any arrest activity.

Finally, it must be pointed out that, in considering reform of Wisconsin's gambling laws, liberalizing the statutes might draw some individuals into lives of waste and futility. People of all classes gamble, some compulsively, whether gambling is legal or illegal. (Pazen, 1973) For those who would aid the indirect victims of derelict gamblers, there are 895.055 and 895.056 Wis. Stats. which void gambling contracts and allow for the recovery of money via civil suit.

Subgoal 25.2: Private Sexual Conduct Among Consenting Adults

The Wisconsin Statutes should be revised to legalize private sexual conduct among consenting adults and to remove imprisonment for public sexual conduct among consenting adults.

Standard 25.2(a)

The following statutes should be repealed: 944.15 Wis. Stat., Fornication; 944.16 Wis. Stat., Adultery; 944.17 Wis. Stat., Sexual Perversion; and 944.22 Wis. Stat., Possession of Lewd, Obscene or Indecent Matter.

Standard 25.2(b)

944.20 Wis. Stat., labeled Lewd and Lascivious Behavior should be amended to remove the imprisonment penalty for subsections (1) and (2) and repeal subsection (3).

Standard 25.2(c)

944.21 Wis. Stat., labeled Lewd, Obscene or Indecent Matter, Pictures and Performances should be amended to strike the terms "Lewd" and "Indecent," remove the imprisonment penalty for subsection (a), and repeal subsections (b), (c), and (d).

Standard 25.2(d)

944.23 Wis. Stat., labeled Making Lewd, Obscene or Indecent Drawings, should be amended to strike the terms "Lewd" and "Indecent" and remove the imprisonment penalty.

Commentary

Sexual Crimes Between Adults With Consent

Thurmond Arnold (1936), after considering a number of sex offenses, wrote that such laws "are unenforced because we want to continue our conduct, and unrepealed because we want to preserve our morals."

Laws designed to uphold sexual morality are difficult if not impossible to enforce. Detection of most offenses is inefficient where it exists at all, and the law as a deterrent to sexual immorality is unrealistic. Reports and studies done by behavioral experts such as Doctors Kinsey, Pomeroy, Martin, and Gebherd have shown statistically that sex laws do not curb prohibited activities. (Bragg, 1972)

According to 1975 Wisconsin Crime and Arrest statistics (Crime Information Bureau), 1,389 arrests were made for sex offenses. Close to one-half (627) of these arrests were made in Milwaukee County. Seventy-four reporting jurisdictions indicated no arrests for sex offenses.

The current fornication statute in 944.15 Wis. Stat. is typical of most fornication statutes. It is not specifically concerned with protecting individuals or the public from forcible sexual attack. Such protection is provided by 940.225 Wis. Stat. (Sexual Assault). Recognizing that fornication statutes offer no additional protection, seventeen states have no such prohibition. (Bragg, 1972)

The Wisconsin adultery statute (944.16 Wis. Stat.) defines adultery as a felony offense, whereas non-marital sexual intercourse between two single consenting adults is a misdemeanor (fornication). The distinction is based on what is believed to be a compelling state interest to preserve the family unit. The legal argument has been posed that where there is no meaningful marital or family relationship to be preserved, there is no compelling state interest to justify governmental intervention into the private lives of the parties involved. The argument is expanded to say that in most cases of adultery the marital or family relationship has already degenerated beyond a point of preservation.

In Wisconsin, prohibitions against acts of a homosexual nature fall under the catch-all proscription of the Wisconsin sodomy statute (944.17 Wis. Stat.). Laws against acts of homosexuality intrude upon an area of private consensual conduct which affects no one other than the participants. However, it should be noted that the criminal sanction is much stiffer. In the Wolfenden Report, the British study which resulted in the legalization of homosexuality in Great Britain, the situation was summarized: "There remains a realm of private morality which is, in brief and crude terms, not the law's business." (Olivieri and Finkelstien, 1971)

Recently, constitutional questions of equal protection and the right of privacy have been legally and logically linked together in this area of criminal law. It was the right of privacy that extended sexual freedom to married couples (Griswold v. Connecticut). This freedom was extended to unmarried couples on equal protection grounds. (Eisenstadt v. Baird) It was in that case that the United States Supreme Court said "...If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

In Arizona a similar conclusion was reached by the Supreme Court in 1975. (Bateman v. State) The court there held that a married couple's right of privacy does preclude prosecution of consensual sodomy, fellatio, or cunnilingus. (However, the court observes, nothing in Griswold v. Connecticut, or any other case, keeps the state out of the marital bedroom with respect to forcible sex acts.)

In 1955, two years before the British Wolfenden Report, the American Law Institute recommended removal of criminal sanctions from all forms of sexual conduct:

> ...Our proposal to exclude from the criminal law all sexual practices not involving force, adult corruption of minors, or public offense is based on the following grounds. No harm to the secular interests of the community is involved in the typical sex practice in private between consenting adult partners. This area of private morals is the distinctive concern of spiritual authorities...
>
> As in the case of illicit heterosexual relations, existing law is substantially unenforced... Further, there is the fundamental question of the protection to which every individual is entitled against state interference in his personal affairs when he is not hurting others.

Closer to home, the same sentiments were publicly voiced in 1972 in the Final Report of the Citizen's Study Committee of Offender Rehabilitation:

> We recommend that the following crimes against sexual morality be eliminated with respect to consenting adults: Section 944.15 Fornication, Section 944.16 Adultery, Section 944.17 Sexual Perversion, Section 944.20 Lewd and Lascivious Behavior, and Section 944.21 Lewd, Obscene, or Indecent Matter, Pictures and Performances.

> It is further recommended that consenting adults shall be interpreted to be any person over the age of 18. If deemed necessary, local jurisdictions should be empowered to enact ordinances which prevent public displays of sexual acts.

In the following year the Citizen's Study Committee on Judicial Organization made essentially the same recommendations:

> The following recommendations are made with respect to 'crimes against sexual morality' for the benefit of the Wisconsin Judicial System
>
> a) as between consenting adults, private offenses of fornication, adultery, sexual perversion, and cohabitation under circumstances implying intercourse should be decriminalized. Prostitution is not included in the recommendation.

Obscenity

Although Wisconsin crime statistics treat obscenity as a part of all sex offenses and there are no separate statistics on obscenity violations, obscenity is treated separately here due to Supreme Court developments in this area of the law.

The Wisconsin Obscenity statutes are 944.21 and 944.22 Wis. Stats. The Offender Rehabilitation Task Force, and the Judicial Organization Task Force included these statutes in their recommendations for removal of criminal sanctions from sex offenses.

In June of 1973, the United States Supreme Court ruled on a number of cases which significantly affected the legal status of "obscenity." The first issue was establishing a working definition of obscenity. This was done in the case of Miller v. California (1973) which also reaffirmed Roth v. United States (1957) in that obscene material is not protected by the First Amendment, once it has been defined to be obscene.

In Paris Adult Theatre I et al v. Slaton (1973), the court held that, although states may drop all controls on commercialized obscenity if they wish, they may enact legislation to protect the

legitimate state interest of "stemming the test of commercialized obscenity" even when juveniles and non-consenting adults are protected. The effect of this holding was to restrict the zone of privacy protected by the ruling in Stanly v. Georgia (1969) which held that mere private possession of obscene matter cannot constitutionally be made a crime. The court, however, refused to extend the right to private possession to include the right to acquire or transport obscene material.

Distinctions that must be made regarding issues of obscenity are these:

(1) the right to privacy versus publicly offensive behavior;

(2) personal interests versus commercial interests;

(3) the definition of "obscene, lewd, lascivious, indecent;"

(4) adult as opposed to juvenile.

The recommendations seek to preserve the rights of an adult to privately pursue one's personal interests free from government scrutiny. At the same time, members of the community at large have the right to be free from offensive behavior foisted upon them.

It must be realized that there is difficulty encountered in the fact that what is offensive to one person may not be offensive to another. "Lewd" and "lascivious" are somewhat defined for the purposes of 944.20 Wis. Stat., i.e., the regulation of publicly offensive behavior. However, "lewd, lascivious, indecent" are not well-defined enought for purposes of 944.21, 944.22, and 944.23 Wis. Stats. Therefore, interpretation of these statutes should be guided by Supreme Court definitions of "obscene."

The transfer of materials defined as obscene is considered a matter for legislative concern because it enters the realms of public conduct, the marketplace, and exposure to minors. 944.24 Wis. Stat., "Exposing minors to harmful materials," remains intact. Since it is generally recognized that minors, lacking the maturity assumed of adults, are incapable of adult decision-making ("consent," for example), the argument for the juvenile's right to privacy does not fall in the same vein as the arguments for adults' rights.

Subgoal 25.3: Prostitution

944.39 Wis. Stat. (Prostitution) and 944.31 (Patronizing Prostitutes) should be made equitable as regards the penalties and sex of the participants.

Commentary

Subgoal 25.3 intends to equalize prostitution and patronizing prostitutes as regards penalties and sexual bias. The Wisconsin Legislature should decide how to make 944.30 and 944.31 Wis. Stats. equitable in regards to penalties and the sex of the participants. The following statutory language is suggested:

> Any person who intentionally does any of the following may be fined not more than $100, or imprisoned not more than three months, or both:
>
> 1. Has or offers to have nonmarital sexual intercourse for anything of value; or
>
> 2. Commits or offers to commit an act of sexual perversion for anything of value; or
>
> 3. Is an inmate of a place of prostitution; or
>
> 4. Engages or offers to engage a prostitute in nonmarital sexual intercourse or an act of sexual perversion for anything of value.

The control of prostitution activity may well be sufficiently covered by 280.09 Wis. Stat. (Bawdy Houses Declared Nuisance) and 66.052 Wis. Stat. (Offensive Industry); however, in spite of these statutes there may remain a need to address the prostitution problem beyond its definition as a public nuisance and into the realm of proscribed behavior. The commercial nature of prostitution may set it apart from the category of private, consensual sexual behavior and into the category of degenerative public behavior.

Another approach that may be pursued is the advantage of civil procedures over criminal procedures for the regulation of prostitution. Civil remedies would include such procedural difference as a six-person jury, the right to compel witness and defendant testimony, no preliminary hearing, use of summons rather than arrest, no criminal record, and others. As may be seen, there are advantages for both plaintiff and defendant.

Finally, no recommendations were made regarding 944.32 Wis. Stat. (Soliciting Prostitutes), 944.23 Wis. Stat. (Pandering), 944.34 Wis. Stat. (Keeping Place of Prostitution) and 944.35 (Evidence of Place of Prostitution). There is sufficient potential for criminal behavior inherent in the organized, commercial operation of the prostitution business to warrant criminal sanctions against such organization. The abuses associated with the recruitment and retention of prostitutes, such as white slavery, and the ancillary crimes often committed in prostitution circles, such as strong-armed robbery, compels strict means of addressing the source of such crimes.

Subgoal 25.4: Alcohol and Other Drug Abuse

The Wisconsin Statutes should be revised to reflect that alcohol and other drug abuse are primarily medical, not criminal problems. (cf. Goal 10 and Subgoal 18.8)

Standard 25.4(a)

By 1978, Chapter 161 shall be amended to remove criminal penalties for possession of marijuana. Possession with intent to deliver or manufacture marijuana shall remain subject to criminal penalties, with possession of 100 grams or less creating a rebuttable presumption of mere possession. It shall be illegal to possess marijuana in public places, with a violation resulting in not more than a $50 forfeiture. A violation of public possession shall be enforced by means of a uniform citation in the manner of 345.11-345.61 Wis. Stats.

Standard 25.4(b)

By 1980, legislation shall be enacted and funds provided for the diversion from the criminal justice system of specific drug offenders. (cf. Standard 16.2(c)) The legislation shall provide for:

(a) A non-treatment diversion option for persons charged only with possession of a controlled substance.

1. The diversion may take place anytime before entry of a judgement of guilt, except during trial.

2. The defendant may be examined to see if he or she is drug-dependent. If so, the defendant may not be diverted under this provision. If not drug-dependent, the defendant must be diverted by being placed on probation without an adjudication of guilt.

3. If the defendant violates probation, the court may reinstate criminal proceedings. If the defendant completes probation, criminal proceedings are dismissed, there is no criminal conviction, and the defendant's record is closed to the public.

(b) A treatment diversion option for persons charged with a crime who are alcohol or drug-dependent.

1. Admission to treatment by request and after an examination is by order of the court. The term of treatment shall be the lesser of 18 months or the maximum period of imprisonment for the offense.

2. The patient should move toward outpatient treatment.

3. Treatment records are confidential.

4. The patient shall lose no civil rights or liberties by reason of this treatment.

5. If charged only with a consumption-related offense and determined to be alcohol or drug-dependent, a person shall be placed in the custody of the Department of Health and Social Services or its designate for treatment, if he or she requests.

6. If charged with other than a violent crime or consumption-related offense and determined to be alcohol or drug-dependent, a person may be placed in the custody of the Department of Health and Social Services or its designate upon approval of the court.

7. A defendant charged with a violent crime is not eligible for diversion into treatment, although treatment may be a condition of probation.

8. Upon successful completion of treatment, all criminal proceedings are dismissed, except for those charged with a violent crime. There is no criminal conviction and the person's record is closed to the public.

9. Upon repeated failure in diversion programs, referral back to the criminal justice system may be initiated.

Standard 25.4(c)

All 51.42 Boards shall include in their annual plan and budget a section on liaison with the criminal justice system. All Boards shall address the need for diversion and treatment of alcohol and drug dependent defendants. Further, each board will (1) after consultation and agreement with the appropriate local prosecutor(s), submit a detailed description of the diversion mechanism to be used, specifying defendants' right to counsel, the manner of waiving the right to speedy trial and any applicable statute of limitations, and standards and procedures for revoking diversion status; (2) a procedure for assessing defendants' treatment needs; and (3) a description of the treatment services to be rendered and other terms and conditions of treatment.

Standard 25.4(d)

All state and local correctional facilities shall offer a continuum of treatment for the alcohol or drug dependent inmate. The facilities should provide for:

(a) Specially trained and qualified staff to design and supervise alcohol and drug treatment programs, including coordination with 51.42 Boards.

(b) The recruitment of former alcohol or drug dependent offenders to serve as staff.

(c) Individual, family, and group counseling.

(d) Movement of the alcohol and drug dependent inmates into pre-release, community treatment programs.

(e) Criteria for patient admissions and terminations.

(f) Program participation on a voluntary basis only.

(g) Intake units, providing physical and laboratory examinations as well as a full personal medical and drug history.

(h) Educational or job training programs.

Standard 25.4(e)

None of the previous standards shall change any existing laws regarding use of a moving vehicle while under the influence of alcohol or drugs. It shall also remain illegal to sell or give any drugs to a minor.

Standard 25.4(f)

Police agencies should commit investigative resources only to the large-scale, organized distribution of controlled substances. (cf. Subgoal 1.3 and its Commentary)

Commentary

Alcohol and drug abuse have both direct and indirect effects on Wisconsin's criminal justice system. The direct effects are readily measured by arrest rates for various crimes. In 1974 and 1975, arrests related to alcohol and other drugs were as follows:

	1974	1975	% Change
Controlled Substances	10,582	9,940	Minus 6%
Driving Under Influence	14,138	15,554	Plus 10%
Liquor Laws	11,995	14,131	Plus 18%
Disorderly Conduct	23,267	25,898	Plus 11%
Sub-Total	59,982	65,523	Plus 9%
Drunkenness	13,544	-0-	Minus 100%
TOTAL	73,526	65,523	Minus 11%

(Crime Information Bureau, 1974, 1975)

For the most part, arrests related to alcohol and drug abuse continue to rise. Public drunkenness was removed from the criminal statutes as of August 1974. This accounts for no arrests for drunkenness in 1975. It should also be noted that while disorderly conduct arrests cannot be traced to an alcohol problem in all cases, enough disorderly conduct arrests are alcohol-related to include that as a category.

In addition to these direct influences, alcohol and drugs have many indirect influences on the criminal justice system. According to a 1976 study by the Wisconsin Division of Corrections, forty-three percent (239) of a sample of residents from Wisconsin correctional institutions had been drinking at the time they committed their most recent offense. In 1974, alcohol misuse was found in 55% of the cases tested which resulted in death by auto accident in Wisconsin (Department of Health and Social Services, 1975/76). Illegal drugs have led to the development of a lucrative black market system. This black market system affects society in two ways: (1) the funds derived from the sale of illegal drugs are often funneled into further illegal drug transactions or other illegal activities; and, (2) the buyers of illegal drugs often must engage in illegal activity to obtain the money to buy the drugs.

In assessing the indirect effects of drug use, it is incorrect to consider all controlled substances together. Marijuana (which accounted for 80% of the drug arrests in Wisconsin in 1975) apparently has little if any indirect effect on crime. Bonnie and Whitebread (1970) note two distinctions between marijuana and other types of drugs:

> Over the past three decades, law enforcement officials continued to convince legislators that the traffic in marijuana was controlled by professional criminals. Confronted with this portrait of the marijuana trade, legislators naturally stereotyped the 'seller' as the vicious criminal pushing his wares for high profit and felt that extraordinarily harsh penalties were justified for sellers. From several recent studies it appears that the structure of marijuana traffic bears little or no resemblance to the traditional stereotype. In a recent survey of 204 users it was found that 44 percent had sold to friends at least once. Many casual users sell to leave themselves enough profit to cover the amount of their own use. The study further finds that even at the very top, profits are too small and the product too bulky to interest the criminal class that probably underwrites sales of heroin and other 'hard drugs'. Thus even at the top, amateurs -- composed generally of the students, young professionals and soldiers who constitute the users -- are the main source of the drug.
>
> Second, there is no evidence whatsoever that the use of marijuana has a direct relationship to the commission of crime. One commentator has noted that '(d)uring the high the marijuana user may say things he would not ordinarily say, but he generally will not do things that are foreign

> to his nature. If he is not normally a criminal, he will not commit a crime under the influence of the drug.' In fact, it is entirely likely that the characteristic passive reaction to the use of marijuana tends to inhibit criminality. A recent study has shown that juvenile 'potheads' tend to be non-aggressive and to stay away from trouble.

In the preceding subgoal and standards, the intent is to move the alcohol and drug user/abuser from the criminal justice system into a more therapeutic, medically oriented system. Consideration was given to removing the enforcement and prosecution of all drug offenses from the criminal justice system. The question of the dangerousness of other drugs, their effect on the population, concurrent federal laws, and the general lack of knowledge about such drugs, set this possibility aside.

In 1962, the U.S. Supreme Court dealt with the question of whether narcotics addiction could be considered criminal:

> Rather, we deal with a statute that makes the 'status' of narcotic addiction a criminal offense ... It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease.... We cannot but consider the statute before us as of the same category. In this Court counsel for the State recognized that narcotic addiction is an illness. Indeed, it is apparently an illness which may be contracted innocently or involuntarily. We hold that a state law which imprisons a person thus afflicted as a criminal ... inflicts a cruel and unusual punishment ... Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold. (Robinson v. California)

It is because of this ruling that statutes are not aimed at drug use, but illegal possession and possession with intent to deliver.

Standard 25.4(a) is the most logical method of removing the possessor of marijuana from the criminal justice system. In 1975, a series of eight public hearings were held by the Controlled Substances Board Special Committee on Wisconsin's Marijuana Laws. Those in attendance at each hearing were surveyed on their views of Wisconsin's marijuana laws. Of those surveyed, 94% said the laws were too harsh, 3% said the laws were adequate, and 3% said the laws were not strict enough. Of those who felt the laws were not strict

enough, 72% wanted longer imprisonment and a greater fine, 14% wanted a greater fine only, and 14% wanted longer imprisonment only. Of those who thought the laws were too harsh, 59% favored the "legalization" of marijuana, with sale and use regulated and taxed by the state, 40% favored "decriminalization," with a forfeiture for possession of small amounts and no criminal record, and 5% favored smaller fines and/or shorter imprisonment.

These were some of the reasons cited by those who urged a relaxation of penalties:

(1) The present law has no deterrent effect, marijuana use is on the rise.

(2) Marijuana cannot be shown to be a dangerous drug.

(3) The selective enforcement of the present law breeds disrespect for the law in general.

(4) The present law labels many young persons as "criminals."

(5) The present law hinders efforts at drug education, prevention and treatment.

(Controlled Substances Board Special Committee on Wisconsin's Marijuana Laws, 1975)

Standard 25.4(b) is intended to provide courts with a systematic process for removing offenders with drug problems from the criminal justice system. Short of outright legalization of all drugs (which would raise serious questions regarding federal laws, proper regulation, and hazards to society), diversion and medical treatment is considered one of the best methods for reducing the impact on the criminal justice system of possession and use of alcohol and drugs.

Bellasai and Segal (1972) wrote of diversion programs:

> The primary goals of diversion are two-fold. The first is the early identification and referral of defendants who are in need of treatment. This may be the most effective way to rehabilitate them and return them to the community as productive citizens. Second, diversion serves to dispose quickly and inexpensively of cases which are more effectively handled without full criminal disposition. This permits the court to focus its attention and concentrate its resources on those cases where deterrence and rehabilitation can best be achieved by ordinary criminal processing.

> The dual goals of diversion and systematic procedures to achieve them are not only appropriate in the non-addict first offender context but are also applicable to the problem of the drug-dependent defendant. Such procedures could develop the court system into an intake unit to channel drug addicts into treatment.

The non-treatment diversion option in Standard 25.4(b) must be at the discretion of the defendant and his or her attorney, in order to assure the defendant's right to due process. The defendant must retain the right to a choice between voluntary diversion from the criminal justice system and a speedy trial.

Certain violent crimes are too serious to warrant diversion despite the drug or alcohol dependency of the offender. Treatment can be offered at the place of incarceration or as a condition of a probation. It is difficult to specify which offenses would disqualify a person from diversion consideration. Several options exist which the legislature might consider. First, non-diversion offenses might be defined by criminal statutes (e.g., Part One Offenses). Second, diversion options can be left to the discretion of the District Attorney or law enforcement personnel. Third, certain criminal behavior can be described in the following manner: "Any criminal act which causes bodily harm or has the potential for bodily harm." Fourth, the determination of diversion could be based on the effect caused by the criminal act rather than the act itself; for example, the mental anguish caused by a threat might be the basis for eliminating the diversion option.

The development of diversion programs should be in conjunction with the local 51.42 Boards. These Boards should become the central point for treatment of alcohol or drug dependent offenders.

With the development of diversion programs and the decriminalization of possession of marijuana, the number of persons entering the correctional system could be greatly reduced. However, some individuals who are alcohol or drug dependent will undoubtedly enter the prisons and jails.

Standard 25.4(d) is modeled after that proposed by the National Advisory Commission (1972) and Law Enforcement Assistance Administration Part E Guidelines (1976). The Commission noted that up to 50% of all offenders in institutions have drug or alcohol problems. The possibility of reinvolvement with the criminal justice system is very high for those who enter and leave with an alcohol or drug dependency. It is for this reason that the standard on correctional treatment is recommended.

An important area of concern not addressed here is revision of Wisconsin's Uniform Alcoholism and Intoxication Treatment Act. Law enforcement agencies have indicated that removing public drunkenness from the criminal statutes has created some confusion. This law was recently reviewed by the Joint Ad Hoc Committee on Alcohol Abuse and Treatment of the Wisconsin Legislature. That Committee made several recommendations to improve the operation of Chapter 198 of the laws of 1973. WCCJ urges continued study of this matter.

The Committee also wishes to acknowledge the importance of education of juveniles in the prevention of drug abuse. The reader is referred to the final report of the 1975 WCCJ Juvenile Justice Standards and Goals Committee, Goal Two, Subgoals 2.1, 2.2, and 2.3 (pp. 21-25).

Standard 25.4(f) recognizes that police agencies operate on limited resources. Since the preceding standards outline a model approach to drug possession and use as a medical problem, the enforcement of statutes aimed at the distribution od drugs should be directed toward those who traffic professionally in the most debilitating drugs. Therefore, the street level drug activity encountered most often by police patrol should be considered either a diversion problem or a low priority for the expenditure of limited police resources. Investigative resources should be committed only to the highly organized sources of the drug traffic problem.

Finally, a recommendation was considered to legalize and regulate the sale and use of marijuana. However, it was decided that such considerations were neither politically nor socially realistic at this time.

GOAL NO. 26: CRIMINAL JUSTICE INFORMATION SYSTEMS

Accurate and sufficient information should be available to all criminal justice agencies to ensure the effective planning and administration of the criminal justice system. This shall be accomplished through development of a total criminal justice information system. Modification in the criminal justice information system shall be coupled with adequate protections of the confidentiality of information gathered and the protection of individual privacy. (See Goal 27) (cf. Standard 11.1(a), 16.2(a), 16.3(m), and 20.2(f))

Subgoal 26.1: Coordinating the Development of Information Systems

The State of Wisconsin should create an organizational structure for coordinating the development of criminal justice information systems and for making maximum use of collected data at all levels.

Standard 26.1(a)

The State should establish a Criminal Justice Information Planning Unit to coordinate the development of an integrated network of state and local criminal justice information systems.

The unit should prepare a master plan, specifying organizational roles and data needed for planning, administration, and operations:

(1) The plan should specify system objectives and services to be provided, including:

  (a) jurisdictional (state, local) responsibilities;

  (b) organizational responsibilities at the state level;

  (c) scope of each system; and

  (d) priorities for development.

(2) The plan should indicate the appropriate funding source both for development and operation of the various systems.

(3) The plan should provide mechanisms for obtaining user acceptance and involvement.

Standard 26.1(b)

The state should provide technical assistance and training in data collection methods, system concept development, and related areas.

Standard 26.1(c)

The Criminal Justice Information Planning Unit should arrange for system audit and inspection to ensure maximum quality in each operating system. This audit and inspection should monitor the systems prior to and during implementation.

Monitoring prior to implementation should be done relative to cost (dollars and manhours), time, and quality (response time, scope, sophistication, and accuracy).

Monitoring during implementation should assure that eventual operations meet the design objectives. It should employ a specific series of quantifiable measuring instruments that report on the cost and performance of component parts and the total system. It should evaluate the conformity of systems to privacy and security regulations. (See Goal 27)

Standard 26.1(d)

Uniform data elements should be used to enhance the exchange of information between agencies. Forms and procedures should be designed to assure that data obtained by agency personnel meet all requirements of the information and statistics systems and that no duplication of data is requested.

Standard 26.1(e)

Smaller agencies should consider pooling resources for the sake of economy. One alternative is the "Local Criminal Justice Information System."

Commentary

Historically, criminal justice information and statistics systems have been conceived, designed, and implemented separately; and they often have reflected the isolated environment in which their agencies have operated. While a few state and major metropolitan areas had begun to establish basic information capabilities, it was not until national attention was focused on the overall crime problem in the 1960's that major efforts were launched to establish more more capable information handling and statistics systems. 165.83 and 165.84 Wis. Stats. authorize such a statewide system, which in practice is operated by the Crime Information Bureau (CIB) within the Wisconsin Department of Justice.

A fundamental role established for the state is the provision of computerized common files needed especially by police officers throughout the state. Typical applications include automated want/warrant systems, stolen vehicle files, etc. Implicit in this service is an interface to the equivalent national files in the FBI's National Crime Information Center (NCIC).

A second role for the state is that of computer-controlled communications links for agency-to-agency communications. This function is a low-cost addition to the file access described in the preceding paragraph, and it adds a great deal of service capability.

The emerging role for the state is in the development of criminal history and offender-based transaction statistics. States will be developing this capability under both FBI and LEAA grant guidelines. Criminal history information and statistics are already a reality in Wisconsin's Crime Information Bureau.

A total information system organized statewide will result in the elimination of variances in record keeping and problems which result from our present reporting system. Storage of information in a total information system should be analyzed in terms of ease and reliability, efficiency of physical arrangement, location and spatial volume, housekeeping orderliness and security, and preservation of information. Retrieval procedures should be analyzed in terms of speed, accuracy, physical convenience, feasibility of multiple simultaneous access, and accurate return to storage. All of these objectives can be attained in a manual system, but an automated system is better suited to such functions.

A statewide information system does not necessarily mean that all information must be stored in a common data bank. One of the recommendations of the Wisconsin Task Force on Computerization and the Criminal Justice System (1973) was for a decentralized system:

> Our committee believes unanimously that each of the three agency structures (law enforcement, courts, and corrections) should maintain independent information systems to meet individualized requirements for program and management information. Such information should not be shared with nor contributed to an overall criminal justice information system on a comprehensive basis. Rather, following carefully worked out controls, selected parts of each information system can be contributed to a statewide system on a consistent and timely basis.

The overall intent of this report is to identify a minimum set of standards for information systems that will assist law enforcement, judicial, and correctional agencies at the state and local levels. CIB and many local jurisdictions have already made tremendous strides in that direction.

The uses of information vary from jury selection to crime analysis to correctional program placement. A recent survey of states by LEAA identified 39 separate police functions, 23 separate court functions and 13 separate corrections functions performed by automated information systems in one or more states or cities. (NAC, Criminal Justice System Report, 1973) As more sophisticated and expensive systems develop, it is essential that their testing, implementation, and use proceed in an efficient and orderly manner.

In addition to existing systems (e.g., CIB), the design set forth seeks to establish uniform procedures and criteria to be implemented on the local level. Local law enforcement agencies, county courts, and correctional agencies will be responsible for collecting and storing personal information relevant to the individual at that point in the system. The criteria established by the state (for the most part this is a legislative responsibility) should protect the person's right to privacy, while ensuring that the needs of the criminal justice system are met.

Information should support on-going research and should be recorded in such a way as to facilitate easy compilation of annual statistical reports, including data such as population characteristics, population movement within the criminal justice system, and analysis of recidivism.

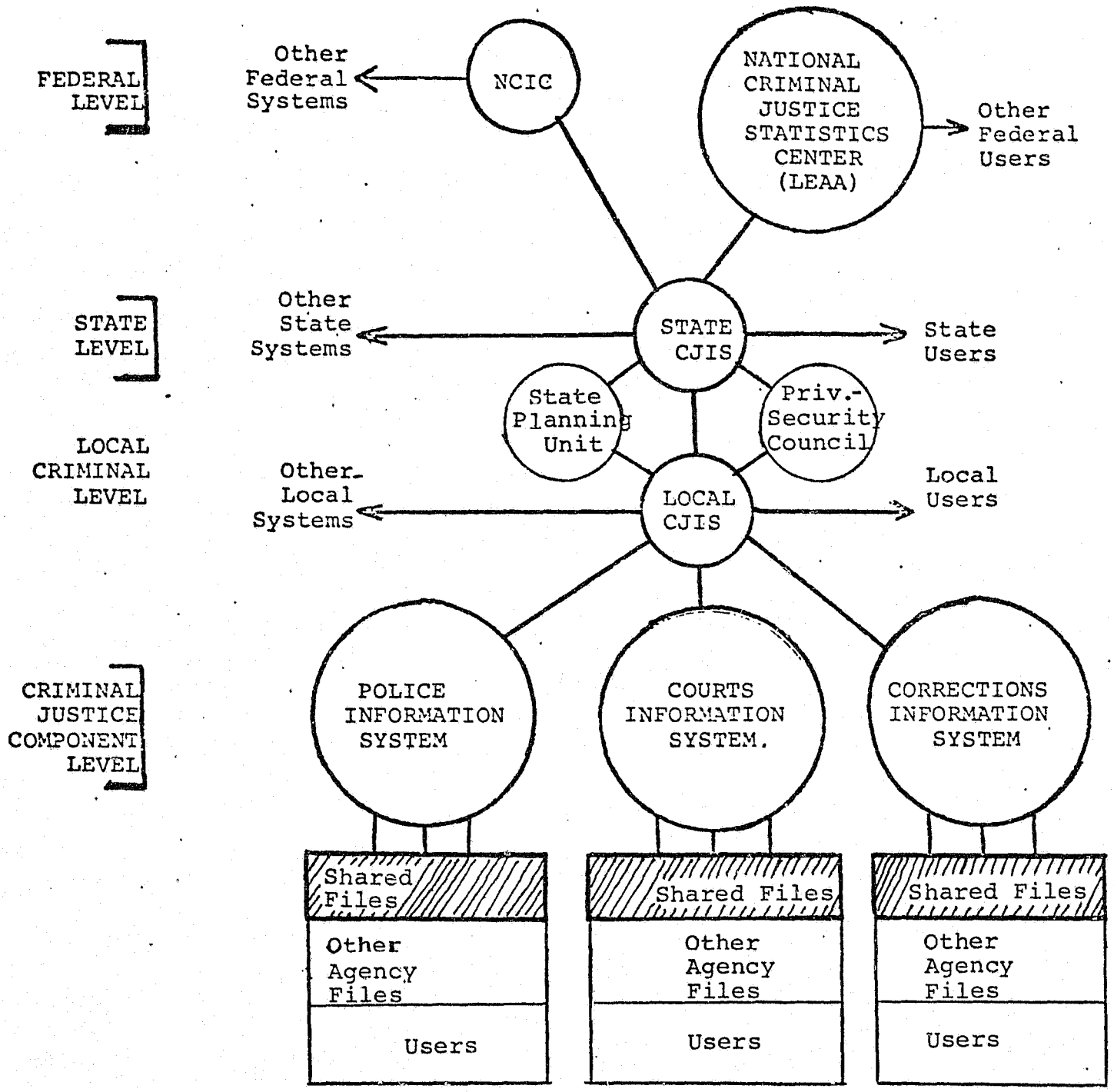
The state should prepare statistical compilations and research studies in which the individual's identity is not disclosed and from which it cannot be ascertained. This information should be provided to the state by the individual agencies which collected the information.

Because of the traditional division of criminal justice responsibility among police, court, and correctional agencies, substantial problems have always been encountered in the transfer of information. These problems affect the collection, aggregation, and dissemination of information concerning persons presently undergoing criminal justice processes. For these reasons, a locality may wish to consolidate the component parts of its criminal justice information system into a Local Criminal Justice Information System (LCJIS). The role of the LCJIS is to transcend agency boundaries. In many cases, the county will be the appropriate level of government at which to institute a LCJIS. This is particularly true in those cases where court and correctional services are administered at a county level.

The primary reason for LCJIS facilities is to fill the need for prompt access to data within a locality. The goals are to avoid duplication of data needed by more than one agency or component of the criminal justice system, to minimize operating costs, and to provide a single source for reporting to state and federal systems. A LCJIS may be directly interfaced with component systems (police, courts, corrections), or it may perform all the functions of the component systems for its constituent agencies. In the latter case, file controls on access are required to ensure total control.

Larger cities will continue to develop police component systems by themselves, if only because of the demand for information primarily of interest to the police. The concept of a LCJIS is not intended to deny this development, but rather to promote the logical development of systems that best serve the users. Coordination of such developing systems is the key to cost effective solutions.

A TOTAL CRIMINAL JUSTICE INFORMATION SYSTEM



Subgoal 26.2: Police Information System

Every police agency should be served by an information system which supports its intra-agency needs. The system should be integrated with those of other components of the criminal justice system (Courts, Corrections).

Standard 26.2(a)

Every police agency should have a well-defined information system. Proper functions of such a system include the following:

1) Dispatch information;

2) Event information (data on incidents and crimes);

3) Case information (data needed during follow-up until police disposition of the case is completed);

4) Reporting and access to other systems which provide required data for operational or statistical purposes; and

5) Support data not provided by external systems, such as misdemeanor want/warrant data, traffic and citation reporting, and local property data.

Standard 26.2(b)

Every police agency should improve its crime analysis capability by using data provided by its information system. Crime analysis includes the following:

1) Methods of operation of individual criminals;

2) Pattern recognition;

3) Field interrogation and arrest data;

4) Crime report data;

5) Incident report information;

6) Dispatch information; and

7) Traffic reports, both accidents and citations.

These elements should be carefully screened for information that may be routinely recorded for crime analysis.

Standard 26.2(c)

For use at the local level, or for state and regional planning and evaluation, data collected concerning an incident regarded as a crime should include as a minimum the following:

1) Incident definition, including criminal statute violated and Uniform Crime Report offense classification;

2) Time, including time of day, day of week, month, and year;

3) Location, including coded geographical location and type of location;

4) Incident characteristics, such as type of weapon used, method of entry, and degree of intimidation or force used;

5) Incident consequences, including type and value of property stolen, destroyed, or recovered, and personal injury suffered;

6) Offender characteristics, including relationship to victim, age, race, sex, residence, prior criminal record, criminal justice status (on parole, etc.), employment and educational status, apparent intent, and alcohol/narcotics usage history;

7) Type of arrest; and

8) Witness and evidence.

Standard 26.2(d)

Agencies developing or operating a computer-based information system should identify critical information groups and assign priorities to them according to the requirements of the system user. Critical information groups should include at least the following:

1) Information on wanted persons;

2) Data on criminal convictions, probation and parole status, recent penitentiary releases, and vital criminal record information;

3) Information that forewarns an officer of persons known to have been armed and other potential dangers; and

4) Information on stolen property and vehicles.

Standard 26.2(e)

Every police agency should provide for an independent audit of incident and arrest reporting. To establish an "audit trail" the following key characteristics or records should be adopted:

1) The police response made to every call for police service should be recorded, regardless of whether or not a unit is dispatched. Dispatch records should be recorded by number and time; if the service leads to a complaint, the complaint should be registered on a numbered crime report, and that number also should be shown on the dispatch record.

2) Dispatch records should show the field unit disposition of the event and should be numbered in such a way as to link dispatches to arrest reports or other event disposition reports.

3) All self-initiated calls should be recorded in the same manner as citizen calls for service.

Standard 26.2(f)

Every police agency should coordinate its information system with those of other local, regional, state, and federal components of the criminal justice system. Care should be taken to assure that only information consistent with privacy and security regulations is shared (see Goal 27).

Commentary

Five basic types of police information (dispatch information, event information, case information, reporting and access to other systems, and patrol and investigative support data), when combined with external systems, provide the police department with the information essential to operations and management. Systems should be designed to support resource allocation and crime analysis, as well as other administrative needs of a police department. Careful design of the data ele-

ments that are to be stored is essential if information use is to be effective. The primary objective of a computer-based information system should be rapid response to the information needs of field units.

A cooperative working relationship is needed between police, courts, and correctional agencies. Part of this working relationship includes sharing information. However, only information which is needed to allow the justice system to function effectively should be shared.

Subgoal 26.3: Courts Information Systems

Every court should be served by an information system which supports its intra-agency needs. The system should be integrated with those of other components of the criminal justice system (Police, Corrections). (cf. Standards 7.4(b) and 16.2(s) and Subgoal 14.2)

Standard 26.3(a)

Court information systems should be designed to ensure that information concerning court activities is recorded, stored, indexed, and available for retrieval in such a way that:

1) The items of information maintained, as well as the documents and procedures for recording transactions, are uniform throughout the system;

2) Necessary inquiries, decisions, and actions concerning the status of cases and court operations can be made on the basis of sufficient and readily available facts;

3) Information entries are made accurately, promptly, and without unnecessary repetition of effort;

4) Access to information is readily possible by all persons concerned with court activities, including judges, court administrative personnel, members of the bar, and the public - subject to controls and safeguards to assure that information of a confidential nature is maintained under appropriately restricted access; and

5) Periodic studies and analysis of court operations and management can be made easily.

Standard 26.3(b)

For effective court administration, criminal courts shall have the capability to determine monthly case flow and personnel workload patterns. This capability requires the following statistical data for both misdemeanors and felonies:

1) Filing and dispositions - number of cases filed and the number of defendants disposed of by offense categories;

2) Monthly backlog - cases in pre-trial or preliminary hearing stage; cases scheduled for trial or preliminary hearing; and cases scheduled for sentencing, which have been delayed since the previous step in adjudication;

3) Status of cases on pre-trial, settlement, or trial calendars - number and percent of cases sent to judges; continued (listed by reason and source), settled, placed off-calendar; nolle prosequi, bench warrants; terminated by trial (according to type of trial);

4) Time periods between major steps in adjudication, including length of trial proceedings by type of trial;

5) Judges' weighted workload - number of cases disposed of by type of disposition and number of cases heard per judge by type of proceeding or calendar;

6) Prosecutor/defense counsel workload - number of cases disposed of by type of disposition and type of proceeding or calendar according to prosecutor, appointed defense counsel, or private defense counsel representation;

7) Jury utilization - number of individuals called, placed on panels, excused, and seated on criminal or civil juries; (cf. Standard 14.2(e))

8) Number of defendants admitted to bail, released on their own recognizance, or retained in custody, listed by most serious offense charged;

9) Number of witnesses called at hearings on serious felonies, other felonies, and misdemeanors; and

10) Courtroom utilization record.

Standard 26.3(c)

Every court information system should be coordinated with those of other local, regional, state, and federal components of the criminal justice system. Care should be taken to assure that only information consistent with privacy and security regulations is shared. (see Goal 27)

Commentary

A court information system should be able to facilitate quick references to recorded information, such as current status of cases pending in the court. Information systems should also supply statistics that present a complete interpretation of operations of the court in a form that permits study of influential factors or variables affecting court workload and efficiency.

For supporting individual case decisions, the information system must provide both defendant data and case handling or following data. The functions provided as an aid to management are given more attention here because of the great potential of an automated system to improve the efficiency of the court in terms of scheduling, summoning, jury selection, and similar activities.

Subgoal 26.4: Corrections Information Systems

The corrections system in Wisconsin should be served by an information system which supports its needs. The system should be integrated with the other components of the criminal justice system (Police, Courts). (cf. Standard 16.2(s))

Standard 26.4(a)

The Division of Corrections should develop and maintain a correctional information system to collect, store, analyze, and display information for planning, operational control, offender tracking, and program review for all state and county correctional programs and agencies.

The information system should store information at the local level with access available to other correctional agencies within the system.

Standard 26.4(b)

The Division of Corrections should provide easy access to authorized social science researchers. Information which identifies individuals should be withheld.

Standard 26.4(c)

The data base should include all data required at decision points. The information useful to corrections personnel at each decision point in the corrections system should be ascertained in designing the data base.

Standard 26.4(d)

The requirements of other criminal justice information systems for corrections data should be considered in the design, and an interface between the corrections system and other criminal justice information systems developed, including support of offender-based transaction systems. Care should be taken to assure that only information consistent with privacy and security regulations is shared. (See Goal 27)

Standard 26.4(e)

The data base should allow easy compilation of an annual statistical report, including sections such as population characteristics, population movement for the full year, and analysis of recidivism by offense and other characteristics.

Standard 26.4(f)

Assignment to special status such as work release should be recorded to enable the system to account for all persons under supervision. Sufficient information must be recorded to identify the offender and the reason for movement. Each agency should record admissions and departures and give the reason for each.

Commentary

The key functions of an information and statistics system for corrections include administrative decision-making, research, and offender accounting.

To support decision making and departmental research, the administration should be able to obtain information on the status of a program at any time. Such information could include staff coverage, characteristics of offenders participating in the program, and pertinent fiscal data.

The information system must provide the administrator with automatic notifications and exception reports to support effective decision-making. The purpose is to inform the administrator that something has gone wrong or that there has been some deviation from original plans. Reports should be issued when volume of assignments varies from standard capabity, when movement of any type varies from planned movement, when non-compliance with established decision criteria exists, and when excessive time is spent in process.

The system must be able to analyze interrelationships among the data. Correlations between variables and outcomes must be made to ensure meaningful data. For example, it is necessary to know the relationship between certain types of treatment and recidivism in making decisions about corrections programs. The system can also provide the administration with information to serve as a basis for projecting future needs.

Similarly, incidents often trigger questions to which corrections systems must respond rapidly. For example, a proposal to control the sale of handguns might require information on the number of prisoners convicted of murder in which a handgun was used. The design of the information system must allow for varied uses of data.

GOAL NO. 27: PROTECTION OF INDIVIDUAL PRIVACY

The confidentiality of all criminal justice information relating to an identifiable individual will be preserved through procedures designed to ensure the privacy and security of such information. (cf. Standards 16.2(a), 18.3(m), Goal 26, and Subgoal 23.4)

Subgoal 27.1: Legislation

The State of Wisconsin should adopt enabling legislation for protection of privacy and security in criminal justice information systems. The enabling legislation should establish administrative structure, minimum standards and civil and criminal sanctions for violations of statutes, rules, or regulations adopted under it. The legislation should apply to both manual and automated systems.

Standard 27.1(a)

For purposes of legislation, "criminal justice information" definitions include the following:

1) "Identification record information" means fingerprint classifications, voice prints, photographs, and other physical descriptive data concerning an individual that does not include any indication or suggestion that the individual has at any time been suspected of or charged with a criminal offense.

2) "Arrest record information" means information concerning the arrest, detention, indictment, or other formal filing of criminal charges against an individual, which does not include a disposition.

3) "Criminal record information" means information concerning the arrest, detention, indictment, or other formal filing of criminal charges against an individual, together with one or more dispositions relating thereto.

4) "Criminal history record information" means information collected by criminal justice agencies on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

5) "Correctional and release information" means information or reports on individuals compiled in connection with bail, pre-trial or post-trial release proceedings, pre-sentence investigations, proceedings to determine physical or mental condition, participation by inmates in correctional or rehabilitative programs, or probation or parole proceedings.

6) "Criminal investigative information" means information on identifiable individuals compiled only if there is reasonable belief that a crime other than a petty offense was or will be committed, the record subject was or will be a participant in or has knowledge of significant facts concerning such crime, and the information in the investigative record is relevant to the prosecution or prevention of the crime.

7) "Wanted persons information" means identification record information on an individual against whom there is an outstanding arrest warrant, including the charge for which the warrant was issued, information relevant to the individual's danger to the community, and any information that would facilitate the apprehension of the individual.

8) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, also disclosing the nature of the termination in the proceedings; or, information disclosing that proceedings have been indefinitely postponed and disclosing the reason for such postponement.

Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed or still pending due to insanity, charge dismissed or still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed - civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial - defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

9) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal investigative activities and the collection, storage, and dissemination of criminal history record information.

10) "Sealing" means that all disseminations of the records in question are returned to the originating agency. The records are then secured in such a way that will allow no access except upon order of the court.

11) "Expungement" means total destruction of the records in question, including any references to the expungement.

Standard 27.1(b)

For purposes of legislation, "criminal justice agency" includes:

1) Any court with criminal jurisdiction or any other governmental agency (or sub-unit thereof) which performs as its principal function any activity directly relating to the detection or investigation of crime; the apprehension, detention, pre-trial release, prosecution, defense, correctional supervision or rehabilitation of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of criminal justice information; and

2) Any other agency or organization not covered by paragraph 1), which, by contract with a covered agency, performs an activity covered by paragraph 1) but only to the extent of such activity.

Standard 27.1(c)

Criminal justice agencies maintaining criminal justice information systems (including investigative systems) subject to the legislation should be required by law to publish annual notice of each such system reasonably designed to acquaint the public with the existence and nature of the system, including the categories of data and categories of subjects in the system, uses permitted of the data, and the operational policies and procedures of the system.

Standard 27.1(d)

With the exception of criminal investigative information, collection of criminal justice information concerning individuals should be triggered only by a formal event in the criminal justice process and contain only verifiable data. No information other than criminal justice information as defined in Standard 27.1(a) shall be collected, stored, or disseminated.

Standard 27.1(e)

The State of Wisconsin should establish a Privacy and Security Council. The Privacy and Security Council shall be vested with sufficient authority to adopt and administer security and privacy standards for criminal justice information systems. The Council should further have authority to establish rules and regulations and to monitor compliance and sanction agencies which fail to comply with them.

Standard 27.1(f)

Civil and criminal sanctions should be set forth in the enabling act for violation of the statute or rules or regulations adopted under it. Penalties should apply to improper collection, storage, access, and dissemination of criminal justice information.

Commentary

The legislation is designed to improve the organization, coordination, and control of criminal justice recordkeeping. The development of procedures which provide vigorous protection for individual rights of privacy, while at the same time strengthening the recordkeeping capabilities of criminal justice agencies, will assure a more credible and useful criminal justice recordkeeping system.

While this goal will be implemented locally, it is best accomplished with statewide consistency due to the complexity and overlapping scope of criminal justice recordkeeping. A state Privacy and Security Council need not be a new body created by the legislature. However, the function of overseer of privacy and security matters must be a designated responsibility. The provisions for administrative procedure and review in Chapter 227 of the Wisconsin Statutes may serve as a guide when establishing mechanisms to fulfill this function.

In these standards and goals, "privacy" refers to protection of the interests of the people whose names appear for whatever reason in the contents of a criminal justice information system. "Security" refers to the protection of the system itself against intended or accidental damage, disclosure, or destruction of any information contained in that system. The restrictions applicable to a given record under the standards depend upon which combination of criminal justice information elements, as listed in the definitions, are included in the record.

One of the best ways to allay public concerns about the nature of information maintained about them and the uses permitted of such information, is full public disclosure of all pertinent facts concerning such systems. For this reason, criminal justice agencies maintaining an information system should be subject to legislation requiring them to publish notice of the system. The notice should give all pertinent facts concerning the type of information an agency collects and disseminates, the sources of such information, the persons and agencies to whom the information may be disseminated, and basic operational policies and procedures of the system. This notice should be published in some form designed to make it possible for any interested person to obtain the information without undue burden.

Arrest record information with no dispositions recorded and criminal records with recorded dispositions favorable to the defendant are, in many cases, of questionable value for subsequent criminal justice purposes. In fact, they may violate the premise of American justice which presumes innocence until proven guilty. A difference should be noted here between arrest record information as a part of the formal criminal justice history of an individual and arrest record information compiled separately for purposes of criminal investigative information.

Releasing information for purposes of licensing, employment checks, and credit bureau use should be restricted. It is generally felt that an issue as important as this should be resolved by the state legislature. Much of the present statutory language concerning such matters is vague.

Subgoal 27.2: The Individual's Right to Access, Challenge, and Supplement

Every person shall have the right to review, challenge, and supplement criminal justice information relating to him or her. Each criminal justice agency with custody or control of criminal justice information shall make available convenient facilities and personnel necessary to permit such reviews.

Standard 27.2(a)

Any individual who satisfactorily verifies his or her identity and complies with reasonable rules and regulations should be permitted, in person or through counsel, to review and obtain a copy of any criminal history record information concerning him or her maintained anywhere in the state.

Standard 27.2(b)

Each criminal justice agency should adopt and publish rules and procedures to implement this section, including some method of administrative review of any challenge the individual may make and some method of ensuring that appropriate corrections are made, and that appropriate notice of such corrections is given to criminal justice agencies that have received inaccurate or incomplete information. The rules and procedures adopted shall be filed with the Privacy and Security Council and shall comply with the Council's minimum standards.

Standard 27.2(c)

Each reviewing individual shall be informed of the right to challenge. He or she should be informed that written exceptions to the information's contents, completeness, or accuracy may be submitted to the criminal justice agency with custody or control of the information. Should the individual elect to submit exceptions, an appropriate form should be furnished. The form should include an affirmance, signed by the individual or legal representative, that the exceptions are made in good faith and that they are true to the best of the individual's knowledge and belief. One copy of the form shall be made a permanent part of the original file.

Standard 27.2(d)

The state shall provide a procedure for administrative appeal to the Privacy and Security Council upon request by the individual in instances in which a criminal justice agency refuses to correct challenged information to the satisfaction of the individual. Such appeal should include a hearing at which the individual is permitted to appear, examine witnesses, and present other evidence.

Standard 27.2(e)

The state shall provide for judicial review of any final decision made after administrative appeal.

Standard 27.2(f)

State legislation should provide that no individual who obtains any copy of any information regarding himself or herself under this standard may be requested or required to transfer or show such copy to any other person or agency, and any request for such a transfer or disclosure should be prohibited. This standard in no way limits the right of the individual to distribute the information regarding himself or herself at his or her sole discretion.

Commentary

The right to access carries with it the right to challenge incorrect or incomplete data. Such rights will help guarantee the accuracy of criminal offender records, prevent unnecessary injuries to individual citizens, and create wider public confidence in the fairness and accuracy of the recordkeeping system. These purposes are particularly served by giving the Privacy and Security Council authority to review alleged omissions and inaccuracies in criminal justice information. Since review by the courts has historically been an important element in the realization of many individual rights, the right of judicial review should be made clear.

A further provision is that no individual who does exercise the right to review can later be required to disclose that information. For example, an individual who obtains copies of his or her criminal justice records could be required to transfer or show those copies to private employers, credit agencies, or others not authorized to see them. In that way the restrictions on non-criminal disclosures could be circumvented easily. Experience in several states has already demonstrated that this practice will prevail where it is not specifically prohibited.

Subgoal 27.3: Completeness and Accuracy of Information

All agencies maintaining criminal justice information identifiable as to a particular individual shall establish methods and procedures to ensure the completeness and accuracy of data.

Standard 27.3(a)

Every item of information should be checked for accuracy and completeness before entry into the system. Data is inaccurate or incomplete when it might mislead a reasonable person about the true nature of the information. A system of verification and audit shall be instituted. Where files are found to be incomplete, all persons who have received or contributed misleading information should be notified immediately.

Standard 27.3(b)

To be complete, a record maintained in a criminal justice information system, which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the state within 90 days after disposition has occurred. If no further disposition beyond arrest is recorded within 90 days, the record shall be sealed for a period of three years and, if no civil action is taken, expunged. (cf. Standard 11.3(f))

Commentary

Each criminal justice agency should be subject to legislation requiring it to adopt and implement operating procedures on security, accuracy, and completeness of criminal justice information. It is important for both the effective operation of criminal justice agencies and for the fair administration of justice that records be accurate and complete. Information of a personal nature that is inaccurate or incomplete can be especially harmful to an individual.

Subgoal 27.4: Limitations on Access and Dissemination

Limitations on access and dissemination of criminal justice information shall be imposed to ensure the protection of the privacy and security of that information.

Standard 27.4(a)

Each criminal justice agency should have operating procedures to: 1) restrict access to criminal justice information to those officers and employees who need such information for the performance of their duties, 2) restrict the use of such information to purposes authorized by legislation,

3) prevent the secondary dissemination of such information to recipients who are not eligible under the legislation to receive it, and 4) facilitate retrieval of information sealed or expunged.

Standard 27.4(b)

Each person and agency that obtains access to criminal justice information should be subject to civil, criminal, and administrative penalties for the improper receipt, use, and dissemination of such information, and for failure to return or destroy records sealed or expunged.

Standard 27.4(c)

Criminal justice agencies should receive and review applications from non-criminal justice government agencies for access to criminal justice information. Each agency which has a right to such information or demonstrates a need to know and a right to know in furtherance of a criminal justice purpose should be certified as having access to such information through a designated criminal justice agency. Such information shall be limited to non-person identifiable data for purposes of criminal justice planning and research only. Refusal to certify may be appealed to the Privacy and Security Council.

Standard 27.4(d)

Criminal justice investigative information should not be commingled with other types of criminal justice information, and such other information should not contain any indication that a criminal investigative file exists on the individuals to whom the information relates.

Standard 27.4(e)

Arrest record information and criminal record information may be disseminated under agency regulations if the matter is still pending within the criminal justice system.

Arrest record information and criminal record information indicating that the criminal proceedings were concluded in the individual's favor shall be sealed for a period of three years. If, after three years from the date of sealing, there is no impending civil action arising from the arrest, the sealed records shall be expunged.

Standard 27.4(f)

Criminal record information shall be available for non-criminal justice purposes only under the following circumstances:

1) the requestor must prove that the information is directly related and necessary to the purpose for which it is sought;

2) the information is limited to conviction data;

3) the individual who is the subject of the information has been notified of the request and of his or her right to review and challenge the accuracy of the information, and has granted permission to disseminate the information.

The disseminating agency shall be responsible for notification that a request has been made. All costs incurred by the request, notification, and dissemination should be born by the requestor.

Standard 27.4(g)

Criminal justice information systems should maintain controls over access to information by requiring identification and authorization of system users and their need and right to know and by requiring that those given access agree to return information when notified that it is to be sealed or expunged.

Standard 27.4(h)

Corrections officials should be permitted to represent orally to prospective employers of offenders under the agency's supervision the substance of criminal justice information about an offender for the purpose of assisting the offender in obtaining employment upon release, providing the offender or his or her attorney consents.

Standard 27.4(i)

Court rules or orders authorizing the release of information should be restricted to agencies or individuals directly involved in the criminal justice process, such as bail bondsmen or private attorneys engaged in the representation of individuals in civil and criminal proceedings. Release

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should be authorized only upon a finding of particularized good cause and setting forth the specific records to be made available, the purposes for which they may be used, and other restrictions necessary to ensure the security and confidentiality of the information.

Standard 27.4(j)

1) Remote terminal access to automated criminal investigative information should not be permitted outside the agency which compiled the information except where expressly authorized by federal or state law.

2) Notwithstanding paragraph one, there should be remote terminal access to identification information sufficient to provide an index of individuals included in automated investigative systems and to refer any requesting agency to other agencies maintaining investigative files.

Standard 27.4(k)

Criminal investigative information should be collected and maintained only if grounds exist connecting an individual with known or suspected criminal activity. Criminal investigative files should be reviewed at regular intervals and, at a minimum, upon any request for dissemination of particular information, determine whether the grounds for retaining the information still exist. If not, it should be destroyed.

Criminal investigative information may be disseminated outside the collecting agency for purposes of collecting further criminal investigative information by another criminal justice agency only if the requesting agency gives assurances that valid grounds for the investigation exist, and that the information is relevant to the investigation, and if the requesting agency or individual agrees to be bound by these standards.

Standard 27.4(l)

Criminal justice agencies shall make available to the public and the press factual information concerning the status of an investigation for a publicized suspect in connection with a specific publicized crime; the apprehension, arrest, release, or prosecution of an individual; the adjudication of charges; or the correctional status of an individual; only if the request is reasonably contemporaneous with the event to which the information relates.

Commentary

One way to ensure the rights of the individual to control personal information is to limit who may use this personal information and how it may be used. Imposing a statutory duty of care on everyone connected with handling data would have the effect of enhancing security and encouraging privacy consciousness. Access can be direct or indirect in computer based systems. To ensure security and privacy it would be advisable to limit such access to the most reliable terminal users.

Dissemination is closely related to the problem of access. Once data is received, security and privacy considerations dictate adequate controls over its subsequent use and distribution. Dissemination to criminal justice personnel for their own use presents the fewest problems. The chief precaution to be exercised is that agency personnel have both a need and right to see the information. When non-criminal justice agencies are involved in receiving data, greater care must be exercised.

Procedures should include use of access restrictions, sign-in logs, prior authorization, or like restrictions. Systems should maintain controls over access to information by requiring identification of system users and their need and right to know.

Strictly from a security and privacy perspective, there should be no dissemination outside government agencies. Insurance companies, credit rating services, and the like should not receive any information from criminal justice information systems. It is virtually impossible to monitor and restrain the use of data once it passes out of the government. Where security checks or clearances are required as a condition of employment on a government funded job, the check or clearances should be made by government personnel. All security clearance decisions should also be made by government personnel and not private employers.

Nevertheless, there may be instances in which the interests of justice warrant the release of criminal records to agencies or individuals not entitled to access under other standards. Such release may be granted by court order or rule.

A natural conflict arises between an individual's privacy and the responsibilities of the news media to report events in the criminal justice system. Since most of those events are public knowledge through observation, arrest log books, and court records, it may seem at first glance a fruitless gesture to withhold access to such information in a criminal justice information system. However, modern technology has made it possible to accumulate in a single location information regarding many years of a person's life. The easy access

to such an accumulation presents the real danger to individual privacy. While most such information may be available by digging through news records systems, it is infinitely easier to obtain it through criminal justice record systems, especially automated systems.

Standard 27.4(1) is an attempt to compromise the conflict between individual rights to privacy and public rights to unhampered reporting of criminal justice news. It permits access to information in criminal justice records systems by news media only when information is "reasonably contemporaneous with the event." The decision to release such information must rest with the person responsible for the information -- sheriff, district attorney, etc. -- and that release should be coordinated by agreement where it overlaps components of the criminal justice system. In other words, the sheriff and district attorney, for example, should determine who should release the information.

This subgoal should not be construed as an impediment to the legitimate use of non-person identifiable data for criminal justice planning and research.

Subgoal 27.5: Security

Each criminal justice agency shall adopt operational procedures designed to ensure the physical security of criminal justice information in its custody and to prevent the unauthorized disclosure of such information.

Standard 27.5(a)

Information system operators should institute procedures for protection of information from environmental hazards such as fire, flood, and power failure. Appropriate elements should include:

1) Adequate fire detection and quenching systems;

2) Protection against water and smoke damage;

3) Liaison with local fire and public safety officials;

4) Fire resistant materials on walls and floors;

5) Air conditioning systems;

6) Emergency power sources; and

7) Backup files.

Standard 27.5(b)

Applicants for employment in information systems should be expected to consent to an investigation of their character and background. The investigation should develop sufficient information to enable appropriate officials to determine the employability and fitness of persons entering sensitive positions.

Standard 27.5(c)

All persons involved in the direct operation of a criminal justice information system should be required to attend approved training sessions concerning the system's proper use and control. Instruction may be offered by any agency or facility, provided that curriculum, materials, and instructor's qualifications have been reviewed and approved by the Privacy and Security Council.

Commentary

Protection of privacy is an empty promise without security. System security is the ability to restrict the availability of specific information to authorized individuals and the ability to physically protect all parts of the system, including both data and the system that processes the data, from any physical destruction or theft.

In July of 1969 a security and privacy study funded by LEAA was undertaken. Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories) set out to evaluate the technical feasibility and operational utility of automating state-collected criminal histories and statistics. Seven major committee statements were discussed:

1) The input, modification, cancellation, or retrieval of information from the system will be limited to authorized agency terminals.

2) Disclosure of information from the system through terminals will be limited to authorized final users.

3) Information in the system will be protected against unauthorized access in the computer center.

4) Information will be protected against unauthorized alteration.

5) Information will be protected against loss.

6) Information will be protected against unauthorized use.

7) System security is a line responsibility equal in importance to system performance.
(Project SEARCH Committee on Security and Privacy, 1970)

These seven statements represent the objectives of system security. The procedures implemented to assure a secure information system should support these objectives.

A security system is only as good as management's commitment to it. The managers of each information system must undertake to establish and enforce system security standards.

GOAL NO. 28: GUN CONTROL

Possession of guns should be strictly controlled. The Wisconsin Legislature and appropriate representatives of the State of Wisconsin should attempt to influence the passage of legislation to ban the manufacture, sale, or transfer of handguns and handgun ammunition within the United States.

Subgoal 28.1: Legislative Action

Wisconsin's elected representatives should move to reduce the potential for deaths and injuries caused by the use of guns.

Standard 28.1(a)

The Wisconsin Legislature should ban the possession of handguns by any person other than law enforcement and military authorities. Criminal penalties should be provided for the unlawful possession of a handgun.

Standard 28.1(b)

The Wisconsin Legislature should promptly outlaw the possession and use of sawed off shotguns and sawed off rifles.

Standard 28.1(c)

The Wisconsin Legislature should promptly outlaw the possession and use of firearms by every person who has been adjudicated a felon, mentally incompetent, or a drug addict.

Standard 28.1(d)

The Wisconsin Legislature should promptly enact legislation requiring every physician to report to the county sheriff every gunshot wound such physician treats.

Commentary

The real issue surrounding handguns is not violent crime *per se*. It is the number of deaths and injuries caused by the manufacture, possession, use -- indeed, the very existence of handguns. Handguns themselves are not the cause of violent crime; however, the degree of injury caused by a handgun used in the commission of a crime of passion or other violent crime warrants the ultimate extinction of the handgun as a weapon.

According to the National Commission on the Causes and Prevention of Violence (1968), approximately 76% of gun homicides, 86% of aggravated assaults involving guns, and 96% of robberies involving guns, are committed by handguns. Although only about 27% of all firearms in the U. S. are handguns, they are the predominant firearm used in crime.

While a ban on handguns may not reduce the number of arguments and fights or the number of crimes committed, it is certain to lessen the degree of injury resulting from those incidents. If society wishes to alleviate the suffering caused by crime, it must be willing to sacrifice a measure of individual freedom, in this case the possession of handguns.

Certain corollary benefits may be expected from the elimination of the handgun. Police officers need no longer fear an unexpected attack involving an easily concealed handgun. Ideally, at some future time the police, during the course of their normal duties, may no longer find it necessary to carry weapons capable of deadly force. Some Fourth Amendment search and seizure questions deriving from the fear of concealed weapons may no longer apply. The criminal justice system may no longer have to deal with the otherwise law abiding citizen who, in the heat of passion, resorts to the use of a handgun to resolve a conflict.

A number of federal, state, and local statutes and ordinances now exist which regulate the purchase and possession of certain types of firearms by certain classes of people (e.g., machine guns, foreign military surplus, mail-order handguns: non-dealers, felons, mentally ill.) The proposed standards seek to expand upon the existing laws.

The National Conference of State Criminal Justice Planning Administrators (1976) pointed out a number of statistics that support these standards:

1) More than 1/2 of the homicides committed in the United States are committed with handguns.

2) Although only approximately 27% of all firearms in the U.S. are handguns, they are the predominant firearms used in crimes; being used in 76% of all gun homicides, 86% of all aggravated assaults involving guns, and 96% of all robberies using guns.

3) Studies have shown that the handgun is the weapon most used in the commission of the majority of violent crimes where injury or death results.

4) Over 70% of the policemen killed in the line of duty between 1961 and 1974 were felled by handguns.

5) 73% of all handgun homicide victims were killed by a relative, friend, or acquaintance.

6) Most such handgun crimes involve legally purchased weapons used without premeditation in emotionally charged situations.

7) Studies show that expensive handguns are involved in crimes as often as cheaper models or "Saturday Night Specials."

Realistically, a certain group of individuals will always possess guns, legally or illegally. However, with the decreased availability of handguns, those who possess them may be more easily controlled by law enforcement agencies.

In order for controls on guns to work, the controls must also be applied to adjacent jurisdictions. Otherwise, guns will flow from an uncontrolled jurisdiction into a controlled jurisdiction. The Wisconsin Legislature and appropriate representatives of the state are urged to promote the passage of firm gun control at the national level.

GOAL NO. 29: AFFIRMATIVE ACTION

No criminal justice agency shall subject or allow its employees or clients to be subjected to discrimination on the basis of race, color, national origin, sex, age, religion, or handicap. Arbitrary criteria such as veterans preference points for promotion should not be considered. Every agency shall take affirmative steps to eradicate the present effects of past discrimination.

Subgoal 29.1: Law and Policy

All criminal justice agencies shall develop and implement Affirmative Action Plans to comply with law. Adequate consideration should be given to means to eliminate the effects of age and handicap discrimination.

Standard 29.1(a)

The Wisconsin Council on Criminal Justice, and any other Wisconsin criminal justice planning agencies acting as overseers for the disbursement of federal grant-in-aid funds, shall require compliance with its Affirmative Action Plan prior to concurrence with grants emanating from federal sources to local or state grantees.

Standard 29.1(b)

Criminal justice agencies shall seek technical assistance as necessary from federal Equal Employment Opportunities Commission (EEOC) offices in Wisconsin; EEO offices in the Wisconsin Council on Criminal Justice; Department of Industry, Labor, and Human Relations; and other sources expert in such matters.

Standard 29.1(c)

Every chief executive of a criminal justice agency shall develop and issue a written statement of the agency's Affirmative Action policy. At a minimum, the statement shall include comments on the agency's commitment to equal employment opportunity, Affirmative Action efforts, designated responsibility for the agency's Affirmative Action Program, and the involvement of all agency personnel in Affirmative Action efforts.

The written statement shall be made available upon request both within the agency, including employees, and to recruitment sources, media, public and private organizations, employment agencies, educational institutions, and any others influential in the employment of minorities, women, the elderly, the handicapped, etc.

Commentary

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, formed the basis for considerable Affirmative Action efforts in the ensuing years. Since then, many refinements have been made in Affirmative Action philosophy and principles. Some of these refinements have been the result of court action. Others have been the result of sophistication in the awareness of complex factors that work to exclude certain categories of citizens from fair opportunities to take advantage of the benefits of our society. These subgoals propose action and deeper exploration of the profundities of these issues. Ultimately, they seek "to insure full and equal participation of minorities and women in employment opportunities in the criminal justice system as their participation is a necessary component of the Safe Streets Act's policy to reduce crime and delinquency in Wisconsin and throughout the United States." (WCCJ EEO/AA Manual, 1976) While primary responsibility for Affirmative Action within the criminal justice system rests with criminal justice agencies, it does not relieve other related organizations from their Affirmative Action responsibilities. (See Subgoal 29.6)

The purpose of requiring an Affirmative Action Plan prior to awarding federal grants in aid is not to withhold funds or make funds nearly impossible to obtain. It is to promote concrete, aggressive implementation of civil rights ideals.

Since a large number of non-compliance violations are the result of ignorance of the law and philosophy of equal employment opportunity, agencies are required under Standard 29.1(b) to seek technical assistance from the federal Equal Employment Opportunities Commission. This technical assistance is free of charge. Other sources of advice may be found in various state and local agencies. Criminal justice agencies can consult the Wisconsin Council on Criminal Justice Affirmative Action Officer and the Wisconsin Department of Industry, Labor, and Human Relations for referral to sources of assistance.

Many areas of equal employment opportunity law are still in flux. Particularly, factors of age and handicap discrimination remain to be examined. The sworn officer category of police employment requires special consideration. Elements of prior training, pension rights, and job-relatedness create difficult questions. These and other areas will be explored as they arise in developing guiding principles of equal employment opportunity.

Since the results sought are increased consciousness and awareness of civil rights, especially in the area of employment, it is necessary that criminal justice agencies assume leadership in their communities

in these matters. The first step in assuming leadership is for the criminal justice agency to let the public know exactly where it stands on the issues. For this reason, each chief executive of a criminal justice agency must accept the responsibility for promulgating its commitment to Affirmative Action principles and efforts. A highly visible Affirmative Action commitment on the part of criminal justice agencies can create a positive atmosphere in the community.

Subgoal 29.2: Analysis of Policies and Practices

All criminal justice agencies shall collect the necessary information and use it to plan specific Affirmative Action efforts.

Standard 29.2(a)

Each criminal justice agency shall accumulate information about its community, service clientele, and characteristics of job categories. Each agency shall then summarize, chart, and analyze its data in order to document compliance with, or progress toward, established Affirmative Action policies.

Standard 29.2(b)

Criminal justice agencies shall develop goals and associated timetables as a means of evaluating achievement of improved equal opportunities within the agencies. Timetables should take into account needs assessments such as agency turnover and budget constraints. These needs assessments should be considered and integrated accordingly when developing the timetable calendar.

Commentary

The purpose of the data collection requirement in Subgoal 29.2 is to identify areas of employment in criminal justice agencies where minority group members and women have been underutilized in the past. The data collected should be sufficient to compare the minorities and women in the available work force with their presence in each job category within the agency. That comparison can then be used to formulate programs to correct any inequities identified.

The determination of a reasonable representation of minorities and women employed by the agency depends on two things: (1) direct service population, and (2) general service population. The direct service population is comprised of the clients actually processed by the agency. An example of a direct service population is the inmate population of a correctional institution. A general service population

is comprised of all the people under the jurisdiction of the agency. For state criminal justice agencies, this means the entire populace of the state; for county criminal justice agencies, it means the entire populace of the county. These are working definitions. It should be noted that some objection is raised on the basis that, for example, a police agency serving an all-white jurisdiction may reason that its police force should be comprised of all white officers. In this case, such an interpretation obviously may hamper Affirmative Action efforts. These judgments should receive careful consideration when analyzing service populations, work force characteristics, job categories, and utilization of minorities and women.

Analysis of job categories is a key element in the development of a workable Affirmative Action program. Each job category must be carefully thought out so that jobs are classified according to similar content, opportunities, wages, and benefits. Work force characteristics and utilization of minorities and women can then be compared to practices of recruitment, retention, and promotion in such a way as to facilitate establishment of truly job-related procedures. Percentage differences between minorities and women in the available work force and underutilization of minorities and women in the agency can be translated into goals and timetables to correct discrepancies. The EEOC and WCCJ have developed convenient forms for the purpose of continual analysis of employee representation in the agency in terms of sex, race, and national origin.

Subgoal 29.3: Recruitment

Criminal justice agencies should search beyond traditional sources for new employees. Efforts should concentrate on increasing the number of qualified minorities and women in the available work force.

Standard 29.3(a)

Non-discriminatory, job-related screening methods and evaluation shall be developed and used for purposes of recruitment.

Standard 29.3(b)

All components of the criminal justice system (police, courts, corrections) shall analyze the sources of professional personnel entering those occupations, and Affirmative Action efforts shall be directed according to the results of those analyses.

Standard 29.3(c)

Whenever the Governor has the opportunity to appoint criminal justice officials, the Governor should do so according to Affirmative Action principles.

Commentary

A review of an agency's recruitment procedures should begin with the scrutiny of recruitment methods and sources, position descriptions, application forms, and the policies and procedures for selection and appointment of new employees. The review should analyze each element of the process to make sure that it is non-discriminatory and job-related, not only on its face but also in its actual operation.

Certain elements of recruitment which are non-discriminatory and job-related on their face may in actual practice work to exclude minorities and women or discourage them from applying. For example, a mobile recruiting station may be set up at a county fair and staffed by minority group members, women, and white males, but if that mobile recruiting station is never located in a minority neighborhood, this otherwise good faith effort may actually work to discourage applications from the minority neighborhood.

The validity of tests for screening purposes has been repeatedly attacked on the grounds that no satisfactory tests have been found that relate to criminal justice occupations in reality. Testing runs the gamut from written examinations to physical agility standards. Until truly non-discriminatory, job-related tests are developed, or until testing is scrapped altogether as a means of screening recruit applications, agencies may find a compromise by using pre-employment tests only as one device in the entire evaluation process, not as rigid criteria for judging an applicant's qualifications. Tests should be regarded as only one indicator of an applicant's future job performance. Agencies should make clear in their recruitment advertising that failure to pass pre-employment tests alone does not disqualify the applicant from consideration.

It is unrealistic to minimize the difficulty encountered in recruiting qualified personnel to serve in criminal justice agencies. The task is probably most difficult in recruiting people to fill professional positions such as assistant district attorney, police officer, correctional officer, legal advisor, and social worker. Criminal justice agencies must exert their influence on the likely sources of personnel for these positions. They may have to use their influence to encourage more minority and female enrollment in law schools, vocational schools, and colleges of arts and sciences.

Another problem encountered is the definition of a minority. A minority as defined by the Equal Employment Opportunities Commission includes Blacks, Spanish-surnamed Americans, American Indians, and Orientals. Is John Jones, whose mother's maiden name was Theresa Valdez, considered a minority for Affirmative Action purposes? Is Samuel Whitedeer, whose ancestors were American Indian, Jewish, and Irish, a minority? While it may seem a frivolous concern, this difficulty is one that may require careful consultation with equal employment opportunity experts.

The recommendation in Standard 29.3(c) is not in any way intended to imply that the occasional appointment of criminal justice officials by the Governor is not now done according to Affirmative Action principles. It is simply meant to reaffirm that the principles of equal opportunities should be considered along with other factors in the appointment process. This is an especially effective course of action by which qualified minorities and women can be introduced into professional occupations in the criminal justice system.

Subgoal 29.4: Advancement, Retention, and Termination

Promotion in criminal justice agencies should be based on ability to perform in the position to be filled. Factors which are not job-related shall not be considered in the selection process.

Standard 29.4(a)

Non-discriminatory, job-related methods of selection and evaluation shall be developed and used for purposes of promotion.

Standard 29.4(b)

All criminal justice agencies shall analyze their lines of career advancement and eliminate or revise those job categories which create dead-end positions.

Commentary

The Affirmative Action commitment does not end with hiring. There must be a continued effort to produce upward mobility in criminal justice agencies for minorities and women.

While promotion should be based strictly on a candidate's ability to perform in the job to which he or she is promoted, and while minorities and women may not have been discriminated against at the point

of recruitment and hiring, past discriminatory practices may have tended to put them at a disadvantage in the competition for promotions. Agencies must work to assure that these disadvantages are removed. They should recommend or provide proper training to prepare all interested candidates for promotional competition.

Agencies must also guard against creating arbitrary, dead-end positions just for the purpose of fulfilling Affirmative Action requirements. This can be done by tracing lines of progression that represent career advancement. If the lines of progression are interrupted by an advancement practice that is discriminatory and not job-related, it should be altered so that the impediment is removed and the affected class of employees is encouraged to compete. In assessing their promotion policies and practices, agencies should examine at least their eligibility requirements, seniority factors, testing procedures, and probationary requirements for discriminatory and non-job-related factors. The use of veterans preference points for promotional purposes is discouraged.

Part of an agency's Affirmative Action record-keeping should be devoted to discipline and termination. Where it is found that minorities or women have been disciplined or terminated disproportionately, the agency should investigate the reasons for these actions in an attempt to find and correct adverse practices.

Subgoal 29.5: Working Conditions

Subtle factors which tend to undermine Affirmative Action recruitment and retention should be identified and corrected.

Standard 29.5(a)

All criminal justice facilities shall provide adequate accommodations for handicapped, female, and male employees.

Standard 29.5(b)

Appointment and periodic evaluation of supervisory and management personnel shall be contingent upon, in part, the individual's Affirmative Action attitude and performance. All supervisory and management personnel of criminal justice agencies should encourage the harmonious intermingling of minorities and women into positions hitherto unoccupied by them. Supervisors and managers should seize every opportunity to aggressively diminish adverse working relationships.

Standard 29.5(c)

Criminal justice agencies shall examine, and wherever influence can be exerted, correct external factors in their communities which may tend to inhibit Affirmative Action efforts; such factors may include living conditions, neighborhood hostilities, discriminatory practices by other public and private organizations, etc. At a minimum, every criminal justice agency shall avoid any appearance of discrimination in its function and composition.

Commentary

Resignations, dismissals, and disciplinary actions of minority group members and women may be an indication of unconscious or concealed practices that subvert the intent of equal employment opportunity efforts. Several examples will serve to illustrate this point. Work areas may be assigned so that women and minorities are relegated to less desirable work stations. Employee associations and clubs may discourage participation by minorities and women. Rest rooms, break rooms, cafeterias, and recreational facilities may not lend themselves to comfortable use by all employees.

While supervisors and managers may be sincere in their Affirmative Action efforts, good faith is not enough. The courts have repeatedly ruled that the simple lack of intent to discriminate is no defense to such a charge. (Griggs v. Duke Power Company, 1971, Franks v. Bowman Transportation Company, 1974) Supervisors and others must actively seek out elements of the agency's operations which tend to perpetuate past discriminatory practices. Supervisors and managers should be held directly responsible and accountable for the attainment of Affirmative Action goals. Hiring and promotion of supervisors and managers, raises, bonuses, and evaluations should depend in part on the individual's success in achieving progress toward those goals. At all levels of management and supervision, subordinates should be regularly reviewed for any manifestations of prejudice. If any employee, supervisor, or manager fosters discrimination contrary to the intent of civil rights law, that employee, supervisor, or manager should be subject to appropriate disciplinary action, depending on the severity of the case.

The agency should demonstrate a commitment to the betterment of the community it serves. Community action to encourage equal employment opportunities should be a significant part of good agency citizenship. Where extra training and education is needed to assist individuals in qualifying for agency employment, it should be provided. The agency should engage in special pre-employment programs to increase the number of minorities and women in the available work force. It should stimulate other community leaders, both public and private,

to solve community problems. Agency employees, supervisors, and managers should serve as advisors, board members, fund raisers, etc., for organizations dedicated to the betterment of the community. Agencies should sponsor seminars, support child care centers, and contribute items to news media as a means of publicizing the cause of equal employment opportunity.

The criminal justice system should provide leadership for the eventual elimination of any factors which tend to sustain an atmosphere of discrimination. The filtering down effect of highly visible, active leadership will be felt in all quarters of the community.

Subgoal 29.6: Unions, Collective Bargaining Associations, Professional Associations, and Subcontractors

Unions, collective bargaining associations, professional associations, and subcontractors which relate to criminal justice occupations should form a commitment to Affirmative Action principles.

Standard 29.6(a)

Principles expressed in the previous subgoals and standards shall apply equally to unions, collective bargaining associations, professional associations, and subcontractors which relate to criminal justice agencies.

Standard 29.6(b)

Agreements between criminal justice agencies and unions, collective bargaining associations, professional associations, or subcontractors shall not include any provisions which may tend to perpetuate past discriminatory practices.

Commentary

Under the National Labor Relations Act of 1935 and related laws, unions are required to fairly represent the interests of their membership. In order to accomplish this mandate, unions must commit themselves to Affirmative Action principles. The ideas expressed in Subgoals 29.1 through 29.5 should be pursued by management and labor alike in their efforts to eliminate discrimination.

Recruitment, hiring, and employment conditions are affected fundamentally by collective bargaining agreements. Job opportunities and grievance procedures may be found in some cases to have a disproportionate effect on minorities and women. Management and labor organi-

zations associated with the criminal justice system should guard against such factors in their negotiations, and provisions which may be discriminatory or not job-related should be excluded from collective bargaining agreements.

Unions and other occupational associations can make a commitment to the advancement of equal employment opportunity ideals. They must first guard against discrimination in their own affairs. They can act as an influence on the community in much the same way as the criminal justice agencies, as discussed under Subgoal 29.5. These ideals are not the exclusive responsibility of either management or labor. They act to the benefit of all concerned.

GOAL NO. 30: VICTIM/WITNESS SERVICES

The rights of victims should be recognized by the criminal justice system, and services to victims and witnesses of crimes should be increased. Each jurisdiction shall decide where victim/witness services are most appropriately provided and implement them accordingly.

Subgoal 30.1: Police

Wisconsin police agencies shall establish policies and programs to ensure that victims of crime are treated with respect and compassion. Police personnel should acknowledge the valuable role of witnesses in investigations.

Standard 30.1(a)

Policies and programs should be established in all law enforcement agencies to accommodate victim/witness needs:

1) Recruit and in-service training should establish a basic approach to police-victim/witness contacts for each officer.

2) Victim/witness advocacy should be delegated within the agency for purposes of answering victims' questions, explaining to a victim what is likely to happen with the case, informing a victim of progress (or lack of it) in an investigation, analyzing victim problems, and recommending improved services as needed.

3) Conditions in victim/witness reception rooms should lessen the tension of the crime and subsequent investigative procedures.

Commentary

"The victim to a large extent is the forgotten person in the criminal process. While ostensibly he is what it is all about, he is the subject of fewer rights and fewer programs of service than any other group coming in contact with the criminal justice system." (Lacy, 1973)

"Nowhere is there hard data on witnesses in criminal cases. In a real sense, our system does not 'see' witnesses in their human dimension. Consequently, we are neglectful of their interests and problems." (Ash, 1972)

Informing victims and witnesses of the progress and results of investigations should be one priority. Another should be the assurance that victim/witness needs, such as transportation, child care, medical care, and legal advice, are met. Consideration of these priorities will increase public confidence in the criminal justice system. Many times people do not report crimes because they consider contact with the police an unpleasant experience. They feel, "Nothing will be done anyway." Raising the level of public confidence should produce a two-fold benefit. First, unless citizens report crimes, there can be no apprehension by law enforcement. Second, a raised level of public confidence will motivate more victims to press charges and follow-up court cases.

The determination of which component of the criminal justice system can best provide victim/witness services will be left to local jurisdictions. This determination should be based on the appropriateness, efficiency, economy, and ease of service. Subgoals 30.1 and 30.2 describe model programs which have been utilized in other jurisdictions. Local jurisdictions may decide to use both programs but, at a minimum, must provide basic victim/witness services at some level of the criminal justice system.

> For most victims, their contact with the criminal process begins and ends with the police, whose responsibilities to them are often less defined than are their responsibilities to the criminal offender. (Lacy, 1973)

Police personnel should receive training which provides a basic approach to police contacts with victim/witnesses. This training should be incorporated into the recruit, in-service, and specialized training received by police personnel.

A designated person or unit in a police agency should be responsible for the needs of victims. The choice of a method to provide victim advocacy should be left to the individual agency. The victim advocate may be an officer, para-professional, or supervisor. The victim advocate role is mainly one of information and referral. Secondary roles include coordination of training described in 30.1(a)(1) and response to the needs of victims and witnesses while they are at the agency facility. Ideally, each employee of the agency is a victim/witness advocate.

Standard 30.1(a)(3) addresses the victim/witness needs if a trip to the police facility is necessary for signing complaints, offender identification, or investigative interviews. Victim/witnesses should not have to wait for long periods not knowing what will happen next or what is expected of them.

Witnesses for the accused and for the victim should be separated. Ill feelings are common in this situation and confrontations should be avoided.

Subgoal 30.2: Courts

The responsibility for victim/witness services at the prosecution level shall be provided either by the District Attorney, the Clerk of Courts, or a combination of services in those offices. (cf. Standard 7.4(c) and Subgoal 13.2)

Standard 30.2(a)

District Attorney offices shall establish victim/witness support units. (cf. Standard 7.5(d) and 15.1(c)) The duties of support units should include at a minimum:

1) Informing witnesses of any changes in court appearances or personal interviews.

2) Assuring that witness needs (e.g., transportation, child care) are met when they appear for interviews and testimony.

3) Informing victims of the progress of a case from initial appearance to final disposition.

4) Assisting victims of crime in obtaining compensation under Wisconsin's Victim Compensation Law.

Standard 30.2(b)

Clerk of Courts offices shall implement and maintain victim/witness information systems. The systems shall include up-to-date case information, daily witness lists, and victim/witness addresses and schedules. The systems shall be coordinated with the District Attorney's victim/witness services.

Commentary

Coordination of victim/witness services may place too large a burden on the District Attorney's office alone. Therefore, designated responsibilities should be assigned to the District Attorney's office and/or the Clerk of Court's office.

Standard 30.2(a) was modeled after Project Turnaround in Milwaukee. District Attorneys should inform witnesses of last minute changes in schedules or case status, since the District Attorney is usually the first to be aware of such changes. The use of para-professionals in victim/witness support units is recommended, due to the heavy workload

in District Attorneys' offices. The implementation of victim/witness support units will eliminate aggravation, frustration, and wasted time and money caused by unnecessary trips to the courthouse by citizens and police.

Since the determination of whether a person is actually a victim (i.e., conviction of the offender) is made at the judicial level, this is the most appropriate level for victim compensation counseling. Subsection (4) of Standard 30.2(a) recommends placement of responsibility for application of the Victim Compensation Law with the District Attorney, rather than police agencies; although both share responsibility in this area.

In 1973, the Citizens Study Committee on Judicial Organization recommended:

> Substantial efforts should be made to keep the victim of a crime as well as other witnesses advised as to the progress of the criminal proceeding. Standard procedures for communicating with such persons should be developed.

Efforts have been instituted in other jurisdictions which address this problem of communication. The Vera Institute of Justice in New York has tested a telephone alert system. Under the alert system, witnesses must be available to come to court within an hour's notice once it has been determined that their testimony is needed.

The Clerk of Courts should be responsible for the actual collection and storage of victim/witness information. In larger jurisdictions, the system can be incorporated into a total court management system. A close liaison must be maintained between the Clerk of Courts and the District Attorney's office in order to keep the system up-to-date and to aid the District Attorney when witnesses must be contacted.

Subgoal 30.3: Corrections

Restitution to victims of crime should be a priority in the correctional system. Selected property offenders should be given the opportunity to repay their victims as an alternative to incarceration. (cf. Standard 16.2(d), 16.2(e), 19.1(b), and Subgoal 18.4)

Standard 30.3(a)

Restitution centers should be established for the purpose of accepting specified property offenders as an alternative to prison terms. (cf. Standard 16.2(r))

Standard 30.3(b)

The property crime victim should have the opportunity to meet with the offender and negotiate a mutually acceptable restitution payment plan. (cf. Standard 15.1(c))

Standard 30.3(c)

Restitution should be a priority in probation and parole agents' casework plans. Periodic progress reports should be made to the victim regarding the status of restitution efforts. (cf. Standards 9.2(d) and 9.2(e))

Commentary

Standards 30.3(a) and (b) are based on a successful restitution project in Minnesota. The Minnesota Restitution Center is a community-based, residential facility which accepts selected adult property offenders from the Minnesota State Prison during the four-month period following their admission. A meeting is arranged between the offender and the victim of the crime and a contract for restitution payment is negotiated. The director of the Center is a Minnesota Department of Corrections Parole Agent and all property offenders in the program are on the agent's caseload.

A program of this type has several measurable benefits. It lowers the monetary cost of maintaining offenders in a penal setting. The offender, by meeting the victim face to face, is compelled to deal with the victim as a human being and accept realistically the responsibility for the offense. The program will reduce taxpayer responsibility for crimes through reduced application of the Victim Compensation Law. Community-based facilities are considered a more acceptable and humane method of dealing with offenders. This type of program will increase public respect for the correctional system, as the public realizes that the system is working not only for the offender but also for victims of crime.

If an offender is placed on probation, restitution is sometimes imposed as a condition. But restitution to the victim is sometimes combined with obligations to court appointed attorneys. In such a case, restitution to the victim must take priority and should be paid as quickly as possible.

In some systems, restitution is accumulated until the whole amount is collected and then disbursed by the Clerk of Courts. This process sometimes takes years. The victim loses confidence in the system, and the rehabilitative influence on the offender is lost. Restitution should be paid to the victim as it is collected. Probation and Parole agents should make restitution to the victim a priority in case planning.

Restitution takes the victim into consideration, and where used as an alternative to incarceration, it is more economical.

Subgoal 30.4: Special Victims and Targets of Crime

The criminal justice system should recognize special victims and targets of crime; i.e., the elderly, battered women, abused children, rape victims, mentally retarded, physically handicapped, foreign language speaking persons. Alternative services should be provided as a referral source for the criminal justice system.

Standard 30.4(a)

The Department of Social Services shall support community based shelter facilities, counseling and referral programs, and community education programs to aid the victims of physical abuse, e.g., battered women and their children.

Commentary

The classes of people listed in the subgoal are not well defined in the criminal justice system and, as a result, do not receive the consideration they deserve.

There are classes of persons who become special victims and targets of crime. These are persons who are easily identified by physical appearance or characteristics. A recent study of victims offers the following typology:

1) The young - Since the young are weak and inexperienced, they are likely to be victims of attack. The young are easily victims not only because they are physically underdeveloped, but because they are immature in moral responsibility and moral resistance.

2) The female - Younger females sometimes become the victims of murder after suffering sexual assault. Older women who are thought wealthy become victims of property crimes. The lesser physical strength of the female has greater significance than that of the young. While the criminal would find little point in committing a property crime against the young, this is not the case with regard to women. Women occupy a biologically determined victim status in sexual crimes.

3) The old - The elder generation holds most positions of wealth. At the same time, the elderly are often times weaker physically. In the combination of wealth and weakness lies the danger. Old people are the ideal victims of predatory crimes.

4) The mentally defective - It is obvious that the insane, the psychopath, and others suffering from any form of mental deficiency are handicapped in any struggle against crime. They are the easy targets.

5) The immigrant - Immigrants are vulnerable because of the difficulties they experience while adjusting to a new culture. Apart from linguistic and cultural difficulties, the immigrant often suffers from poverty, emotional disturbance, and rejection. (Drapkin and Viano, 1974)

There are two options in reducing this crime problem: (1) deterrence or prevention, and (2) harden the target. The second option, hardening the target, includes such concepts as security locked buildings, dead bolt locks, and self-defense training. But however effective these methods are, they do not eliminate or reduce the fear of attack outside secure households. Many women are afraid to leave their homes and walk alone at night. Elderly persons fear a short walk to the corner grocery store.

With proper training, law enforcement personnel will be able to recognize situations which involve special victims and targets and either prevent crimes by their physical presence or make appropriate social service referrals which may resolve the problem. Preventive patrols have been successful in deterring crime against the elderly in Milwaukee County. More importantly, these patrols have reduced the fear which has kept many older persons confined to their homes.

Certain crimes, such as child abuse, wife-beating, and rape, often involve deep psychological or social dysfunctions which will not be resolved by a fine or a criminal penalty. Eventually the offender will return to the same situation which caused the problem. Unless the long-term problem is solved, the short-term problem will recur.

The criminal justice system should eliminate the myths and prejudices held by some criminal justice personnel which impede the willingness of some special victims to pursue cases through the system. These myths apply mainly in the area of husband/wife disputes and incidents of rape. Criminal justice attitudes toward intra-family violence are tied closely to cultural norms which assume that the marriage license and parental status sanction violence which would not be tolerated if it took place outside the family structure.

There should be an awareness in the criminal justice system of the problems of foreign language speaking persons, who are not only targets of crime but also victims of a complex criminal justice system.

Cultural differences, language barriers, and a lack of understanding of the system tend to minimize their participation. Extra care must be taken to ensure that this class of people does not lose all the rights and safeguards guaranteed to every citizen. The Spanish American Organization of Madison, Wisconsin is one such attempt to provide services to a specific group. More agencies are needed which will provide services to all foreign language speaking persons. These offices should, at a minimum, have one lawyer or legal aide who is familiar with the language, culture, and customs of the people served.

The fact that police are usually the first contact made by special victims and targets does not necessarily mean that they are the most appropriate source of services beyond immediate protection. Therefore, special referral services must be available. The Milwaukee Task Force on Battered Women (1976) contends:

> A woman who has been beaten by her husband or boy friend, and who contacts the police or the District Attorney's Office, is confronted by a system unsympathetic to her situation and unable to offer her realistic alternatives. The lack of services and protection for victims and witnesses, causing inconvenience and disillusionment for some, can be deadly for a woman who must return to the violent man she was seeking protection from.

The criminal justice system is not equipped to handle the complex social and psychological problems which are common in many crimes involving special victims and targets. There is a need for alternative social service support on-call 24 hours a day seven days a week. Certain social service personnel may accompany police in situations involving special victims and targets. At the very least they should be available for immediate referral by police.

The Committee realizes that the above discussion does not fully describe or resolve the plight of special victims and targets. It urges further study of special victims and targets and their relationship to the criminal justice system.

Subgoal 30.5: Victim Compensation

Fair mechanisms and standards for awards to all victims of crime shall be given high priority by the State of Wisconsin.

Standard 30.5(a)

The activities and awards of the Victim Compensation Board shall be monitored.

Standard 30.5(b)

The Victim Compensation Board shall fully inform the public through community education, contacts with local units of government, including law enforcement agencies, and private organizations of the existence of victim compensation. The Board shall also urge applications for claims.

APPENDICES

State of Wisconsin \ OFFICE OF THE GOVERNOR

WISCONSIN COUNCIL ON CRIMINAL JUSTICE
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MADISON, WISCONSIN 53703
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CHARLES M. HILL, SR.
EXECUTIVE DIRECTOR

Patrick J. Lucey
Governor

APPENDIX A

MINORITY REPORT ON SENTENCING RECOMMENDATIONS

The Wisconsin Council on Criminal Justice in its adoption of the recommendations of the Special Committee on Criminal Justice Standards and Goals rejected the Committee's majority position on sentencing. The Council chose to substitute the minority position. The Special Committee had recommended the adoption of a determinate sentencing model in Wisconsin. The Council chose to support recommendations for the improvement of the existing parole system. I believe the majority of the Special Committee recognized that the existing parole system is not consistent with an effective corrections program.

Recognizing the need for continued examination of sentencing alternatives, the Council adopted the following resolution:

> "Although this body saw fit and was forced, in fact, to make a choice between the recommendations of the Corrections Committee and the recommendations of the Courts Committee, these issues are critical ones not only to this body but to the state and I would move that every effort on the part of the Council on Criminal Justice to act either independently or in cooperation with the other state agencies toward investigating sentencing alternatives and method shall be continued."

On behalf of the Special Committee, I support this resolution and urge the Governor, State Legislature and other state agencies to proceed with further evaluation of sentencing practices in Wisconsin.

So that the major recommendations of the Special Committee on Criminal Justice Standards and Goals may be a part of this report, the relevant standards are set forth below:

APPENDIX A

MINORITY REPORT ON SENTENCING RECOMMENDATIONS

Standard 17.2(i)

If the judge determines that a sentence of imprisonment is appropriate, the judge shall specify the maximum time to be served by the defendant which shall be reduced only by good time not forfeited, executive clemency, or the granting by the trial court of a petition for reduction of sentence on the grounds of extraordinary and unusual hardship.

Standard 17.4(c)

The maximum statutorily prescribed penalty for property offenses shall not exceed four years, and for all other offenses, except first degree murder, the maximum statutorily prescribed penalty shall not exceed eight years.

Standard 17.4(e)

Except for executive clemency or the granting by the trial court of a reduction of sentence on the grounds of extraordinary and unusual hardship, discretionary release prior to the expiration of an offender's sentence shall be abolished.

Wisconsin has a long tradition of progressive law and policy in the area of criminal justice; our courts and correctional system are often cited as models of advanced procedures to be replicated elsewhere. Thoughtful and continuing examination of all possible sentencing alternatives will ultimately result in an effective and just criminal justice system in Wisconsin.

Sincerely,

David O. Steingraber

David O. Steingraber
Chairman
Special Committee on Criminal
Justice Standards and Goals

DOS:jd

APPENDIX B

PUBLIC HEARING SUMMARY

The following report is a summary of testimony heard during a statewide series of public hearings conducted by the Special Committee on Criminal Justice Standards and Goals. Ten hearings were held between March and May, one in each of the WCCJ planning regions. Approximately 425 people, representing a broad spectrum of criminal justice professionals, local officials, citizen groups and private individuals attended the hearings. The hearings represented the first of five stages in the Standards and Goals Committee's work of investigating problems and issues in the State's criminal justice system and making recommendations for its improvement.

This information was provided to give a general overview of local issues related to the criminal justice system in Wisconsin and was used as background material in considering recommended standards.

POLICING

The topic which received the most attention in the law enforcement area was police officer training. Many people expressed the feeling that the present 240 hours minimum training requirement should be increased. Several police administrators spoke in favor of increasing the training requirements, but added that police training places a heavy financial burden on law enforcement agencies, requiring them to pay the salaries of both the officer in school and the patrol replacement. It was suggested the state seek ways of off-setting some of the costs involved by either setting up more localized training facilities (thus reducing room, board and travel costs) or by subsidizing police salaries during training.

Training for chiefs of police, sheriffs and police management personnel was also discussed. Some people felt that minimum qualification standards should be set for these positions as well as for line officers.

Also mentioned was the need to establish minimum performance requirements for all recruits undergoing training. It was stated that performance requirements and the adoption of statewide salary standards would help to improve the quality of law enofrcement. Periodic evaluation and examination of officers was also suggested.

Another area of concern, particularly for small agencies, was the difficulty they have in obtaining sophisticated equipment. Effective law enforcement, it was said, depends on the use of modern equipment and techniques which are often expensive. The committee was asked to seek ways of making these tools available to agencies who are unable to purchase them.

Comments were also heard concerning the role of the police. One speaker stated that the public perceives the police role as "doing whatever needs to be done." He said a clearer definition of the police function is needed. Others felt that the discretionary powers exercised by police officers in enforcing the law should be reduced, and that police agencies should give a low priority to certain types of crime (such as traffic offenses and possession of marijuana) to free resources to deal with more serious crimes.

Other issues included the recommendation that police recruitment be handled on a statewide basis from a central location, and the suggestion that feasibility studies be undertaken for the consolidation of police services on a regional basis.

COURTS

Sentencing practices and procedures was the issue drawing the most attention in the courts area. It was pointed out that there is a wide disparity in sentencing patterns among judges in Wisconsin. Criminals in different jurisdictions in the state may, for the same felony offense, receive a sentence of probation, a jail term with Huber privileges, or incarceration in a state institution.

Many felt that this difference in sentences showed a weakness in the system and favored the adoption of mandatory sentence guidelines. Others said they would like to see the practice of institutionalizing offenders used less often and the use of probation sentences and community based facilities increased. Still others said that the present system of indeterminate sentencing afforded the greatest flexibility, allowing the judge to take into account the individual circumstances of each case. They argued that mandatory sentence requirements would make the justice system too "mechanical."

The issue of plea bargaining was brought up several times. Attitudes on this topic were also divided. People testified that the practice should be abolished because it tends to erode police morale and effectiveness. Some felt it should be eliminated because if charges are properly made against an offender, there is no need to plea bargain. On the other side, it was felt that practice should be preserved because it provides needed flexibility, further "humanizes" the justice system, and helps relieve case loads.

In the area of court administration, recommendations were made supporting the creation of a single level trial court and an intermediate appellate court, increased court support staff, rules for removal of judges for cause, and a case flow management system to assure speedy, efficient justice.

Several people spoke about the need for full-time district attorneys for counties or combinations of counties. They said that part-time district attorneys have an inherent conflict of interest with their private practices. Increased training for district attorneys and judges was supported.

Defense services was also an area of concern with some saying that public defender offices should be established in every county and others saying that such a system would be too costly for rural areas. They favored instead counties contracting for defense services on a case-by-case basis or a statewide system of legal defense.

CORRECTIONS

Of primary concern at several hearings was the issue of jail facilities and services. Jail facilities in several counties were said to be inadequate and overcrowded. High construction costs were cited as the major factor in holding back improvements in physical jail facilities. It was suggested that the committee should examine ways for the state to assume some of the construction costs.

Several speakers testified as to the lack of services available to jail inmates. Increased educational opportunities, counselling services and employment were seen as constructive programs which should be made available to all inmates in jails. It was also stated that many times these types of services already exist in communities, but need to be coordinated and made available to jail populations. Speakers also testified that there is a need for better training for jail personnel.

Efforts at rehabilitation programs in jails were seen as largely unproductive due to the relatively short time people spend there.

Programs and services for women inmates were emphasized as a special problem area. Because of small female jail populations, programs are often not developed to serve women's needs.

Issues in the area of community corrections received widespread concern. The feeling was expressed that local communities should take more responsibility in seeing that offenders become integrated into the fabric of society. One way is to expand efforts in community involvement, such as Volunteers in Probation programs, it was said. The increased use of halfway houses was suggested as another method for reintegration. The committee was also urged to draft legislation which would remove employment barriers to offenders after the successful completion of a sentence.

A general topic area concerning the philosophy of corrections was discussed during the hearings. Two divergent opinions were identified. One is the attitude that offenders should be punished harshly for their crimes, that incarceration serves as a deterrent to criminal behavior, and that crime can be reduced through use of this model. The other prevalent philosophy expressed was that offenders, while they have a debt to pay for their crime, must be provided with opportunities to learn new skills and attitudes so they can lead useful and productive lives without having to resort to crime for their livelihood or satisfaction.

CRITICAL ISSUES

Two topics facing the Critical Issues Subcommittee received substantial attention: alcohol and drug abuse programs and laws governing sexual conduct.

A considerable amount of testimony, particularly in rural areas, was heard which supported the continuation of WCCJ funding for alcohol and drug programs. Speakers said that 51.42 Boards often are not able to handle all the referrals made to them. A great proportion of the referrals for alcohol and drug problems originate from the criminal justice system, and there is a need to develop a cooperative and coordinated effort to deal with the problem which includes the components of the criminal justice system. It was also stated that some law enforcement agencies are experiencing difficulty in dealing with the public inebriate law. They said a great deal of law enforcement time is spent in transporting inebriates to detoxification centers and that 51.42 Boards are sometimes reluctant to reimburse them for the expense involved.

Concerning sexual conduct laws, the committee heard several speakers oppose the suggested repeal of present Wisconsin statutes. The participants upheld the right of government to regulate morality and stated that the Bible should serve as a guide for conduct and morals.

Other topics included:

Gun Control - Several people addressed this topic on all sides of the issue. Some speakers opposed any restrictions on gun ownership. Some felt limited registration requirements and a ban on certain types of firearms would ease the problem. Others expressed the attitude that there should be a total ban on handgun ownership.

Victim Services - All speakers who addressed this topic favored the concept of providing services and compensation for the victim of crimes.

Information Systems - The need for a central information system containing data on probationers, parolees, and individuals with outstanding charges was expressed. It was felt this type of system would be useful for law enforcement agencies and district attorneys.

GENERAL COMMENTS

Public Education/Information

Several participants urged that more public education and information efforts should be developed to make individuals more knowledgeable on the operation of the criminal justice system. It was felt that a great deal of confusion exists among the public concerning the problems of insuring justice in society. This confusion leads to a public attitude which sees the justice system as not living up to its responsibilities. Public information and education programs were seen as a way to correct this problem.

Coordination

A more coordinated approach should be taken when considering criminal justice issues. It was pointed out that changes in policies and practices in one area affect all other parts of the system.

Rural/Urban Differences

Speakers said that any recommended standards should take into account the differences between urban and rural counties in the state.

Enforcement Priorities

It was suggested that the committee recommend priorities for the enforcement of laws. Some said increased efforts should be placed on white collar and juvenile crime.

Research

Another view expressed was the need for more research into the causes of crime. Evaluation efforts, it was said, should also be increased to determine which programs are the most effective in alleviating problems in the criminal justice system.

Juveniles

The problem of juvenile crime was addressed by several speakers during the hearings.

APPENDIX C

SURVEY OF REGIONAL COUNCIL MEMBERS AND PLANNING DIRECTORS

The following is the result of an attitude survey administered to WCCJ Regional Council members and Regional Planning Directors. The survey was conducted to elicit participation and input into the Standards and Goals Process. The interpretation of the survey results has been broken down by subcommittee topic area.

STANDARDS AND GOALS ATTITUDE SURVEY

A total of ninety-nine usable questionnaires were returned. The breakdown by region is as follows:

Region	Number
Upper West Central	20
Lower West Central	16
Southeast	12
Metropolitan Milwaukee	12
Central	11
East Central	11
Southwest	10
Northwest	3
South Central	3
Northeast	0
Unknown	1

The numbers in each of the response categories on the enclosed questionnaire are the percent of those individuals who answered that question in that manner. For example, 50% of the respondents "strongly agree" with the statement (Item 2) that "Criminals receive more attention and help than victims and witnesses." Another 42% also "agree."

A separate analysis indicates that there are no statistically significant differences in responses to any of the questions by region. When Regional Planning Directors are compared to Regional Council members, there are significant differences in the responses to only two questions. With regards to Item 28, Council members tend to feel that "active involvement of interested citizens and groups" is more important than do Planning Directors, as a whole. Planning Directors also seem to agree that "Prisons fail to rehabilitate prisoners" (Item 22) more than Council members do.

General Criminal Justice Issues

In the opinion of those surveyed, both the causes and possible solutions of the problems associated with the criminal justice system are associated with matters not normally included in the criminal justice system. Ninety percent of those responding felt that the home environment was the greatest contributor to criminal behavior. Eighty-eight percent disagreed with the statement that agencies and organizations outside the justice system can do little to prevent crime and delinquency. Fifty-four percent felt that instead of duplicating existing services, the justice system should contract for services from private agencies. Groups outside of criminal justice were felt to be

of great importance to the success of the system. Two other questions further emphasize this point. Eighty-seven percent agreed that private agencies, civic, religious, and professional organizations should play a greater role in juvenile and criminal justice. Ninety percent felt that criminal and juvenile justice agencies will not improve without the active involvement of interested citizens and groups. Eighty-six percent of those polled said that crimes reported to police are not true indicators of the crime problem.

Despite a concern for matters outside the system, ninety percent of those surveyed agreed that the criminal justice system could do more to prevent crime and delinquency.

Methods felt to be useful for the criminal justice system in reducing crime do not clearly emerge from the survey, but several positions about the methods that won't work are evident. Fifty-eight percent felt that reinstatement of the death penalty would not reduce crime. Seventy-two percent felt that increasing the number of police was not the best method of reducing crime.

Other attitudes reflected in the survey results are:

1) Ninety-two percent agree that criminals receive more attention and help than victims and witnesses;

2) Eighty-five percent feel all defendants do not receive equal treatment by police, courts, and corrections;

3) Ninety-one percent disagree with the statement that most criminals are like the rest of us, only they get caught;

4) Eighty-eight percent do not feel that most people who commit crimes are "sick."

Courts Subcommittee

Several items included in the survey relate specifically to court issues. In the process that occurs before sentencing, seventy-three percent of the respondents felt that the free legal services that are available are adequate. Sixty percent felt that public safety would be better served if many juvenile and adult offenders were diverted out of the criminal justice system before prosecution. Eighty-seven percent of those polled felt there is practically no supervision over prosecutors' discretion in plea bargaining.

The sentencing process itself was the subject of several questions. Sixty-seven percent of those polled felt that mandatory minimum sentences should be encouraged. Seventy-one percent believed that

the sentencing process itself was the subject of several questions. Seventy-one percent believed that offenders who commit the same crimes under similar circumstances do not receive similar sentences. Parole and executive clemency do not remedy this discrepency according to sixty-nine percent of the poll.

Law Enforcement Subcommittee

Three questions included in the survey relate specifically to law enforcement issues. Eighty-four percent of those polled believe that civilians should take over "noncriminal" functions that now take up over half the time of trained officers. Seventy-four percent feel that police corruption is a minor problem. Fifty-seven percent feel that citizen review boards are useful mechanisms for increasing police accountability.

Critical Issues Subcommittee

Four issues of specific importance to the Critical Issues Subcommittee were included in the survey. Sixty-one percent of the respondents felt that gun control laws would have little effect on the crime problem. Fifty-five percent felt that nearly half the people arrested have committed no crime involving a victim. This questions did not make clear whether a victim was only a person bodily injured or whether property crime victims should be included. Fifty-one percent agreed and forty-nine percent disagreed with the statement "Drug addiction is a medical, not a criminal problem." Eighty-eight percent of those polled felt victims of crimes should be compensated for their losses.

Corrections Subcommittee

Several issues relate specifically to corrections. Rehabilitative and deterrent effects of various dispositions were examined. Sixty-seven percent of the respondents felt that harsh sentences discourage others from committing crimes. Fifty-five percent felt that prison is more effective than probation. Sixty-five percent of those surveyed felt that the average prison inmate is indeed dangerous and could not be better dealt with in community-based programs. Sixty-seven percent believed that mandatory minimum sentences should be encouraged. Sixty-one percent indicated disagreement with the statement that no more jails or prisons should be built until alternative solutions have been fully explored.

The greatest concern of those surveyed seems to be with security arrangements. Seventy-eight percent felt that prisons fail to rehabilitate prisoners. Seventy-two percent said that citizens should accept, not resist, community-based programs for offenders in their neighborhoods. Eighty-nine percent disagreed with the statement that people with a criminal record should be given low priority in the job market.

1. I am a:

Regional Planning Director	7
Regional Council Member	92

(Due to rounding all percentages may not add to 100%)	% Strongly Agree	% Agree	% Disagree	% Strongly Disagree
2. Criminals receive more attention and help than victims and witnesses	50	42	6	2
3. Agencies and organizations outside the justice system can do little to prevent crime and delinquency	4	7	44	44
4. Gun control laws would have little effect on the crime problem	21	40	25	13
5. Home environment is the greatest contributor to criminal behavior	23	67	9	1
6. Instead of duplicating existing services, the justice system should contract for services from private agencies	6	48	35	11
7. Nearly half the people arrested have committed no crime involving a victim	9	46	39	7
8. Harsh sentences discourage others from committing crime	14	53	26	7
9. Probation is more effective than prisons	8	37	40	15
10. The criminal justice system could do more to prevent crime and delinquency	21	69	7	2
11. Civilian personnel should perform the noncriminal functions that now take up more than half the time of trained police officers	31	53	16	0
12. Public safety would be better served if many juvenile and adult offenders were diverted out of the criminal justice system before prosecution	14	46	32	8
13. Parole and executive elemency serve to correct unequal sentences for like crimes	6	25	57	12

	% Strongly Agree	% Agree	% Disagree	% Strongly Disagree
14. Reinstatement of the death penalty would reduce crime	11	31	44	14
15. There is practically no supervision over the prosecutor's discretion in plea bargaining	26	61	12	1
16. Private agencies, civic, religious and professional organizations should play a greater role in juvenile and criminal justice	36	51	12	1
17. Citizens should accept, not resist, community-based programs for offenders in their neighborhoods	20	52	25	3
18. People with a criminal record should be given low priority in the job market	3	8	65	24
19. All defendants receive equal treatment by police, courts and corrections	4	13	55	28
20. Most criminals are like the rest of us, only they get caught	2	7	64	27
21. Most people who commit crime are "sick"	1	11	68	20
22. Prisons fail to rehabilitate prisoners	15	63	19	3
23. No more jails or prisons should be built until alternative solutions have been fully explored	6	33	44	17
24. Most people in prisons are nondangerous and could be better dealt with in community-based programs	9	27	50	15
25. Crimes reported to police are true indicators of the crime rate	0	13	66	20
26. The best way to reduce crime is to put more police on the street	3	25	57	15
27. Offenders who commit the same crimes under similar circumstances receive similar sentences	2	28	52	19
28. Criminal and juvenile justice agencies will not improve without the active involvement of interested citizens and groups	34	56	7	3

APPENDIX C

	% Strongly Agree	% Agree	% Disagree	% Strongly Disagree
29. The quality of free legal service to criminal defendants is generally substandard	7	19	60	13
30. Drug addiction is a medical, not criminal problem	7	44	37	12
31. Police corruption is a minor problem	14	60	21	5
32. Mandatory minimum sentences should be encouraged	21	46	28	5
33. Citizen review boards are a useful mechanism for increasing police accountability	7	50	30	13
34. The victims of crimes should be compensated for their losses	24	64	10	2

APPENDIX D

METROPOLITAN MILWAUKEE PUBLIC OPINION SURVEY

This survey was developed, administered and compiled by the Metropolitan Milwaukee Criminal Justice Council.

METROPOLITAN MILWAUKEE CRIMINAL JUSTICE COUNCIL

Richard W. Glaman
Chairman

Mark M. Rogacki
Executive Director

BRUMDER BUILDING – ROOM 709
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Milwaukee, Wisconsin 53203
Phone (414) 276-2218

February 18, 1976

Public Opinion Survey
SURVEY 400

OBJECTIVE:

In order to aid the Metropolitan Milwaukee Criminal Justice Council in the 1977 planning year, Metro staff undertook the task of accumulating input from a representative segment of metro Milwaukee area citizens relative to their feelings about crime and the criminal justice system.

Furthermore, the Metropolitan Milwaukee Criminal Justice Council will make the survey results available to any governmental and private agencies, state legislators, civic leaders, and citizens' groups so requesting.

Due to limitations in staff manpower and budget, the gathering of citizen opinions could only be facilitated through the use of a telephone survey.

PURPOSE:

The purpose of this survey was two-fold. The main concern, as mentioned above, was to obtain the opinions of metro Milwaukee residents regarding current issues in the field of criminal justice. In addition, selective demographic information was gathered in an attempt to determine what factors, if any, influenced the respondents' opinions (e.g., age, sex, race, homeownership, etc.).

SELECTION OF SAMPLE:

The sample used for this survey was drawn at random from the Milwaukee Metroplan Telephone Directory (1975). Four hundred (400) telephone numbers were selected, one from every third page of the directory. In order to determine the respondent's particular census tract, home addresses were also documented. After the respondent's census tract was determined, and if the respondent elected not to receive a copy of the survey, those particular addresses were destroyed. The remaining addresses were kept for the purpose of mailing out survey results to the requesting participants.

Public Opinion Survey

Prior to the administration of the Public Opinion Survey 400, a pretest sample of forty (40) respondents' telephone numbers were selected, one from every 37 pages in the directory. The purpose of the pretest was to aid the interviewers in working out any potential problems with respect to the questions or gathering of opinions and information.

Upon completion of the pretest, it was decided that certain questions needed to be reworded to eliminate problems of syntax and level of diction.

QUESTIONS:

The questionnaire contained thirty-six (36) questions. The first twenty-nine (29) asked for either a "yes", "no", or "undecided" answer. The last seven questions provided multiple choice answers.

The nature of the questions were purposely general so as to prevent the possibility of providing any prejudicial information.

SUMMARY:

While we don't want to make definitive statements regarding "all" citizens in Region X, for the purposes of aiding the Metro Council in its 1977 planning process, the results of the survey offer valuable information as to how 277 participants responded relative to the questions.

CJT:pr

Public Opinion Survey
1977 Planning

SURVEY 400

I.	Total "Refusals to Participate" in Survey:	123	(30.75%)
II.	Total Respondents:	277	(69.25%)
	Total Males	85	(30.68%)
	*Total Females	192	(69.31%)
	Average age of Males	42.7 years	
	Average age of Females	45.3 years	
III.	Total Minority Respondents:	31	(11.19%)
	Total Males	12	(38.70%)
	*Total Females	19	(61.29%)
	Average age of Males	38.4 years	
	Average age of Females	45.5 years	
IV.	Total White Respondents:	246	(88.8 %)
	Total Males	73	(29.67%)
	*Total Females	173	(70.32%)
	Average age of Males	47.6 years	
	Average age of Females	44.3 years	
V.	Total Homeowners:	162	(58.48%)
	Total Minority	15	(9.25%)
	Total Whites	147	(90.74%)
	Average age of Homeowners	48.5 years	
VI.	Total Non-homeowners:	115	(41.51%)
	Total Minority	16	(13.91%)
	Total Whites	99	(86.08%)
	Average age of Non-homeowners	39.0 years	

The tables included in this Public Opinion Survey represent a partial demographic breakdown. Those individuals interested in additional data analysis (e.g., comparing blue collar to white collar responses; homemakers to student responses; grade school to college educated, etc.), may request it from staff.

* The high number of female responses can be attributed to the fact that the survey was conducted between 9:00 AM and 4:30 P.M.

Public Opinion Survey
1977 Planning

SURVEY 400

Occupational Levels:

White Collar	76	(27.43%)
Blue Collar	77	(27.79%)
Homemakers	108	(38.98%)
Students	16	(5.77%)

Educational Levels:

Grade School Only	46	(16.6 %)
High School Only	125	(45.12%)
High School plus one year Trade or Technical School	16	(5.77%)
College	76	(27.43%)
Post-College	14	(5.05%)

Public Opinion Survey
1977 Planning

SURVEY 400

Census Tract _____ Age _____ Sex _____ Race _____

Occupation _____ Homeowner _____ Level of Education ____

ANSWER Yes, No or Undecided, where appropriate.

1. Would you favor legislation prohibiting the personal ownership of handguns?

	Yes	No	Undecided
Total Responses	134 (48.37%)	114 (41.15%)	29 (10.46%)
Whites	123 (50.0)	98 (39.83)	25 (10.16)
Minorities	11 (35.48)	16 (51.61)	4 (12.9)
Homeowners	73 (45.06%)	69 (42.59)	20 (12.34)
Non-homeowners	61 (53.04)	45 (39.13)	9 (7.82)

2. Would you favor repeal of the age of adulthood from 18 back to 21 years of age?

	Yes	No	Undecided
Total Responses	133 (48.01%)	126 (45.48%)	18 (6.49%)
Whites	115 (46.74)	113 (45.93)	18 (7.31)
Minorities	18 (58.06)	13 (41.93)	--
Homeowners	84 (51.85)	66 (40.74)	12 (7.40)
Non-homeowners	49 (42.61%)	60 (52.17)	6 (5.21)

3. Would you favor reinstitution of the death penalty for certain crimes of violence?

	Yes	No	Undecided
Total Responses	144 (51.98%)	91 (32.85%)	42 (15.16%)
Whites	135 (54.87)	77 (31.3)	34 (13.82)
Minorities	9 (29.03)	14 (45.16)	8 (25.8)
Homeowners	90 (55.55)	51 (31.48)	21 (12.96)
Non-homeowners	54 (46.95)	40 (34.78)	21 (18.26)

Public Opinion Survey

4. Would you favor decriminalization of marijuana for personal use if the user has in his possession less than one ounce? (Decriminalization does not mean legalization--it means changing the offense from a felony to a misdemeanor.)

	Yes	No	Undecided
Total Responses	133 (48.01%)	117 (42.23%)	27 (9.74%)
Whites	119 (48.37)	104 (42.27)	23 (9.34)
Minorities	14 (45.16)	13 (41.93)	4 (12.9)
Homeowners	81 (50.0)	67 (41.35)	14 (8.64)
Non-homeowners	52 (45.21)	50 (43.47)	13 (11.3)

5. Do you favor the regulation requiring all off-duty policemen to carry handguns?

	Yes	No	Undecided
Total Responses	99 (35.74%)	140 (50.54%)	38 (13.71%)
Whites	89 (36.17)	123 (50.0)	34 (13.82)
Minorities	10 (32.25)	17 (54.83)	4 (12.9)
Homeowners	44 (27.16)	98 (60.49)	20 (12.34)
Non-homeowners	55 (47.82)	42 (36.52)	18 (15.65)

6. Do you feel plea bargaining:

	Should be Used	Should Not be Used	Undecided
Total Responses	56 (20.21%)	90 (32.49%)	131 (47.29%)
Whites	50 (20.32)	84 (34.14)	112 (45.52)
Minorities	6 (19.35)	6 (19.35)	19 (61.29)
Homeowners	28 (17.28%)	55 (33.95)	79 (48.76)
Non-homeowners	28 (24.34)	35 (30.43)	52 (45.21)

7. Would you favor the legalization of gambling under state regulation and control? (including all games of chance)

	Yes	No	Undecided
Total Responses	163 (58.84%)	92 (33.21%)	22 (7.94%)
Whites	149 (60.56)	77 (31.3)	20 (8.13)
Minorities	14 (45.16)	15 (48.38)	2 (6.45)
Homeowners	95 (58.64)	54 (33.33)	13 (8.02)
Non-homeowners	68 (59.13)	38 (33.04)	9 (7.82)

Public Opinion Survey

8. Do you favor the recent change in Wisconsin law whereby drunkenness is not a criminal offense?

	Yes	No	Undecided
Total Responses	146 (52.7 %)	103 (37.18%)	28 (10.1 %)
Whites	126 (51.21)	94 (38.21)	26 (10.56)
Minorities	20 (64.51)	9 (29.03)	2 (6.45)
Homeowners	82 (50.61)	59 (36.41)	21 (12.96)
Non-homeowners	64 (55.65)	44 (38.26)	7 (6.08)

9. Would you favor the legalization of prostitution under state regulation and control?

	Yes	No	Undecided
Total Responses	86 (31.04%)	164 (59.2 %)	27 (9.74%)
Whites	78 (31.7)	143 (58.13)	25 (10.16)
Minorities	8 (25.8)	21 (67.74)	2 (6.45)
Homeowners	9 (30.86)	93 (57.4)	19 (11.72)
Non-homeowners	36 (31.3)	71 (61.73)	8 (6.95)

10. Do you support additional recruitment of minority members for police departments?

	Yes	No	Undecided
Total Responses	170 (61.37%)	73 (26.35%)	34 (12.27%)
Whites	148 (60.16)	69 (28.04)	29 (11.78)
Minorities	22 (70.96)	4 (12.9)	5 (16.12)
Homeowners	103 (63.58)	43 (26.54)	16 (9.87)
Non-homeowners	67 (58.26)	30 (26.08)	18 (15.65)

11. Would you agree with the following statement: Juveniles who have committed "serious offenses" are best treated in the community rather than in secure institutions?

	Yes	No	Undecided
Total Responses	104 (37.54%)	114 (41.15%)	59 (21.29%)
Whites	94 (38.21)	99 (40.24)	53 (21.54)
Minorities	10 (32.25)	15 (48.38)	6 (19.35)
Homeowners	54 (33.33)	71 (43.82)	37 (22.83)
Non-homeowners	50 (43.47)	43 (37.39)	22 (19.13)

Public Opinion Survey

12. Would you favor a repeal of the Huber Law?

	Yes	No	Undecided
Total Responses	46 (16.6 %)	195 (70.39%)	36 (12.99%)
Whites	37 (15.04)	175 (71.13)	34 (13.82)
Minorities	9 (29.03)	20 (64.51)	2 (6.45)
Homeowners	23 (14.19)	118 (72.83)	21 (12.96)
Non-homeowners	23 (20.0)	77 (66.95)	15 (13.04)

13. Would you favor a statewide public defender system?

	Yes	No	Undecided
Total Responses	187 (67.5 %)	37 (13.35%)	53 (19.13%)
Whites	159 (64.63)	36 (14.63)	51 (20.73)
Minorities	28 (90.32)	1 (3.22)	2 (6.45)
Homeowners	102 (62.96)	28 (17.28)	32 (19.75)
Non-homeowners	85 (73.91)	9 (7.82)	21 (18.26)

14. Would you favor government compensation to victims of crime when personal injury occurs?

	Yes	No	Undecided
Total Responses	170 (61.37%)	72 (25.99%)	35 (12.63%)
Whites	146 (59.34)	68 (27.64)	32 (13.0)
Minorities	24 (77.41)	4 (12.9)	3 (9.67)
Homeowners	91 (56.17)	46 (28.39)	25 (15.43)
Non-homeowners	79 (68.69)	26 (22.6)	10 (8.69)

15. Do you feel the bail bond system in Milwaukee County is applied:

	Fairly	Unfairly	Undecided
Total Responses	28 (10.1 %)	57 (20.57%)	192 (69.31%)
Whites	26 (10.56)	49 (19.91)	171 (69.51)
Minorities	2 (6.45)	8 (25.8)	21 (67.74)
Homeowners	15 (9.25)	33 (20.37)	114 (70.37)
Non-homeowners	13 (11.3)	24 (20.86)	78 (67.82)

Public Opinion Survey

16. Would you favor conjugal visitation for prison inmates and their wives (or husbands, for women prisoners)?

	Yes	No	Undecided
Total Responses	162 (58.48%)	89 (32.12%)	26 (9.38%)
Whites	138 (56.09)	85 (34.55)	23 (9.34)
Minorities	24 (77.41)	4 (12.9)	3 (9.67%)
Homeowners	81 (50.0)	61 (37.65)	20 (12.34)
Non-homeowners	81 (70.43)	28 (24.34)	6 (5.21)

17. Would you favor the removal of civil disabilities for ex-offenders (give them back their right to vote, to enter the tavern business, etc.)?

	Yes	No	Undecided
Total Responses	152 (54.87%)	66 (23.82%)	59 (21.29%)
Whites	135 (54.87)	59 (23.98)	52 (21.13)
Minorities	17 (54.83)	7 (22.58)	7 (22.58)
Homeowners	84 (51.85)	44 (27.16)	34 (20.98)
Non-homeowners	68 (59.13)	22 (19.13)	25 (21.73)

18. Have you ever heard of the Law Enforcement Assistance Administration?

	Yes	No	Undecided
Total Responses	39 (14.07%)	233 (84.11%)	5 (1.8 %)
Whites	33 (13.41)	209 (84.95)	4 (1.62)
Minorities	6 (19.35)	24 (77.41)	1 (3.22)
Homeowners	20 (12.34)	138 (85.18)	4 (2.46)
Non-homeowners	19 (16.52)	95 (82.6)	1 (.86)

19. Should a rape victim's past sexual behavior have <u>any</u> bearing in the weighing of evidence at the trial of the accused?

	Yes	No	Undecided
Total Responses	74 (26.71%)	177 (63.89%)	26 (9.38%)
Whites	68 (27.64)	153 (62.19)	25 (10.16)
Minorities	6 (19.35)	24 (77.41)	1 (3.22)
Homeowners	47 (29.01)	104 (64.19)	11 (6.79)
Non-homeowners	27 (23.47)	73 (63.47)	15 (13.04)

Public Opinion Survey

20. Do the police in your community maintain good relations with you?

	Yes	No	Undecided
Total Responses	221 (79.78%)	38 (13.71%)	18 (6.49%)
Whites	202 (82.11)	29 (11.78)	15 (6.09)
Minorities	19 (61.29)	9 (29.03)	3 (9.67)
Homeowners	137 (84.56)	20 (12.34)	5 (3.08)
Non-homeowners	84 (73.04)	18 (15.65)	13 (11.3)

21. Would you favor destruction of juvenile records once an adolescent reaches legal age of adulthood?

	Yes	No	Undecided
Total Responses	113 (40.79%)	120 (43.32%)	44 (15.88%)
Whites	97 (39.43)	110 (44.71)	39 (15.85)
Minorities	16 (51.61)	10 (32.25)	5 (16.12)
Homeowners	69 (42.59)	65 (40.12)	28 (17.28)
Non-homeowners	44 (38.26)	55 (47.82)	16 (13.91)

22. Have you ever heard of the Metropolitan Milwaukee Criminal Justice Council?

	Yes	No	Undecided
Total Responses	59 (21.29%)	212 (76.53%)	6 (2.16%)
Whites	51 (20.73)	191 (77.64)	4 (1.62)
Minorities	8 (25.8)	21 (67.74)	2 (6.45)
Homeowners	32 (19.75)	126 (77.79)	4 (2.46)
Non-homeowners	27 (23.47)	86 (74.78)	2 (1.73)

23. Would you favor the establishment of a half-way house for ex-offenders next door to your home?

	Yes	No	Undecided
Total Responses	112 (40.43%)	126 (45.48%)	39 (14.07%)
Whites	95 (38.61)	116 (47.15)	35 (14.22)
Minorities	17 (54.83)	10 (32.25)	4 (12.9)
Homeowners	55 (33.95)	84 (51.85)	23 (14.19)
Non-homeowners	57 (49.56)	42 (36.52)	16 (13.91)

Public Opinion Survey

24. Do you feel more emphasis should be placed upon educating the average citizen in relation to what constitutes a law-breaking act?

	Yes	No	Undecided
Total Responses	237 (85.55%)	28 (10.1 %)	12 (4.33%)
Whites	208 (84.55)	28 (11.38)	10 (4.06)
Minorities	29 (93.54)	--	2 (6.45)
Homeowners	135 (83.33)	21 (12.96)	6 (3.7)
Non-homeowners	102 (88.69)	7 (6.08)	6 (5.21)

25. Do you feel increasing the manpower of the police force would decrease crime significantly?

	Yes	No	Undecided
Total Responses	141 (50.9 %)	113 (40.79)	23 (8.3 %)
Whites	121 (49.18)	105 (42.68)	20 (8.13)
Minorities	20 (64.51)	8 (25.8)	3 (9.67)
Homeowners	89 (54.93)	58 (35.8)	15 (9.25)
Non-homeowners	52 (45.21)	55 (47.82%)	8 (6.95)

26. Do you believe institutionalizing juveniles and/or placing them on probation changes delinquent behavior?

	Yes	No	Undecided
Total Responses	81 (29.24%)	126 (45.48%)	70 (25.27%)
Whites	73 (29.67)	113 (45.93)	60 (24.39)
Minorities	8 (25.8)	13 (41.93)	10 (32.25)
Homeowners	45 (27.77)	76 (46.91)	41 (25.3)
Non-homeowners	36 (31.3)	50 (43.47)	29 (25.21)

27. If you could be guaranteed a significant decrease in the crime rate, would you be willing to pay an additional increase in taxes?

	Yes	No	Undecided
Total Responses	212 (76.53%)	44 (15.88%)	21 (7.58%)
Whites	189 (76.82)	39 (15.85)	18 (7.31)
Minorities	23 (74.19)	5 (16.12)	3 (9.67)
Homeowners	121 (74.69)	28 (17.28)	13 (8.02)
Non-homeowners	91 (79.13)	16 (13.91)	8 (6.95)

Public Opinion Survey

28. Have you ever been the victim of a crime?

	Yes	No	Undecided
Total Responses	89 (32.12%)	188 (67.87%)	---
Whites	79 (32.11)	167 (67.88)	---
Minorities	10 (32.25)	21 (67.74)	---
Homeowners	51 (31.48)	111 (68.51)	---
Non-homeowners	38 (33.04)	77 (66.95)	---

29. If yes, did you report it?

	Yes	No	Undecided
Total Responses	77 (86.51%)	12 (13.48%)	---
Whites	70 (88.6)	9 (11.39)	---
Minorities	7 (70.0)	3 (30.0)	---
Homeowners	45 (88.23)	6 (11.76)	---
Non-homeowners	32 (84.21)	6 (15.78)	---

MULTIPLE CHOICE

1. Do you feel _____ in your neighborhood today as you did five or ten years ago?

	Less Safe	More Safe	As Safe	Undecided
Total Responses	153 (55.23%)	14 (5.05%)	83 (29.96%)	27 (9.74%)
Whites	134 (54.47)	11 (4.47)	76 (30.89)	25 (10.16)
Minorities	19 (61.29)	3 (9.67)	7 (22.58)	2 (6.45)
Homeowners	92 (56.79)	7 (4.32)	55 (33.95)	8 (4.93)
Non-homeowners	61 (53.04)	7 (6.08)	28 (24.34)	19 (16.52)

2. Do you feel parole boards are releasing offenders:

	Too Soon	Not Soon Enough	Appropri-ately	Not Sure
Total Responses	135 (48.73%)	6 (2.16%)	15 (5.41%)	121 (43.68%)
Whites	126 (51.21)	4 (1.62)	11 (4.47)	105 (42.68)
Minorities	9 (29.03)	2 (6.45)	4 (12.9)	16 (51.61)
Homeowners	84 (51.85)	1 (0.61)	7 (4.32)	70 (43.2)
Non-homeowners	51 (44.34%)	5 (4.34)	8 (6.95)	51 (44.34)

Public Opinion Survey

3. Do you feel probation is used:

	Too Frequently	Not Frequently Enough	Appropriately	Undecided
Total Responses	106 (38.26%)	17 (6.13%)	39 (14.07%)	115 (41.51%)
Whites	96 (39.02)	16 (6.5)	37 (15.04)	97 (39.43)
Minorities	10 (32.25)	1 (3.22)	2 (6.45)	18 (58.06)
Homeowners	64 (39.5)	9 (5.55)	20 (12.34)	69 (42.59)
Non-homeowners	42 (36.52)	8 (6.95)	19 (16.52)	46 (40.0)

4. Provided there is no further contact with the criminal justice system, adult criminal records should be destroyed after:

	Five Years	Ten Years	Never	Undecided
Total Responses	40 (14.44%)	67 (24.18%)	89 (32.12%)	81 (29.24%)
Whites	32 (13.0)	64 (26.01)	82 (33.33)	68 (27.64)
Minorities	10 (32.25)	1 (3.22)	2 (6.45)	18 (58.06)
Homeowners	24 (14.81)	44 (27.16)	52 (32.09)	42 (25.92)
Non-homeowners	16 (13.91)	23 (20.0)	37 (32.17)	39 (33.91)

5. Do you feel the overall quality of law enforcement in the past five years has:

	Improved	Declined	Remained Constant	Undecided
Total Responses	66 (23.82%)	88 (31.76%)	62 (22.38%)	61 (22.02%)
Whites	60 (24.39)	80 (32.52)	58 (23.57)	48 (19.51)
Minorities	6 (19.35)	8 (25.8)	4 (12.9)	13 (41.93)
Homeowners	45 (27.77)	51 (31.48)	39 (24.07)	27 (16.66)
Non-homeowners	21 (18.26)	37 (32.17)	23 (20.0)	34 (29.56)

6. Do you feel suburbs receive _____ law enforcement protection than the immediate Milwaukee area?

	Better	Less	Equal	Undecided
Total Responses	81 (29.24%)	36 (12.99%)	80 (28.88%)	80 (28.88%)
Whites	70 (28.45)	34 (13.82)	73 (29.67)	69 (28.04)
Minorities	11 (35.48)	2 (6.45)	7 (22.58)	11 (35.48)
Homeowners	54 (33.33)	18 (11.11)	53 (32.71%)	37 (22.83)
Non-homeowners	27 (23.47)	18 (15.65)	27 (23.47)	43 (37.39)

Public Opinion Survey

7. Do you believe a prison should be a place for:

	Punishment	Isolation from Society	Rehabilitation
Total Responses	49 (17.68%)	19 (6.85%)	209 (75.45%)
Whites	42 (17.07)	17 (6.91)	187 (76.01)
Minorities	7 (22.58)	2 (6.45)	22 (70.96)
Homeowners	31 (19.13)	10 (6.17)	121 (74.69)
Non-homeowners	18 (15.65)	9 (7.82)	88 (76.52)

CJT:pr

A P P E N D I X F

SURVEY AND DESCRIPTIVE ANALYSIS OF WISCONSIN POLICE AGENCIES

Prepared for the
Standards and Goals Project
Wisconsin Council on Criminal Justice

By: Loren Rathert
Research Analyst

September, 1976

In March 1974 the Wisconsin Council on Criminal Justice conducted a survey of Wisconsin police agencies. This report represents the first analysis of that survey data and is intended to provide an overview of some perceived needs and operational characteristics of Wisconsin police.

Because of the size of the survey and the delay in the analysis of the data, the decision was made to analyze only those response areas that met one of the following criteria:

1. The responses provided a data base upon which future studies could be conducted.

2. The responses filled data gaps in current information availability.

3. The responses directly applied to issues and questions being considered by the WCCJ personnel or its affiliates.

SAMPLE

The target population consisted of police agencies in each of the ten WCCJ regions having a) county-wide enforcement jurisdiction, or b) municipal jurisdiction with a citizen population of 10,000 or more people. In rural regions with lesser populated centers, it was decided to sample police agencies located in communities of 5,000 people or more. A lack of adequate controls, however, resulted in the questionnaire being administered to some police agencies with considerably smaller jurisdictional populations.

Although this resulted in a broader data base, the reader is advised to avoid making inferences from the smaller police agencies sampled to small agencies in general. While it might be profitably argued that rural Wisconsin police agencies are homogeneous in respect to size, operation and perhaps problems; the sample as selected, does not allow for such statistical inference. In addition to the aforementioned problems, responses from the Northwest Region were not available. The following analysis is not intended to reflect activities in that region.

METHODOLOGY

A total of 210 police agencies responded to the questionnaire representing 36.5% of the total 575 police agencies as reported by the Wisconsin Law Enforcement Directory. 1

The questionnaires were coded with a minimum of data lost in categorization. The STATJOB Format was chosen for the analysis utilizing the Crostab-2 program. This program provided multi-dimensional analysis with cell frequency and percentage outputs in table form.

[1] *The reader should be advised that the total number of police agencies fluctuates. This is a result of including town constables and township police agencies in the listing.*

The results of the analysis are presented in two parts. The first part specifies frequency counts and percentages for each of the measures selected, broken down by county and municipality. The questions are grouped into the categories of a) recruit screening, b) personnel and organization, and c) needs and problems.

The second part of the analysis examines the same measures from the perspective of agency size or jurisdiction (e.g., county or municipality) as a correlate of the response. The chi-square (X^2) test of significance was utilized to determine if the frequencies obtained empirically differed significantly from those which would be expected under a certain set of theoretical assumptions. (Blalock,1972) The theoretical assumptions in this case are that:

1. The size of a police agency as measured by the number of full-time sworn personnel does not contribute in a statistically significant degree to recruit screening practices, personnel deployment, operational characteristics or perceived needs and problems; and

2. The jurisdiction of a police agency (e.g., county or municipality) does not contribute in a statistically significant degree to recruit screening practices, personnel deployment, operational characteristics or perceived needs and problems.

The reader will note that no attempt has been made to uncover the combined effect of the two determinants specified, nor is it possible to determine the degree or direction of any relationships. In other words, the results, when found significant, only reveal that some relationship may exist. Although it would be profitable to pursue these and other possible relationships, the questionnaire construction and the data received is not appropriate for such analysis. Only those relationships found to be statistically significant are listed in the second section.

PART I: FREQUENCY AND PERCENTAGES

RECRUIT SCREENING

1. What is the educational requirement for sworn officers?

	County		Municipality	
	N	%	N	%
8th Grade	1	(1.89)	2	(1.27)
High School Diploma	50	(94.34)	145	(92.36)
1 Year College	--		4	(2.55)
2 Years College	--		3	(1.91)
3 Years College	--		--	
B.A. Degree	--		--	
No Answer	2	(3.77)	3	(1.91)
Total	53		157	

2. Does your department conduct a written entrance examination on applicants?

	County		Municipality	
	N	%	N	%
Yes	41	(77.36)	104	(66.24)
No	12	(22.64)	50	(31.85)
Total	53		154	

3. Are applicants administered psychological tests as part of your screening procedure?

	County		Municipality	
	N	%	N	%
Yes	22	(41.51)	77	(50.00)
No	31	(58.49)	77	(50.00)
Total	53		154	

4. What type of tests are administered?

	County		Municipality	
	N	%	N	%
Aptitude and Intelligence	4	(18.18)	11	(14.29)
Personality	--	--	4	(5.19)
Aptitude and Personality	13	(59.09)	55	(71.43)
Aptitude and Lie Detector	1	(4.55)	1	(1.30)
All Three Types	3	(13.64)	4	(5.19)
Other	--	--	2	(2.60)
No Answer	1	(4.55)	--	--
Total	22		77	

PERSONNEL AND ORGANIZATION

1. How many personnel are assigned to a planning unit on a full-time basis?

	County		Municipality	
	N	%	N	%
None	43	(81.13)	126	(80.25)
1- 5	9	(16.98)	23	(14.65)
6-10	--	--	1	(0.64)
11-20	--	--	1	(0.64)
21-30	--	--	--	--
31-50	--	--	--	--
No Answer	1	(1.89)	6	(3.82)
Total	53		157	

2. How many personnel are assigned to a planning unit on a part-time basis?

	County		Municipality	
	N	%	N	%
None	31	(58.49)	93	(59.24)
1- 5	16	(30.19)	45	(28.66)
6-10	3	(5.66)	7	(4.46)
11-20	--	--	1	(0.64)
21-30	1	(1.89)	2	(1.27)
31-50	--	--	1	(0.64)
No Answer	2	(3.77)	8	(5.10)
Total	53		157	

3. How many personnel are assigned to a community relations unit on a full-time basis?

	County		Municipality	
	N	%	N	%
None	45	(84.91)	133	(84.71)
1- 5	4	(7.55)	12	(7.64)
6-10	--	--	3	(1.91)
11-20	1	(1.89)	2	(1.27)
21-30	--	--	--	--
31-50	--	--	3	(1.91)
No Answer	3	(5.66)	--	--
Total	53		153	

4. How many personnel are assigned to a community relations unit on a part-time basis?

	County		Municipality	
	N	%	N	%
None	25	(47.17)	80	(50.96)
1- 5	12	(22.64)	45	(28.66)
6-10	3	(5.66)	14	(8.92)
11-20	1	(1.89)	3	(1.91)
21-30	1	(1.89)	2	(1.27)
31-50	1	(1.89)	--	--
No Answer	3	(5.66)	12	(8.33)
Total	46		156	

5. How many personnel are assigned to a juvenile unit on a full-time basis?

	County		Municipality	
	N	%	N	%
None	28	(52.83)	109	(69.43)
1- 5	21	(39.62)	34	(21.66)
6-10	2	(3.77)	4	(2.55)
11-20	--	--	3	(1.91)
21-30	--	--	--	--
31-50	--	--	--	--
No Answer	2	(3.77)	7	(4.46)
Total	53		157	

6. How many personnel are assigned to a juvenile unit on a part-time basis?

	County		Municipality	
	N	%	N	%
None	24	(45.28)	76	(48.41)
1- 5	17	(32.08)	55	(35.03)
6-10	2	(3.77)	9	(5.73)
11-20	5	(9.43)	5	(3.18)
21-30	--	--	--	--
31-50	1	(1.89)	3	(1.91)
No Answer	4	(7.55)	9	(5.73)
Total	53		157	

7. Does your department hire seasonal sworn officers?

	County		Municipality	
	N	%	N	%
Yes	14	(26.42)	27	(17.42)
No	39	(73.58)	128	(82.58)
Total	53		155	

8. How many auxiliary or emergency police does your agency maintain?

	County		Municipality	
	N	%	N	%
None	17	(32.07)	80	(50.96)
1-10	1	(1.89)	25	(15.92)
11-20	9	(16.98)	17	(10.83)
21-40	11	(20.75)	14	(8.92)
41-60	5	(9.43)	4	(2.55)
61-80	3	(5.66)	3	(1.91)
81 +	7	(13.21)	14	(8.92)
Total	53		157	

9. Does your agency have a written policy/regulations manual for sworn personnel?

	County		Municipality	
	N	%	N	%
Yes	41	(77.36)	113	(71.97)
No	12	(22.64)	43	(27.39)
Total	53		156	

10. Does your department require any special educational standards for promotion?

	County		Municipality	
	N	%	N	%
Yes	7	(13.21)	16	(10.19)
No	46	(86.79)	139	(88.54)
Total	53		155	

11. Is incentive pay given to those who complete college law enforcement related courses?

	County		Municipality	
	N	%	N	%
Yes	15	(28.30)	22	(14.01)
No	37	(69.81)	135	(85.99)
Total	52		157	

12. To what extent does your local government reimburse the tuition of your sworn personnel enrolled in college?

	County		Municipality	
	N	%	N	%
Does Not	38	(74.51)	122	(82.99)
1%-25%	3	(5.88)	3	(1.88)
25%-50%	3	(5.88)	1	(0.68)
51%-75%	--	--	1	(0.68)
76%-100%	7	(13.73)	20	(13.61)
Total	51		147	

13. Does your department have a residency requirement?

	County		Municipality	
	N	%	N	%
Yes	50	(75.47)	131	(83.44)
No	3	(5.66)	26	(16.56)
Total	53		157	

PERCEIVED NEEDS AND PROBLEMS

1. Is juvenile delinquency a major problem within your jurisdiction?

	County		Municipality	
	N	%	N	%
Yes	31	(63.27)	70	(46.98)
No	18	(36.73)	79	(53.02)
Total	49		149	

2. Is drug abuse a major problem within your jurisdiction?

	County		Municipality	
	N	%	N	%
Yes	40	(81.63)	96	(64.86)
No	9	(18.37)	52	(35.14)
Total	49		148	

3. What do you conceive to be the major problems in criminal justice in your area and specialty?

	County		Municipality	
	N	%	N	%
No Problems	4	(7.55)	9	(5.73)
Lack of Manpower	8	(15.09)	15	(9.55)
Court Over-crowding	5	(9.43)	21	(13.38)
Court Leniency	9	(16.98)	35	(22.29)
Juvenile Leniency	1	(1.89)	6	(3.82)
Lack of Money	1	(1.89)	3	(1.91)
Public Apathy	1	(1.89)	2	(1.27)
Other	2	(3.77)	18	(11.46)
No Answer	22	(41.51)	48	(30.57)
Total	53		157	

4. What recommendations do you have for solving these problems?

	County		Municipality	
	N	%	N	%
More Personnel	11	(20.75)	9	(5.73)
Full-time Prosecutor	1	(1.89)	7	(4.46)
More Money	1	(1.89)	3	(1.91)
Significant Court Change	10	(18.87)	37	(23.57)
More Public Education	2	(3.77)	7	(4.46)
More Specialized Police	1	(1.89)	5	(3.18)
More Punishment	1	(1.89)	7	(4.46)
Other	4	(7.55)	18	(11.46)
No Answer	21	(41.51)	64	(40.77)
Total	52		157	

RECRUIT SCREENING

Beyond a minimum requirement of age, education, background investigations, and physical certification, recruit screening methods are employed at the discretion of the police administration.

An examination of screening methods as a correlate of the jurisdiction (e.g. county or municipality) of the police agency revealed no statistically significant results. Looking within each jurisdictional category to determine if any relationship exists between the size of the police agency and the screening methods used was the next step in the analysis. Table 1:1 specifies the results of the tests for significance.

TABLE 1:1

Agency Size X Screening Mechanism
(controlled for jurisdiction)

	County	Municipality
Measure:	Chi-Square	Chi-Square
Written Entrance Exam.	.13 2DF N.S.	17.02 6DF P > 0.01
Psychological Tests	1.22 2DF N.S.	2.98 4DF N.S.
Type of Psychological Tests	Insufficient cell frequencies - Chi-Square not conducted	

While jurisdiction per se does not appear to be a correlate of the type of screening methods employed, a significant relationship was indicated within the municipal jurisdictional category between agency size and the use of the written entrance examination. If it can be assumed that a written entrance examination produces a better police recruit, then it would follow that police agencies in larger municipal areas are recruiting better qualified personnel.

PERSONNEL AND ORGANIZATION

Personnel deployment was measured by the number of full-time and part-time personnel assigned to line organizational categories (i.e. planning units, community relations units, and juvenile delinquency units), the number of seasonal police, and the number of emergency, stand-by police. When analyzed as a correlate of jurisdiction, no significant relationships were revealed.

The organizational complexity of any agency is, in part, a function of agency size, resources and task. (Arygris 1972, Blau 1970, Perrow 1967) Police agencies are unique in the respect that the complexity of the task is not generally reflected in separate organization categories. (Bittner 1970, 1974; Goldstein 1976) Rather, it is the line staff (e.g. patrol

officer) who has historically absorbed the organizational complexity of the task in their day-to-day function. In other words, the complexity of the task, measured by the amount of uncertainty and variety encountered, is not compartmentalized and processed by function specialties. The generalist police officer is expected to perform all the tasks. The only exception to this pattern has been the existence of crime specific or situation specific functional units such as vice squads, family/conflict intervention units, and SWAT units. This pattern was reflected in the measures of organizational complexity when analyzed as a correlate of agency size controlling for jurisdiction.

TABLE 1:2

Agency Size X Personnel Deployment
(controlled for jurisdiction)

	County			Municipality		
Measure	Chi-Square			Chi-Square		
Planning						
Full-Time	.30	4DF	N.S.	8.66	8DF	N.S.
Part-Time	10.64	8DF	N.S.	7.41	12DF	N.S.
Community Relations						
Full-Time	.51	6DF	N.S.	2.31	10DF	N.S.
Part-Time	2.64	14DF	N.S.	8.31	14DF	N.S.
Juvenile Delinquency						
Full-Time	3.11	6DF	N.S.	49.69	10DF	P> 0.001
Part-Time	2.31	10DF	N.S.	8.60	14DF	N.S.
Emergency Police	Insufficient cell frequencies - test not conducted					
Seasonal Police	Insufficient cell frequencies - test not conducted					

As indicated by the table, agency size was not statistically significant in any of the relationships except the number of personnel in the municipal category assigned full-time to juvenile units. The implication is clear that for the most part, officers are expected to perform at a minimum of duties involving law enforcement, community relations, planning and juvenile delinquency functions.

Other measures of organizational operation included the existence of policy/regulation manuals, educational standards for promotion, incentive pay for law enforcement courses, tuition reimbursement for higher education, and residency requirements. When analyzed as a correlate of the jurisdiction of a police agency, two measures produced statistically significant results; incentive pay for law enforcement courses and residency requirements.

Residency requirements, although statistically significant, are more a function of prevailing law than organizational discretion and are therefore not helpful in a descriptive analysis of police agencies.

Incentive pay for law enforcement related course work, however, has a number of implications for this analysis. It indicates, when present, a higher level of resources and greater administrative support for career development. More important than the resource implications however are the effects on the quality of police officers. If it can be assumed that law enforcement related course work produces a better police officer, then those agencies encouraging such activity would have better police officers.

Carrying this analysis into the jurisdictional categories, it was revealed that for both county and municipal police agencies, incentive pay provisions are in part a correlate of agency size. The implication for the sharing of personnel between large and small police agencies or perhaps for state subsidy of all education programs for police are clear if it can be assumed that further education produces a better police officer. Table 1:3 illustrates the relationships between agency size and the aforementioned organizational measures controlling for jurisdiction.

TABLE 1:3

Agency Size X Organizational Characteristics
(controlled for jurisdiction)

	County			Municipality		
Measures	Chi-Square			Chi-Square		
Police Manual	10.66	4DF	P > 0.05	12.36	6DF	N.S.
Educational Standards for Promotion	1.60	4DF	N.S.	1.00	6DF	N.S.
Incentive Pay-Courses	11.38	4DF	P > 0.05	15.67	6DF	P > 0.05
Tuition Reimbursement	Test Not Conducted			Test Not Conducted		
Residency Requirements	Test Not Conducted			Test Not Conducted		

As indicated by the analysis, the only other organizational characteristic significantly correlated to agency size was the existence of a policy/regulations manual in county agencies. Table 1:4 specifies the frequencies (and percentages) to which the chi-square test was applied.

Looking within the table cells, it is indicated that for county agencies the existence of a regulation/policy is universal when agency size exceeds 21 sworn full-time officers. Municipal agencies on the other hand do not exhibit the consistency of the county agencies in the provision of regulation/policy manuals.

The importance of these results must not be discounted. It has been argued that the task of the police officer is infinite in its

TABLE 1:4

Agency Size (measured by full-time sworn officers)

Policy Regulation Manual	1-10 Officers			11-20 Officers			Over 21 Officers		
	County	Municipal	Total*	County	Municipal	Total	County	Municipal	Total
YES	6(50.0%)	43(58.1%)	49(57%)	11(47.8%)	25(86.2%)	36(69%)	18(100.0%)	46(85.2%)	64(89%)
NO	6(50.0%)	30(40.5%)	36(42%)	11(47.8%)	4(13.8%)	15(29%)	- - -	8(14.8%)	8(11%)
No Answer	- - -	1(1.4%)	1(.1%)	1(4.4%)	- - -	1(2%)	- - -	- - -	- - -

Total = Primary category total without control

complexity. (ABA, Urban Police Function, 1973; Bittner, 1970, 1974) Given that the regulation manual is perhaps the only written standard of conduct available to the line officer, it is significant to note that, while approximately 75% of police agencies employ 20 or less full-time sworn personnel, statistically over 51% of these agencies require their officers to function without even a minimum of guidance concerning departmental policies. Even more significant perhaps is that the regulation/policy manual has historically not covered matters of line officer discretion, limiting itself to uniform appearance, weapons care, and reporting procedures. The conclusion is unavoidable that police officers are expected to function with minimum managerial and supervisory guidance.

PERCEIVED PROBLEMS AND NEEDS

Four measures were selected under this category:

1) drug abuse as a perceived problem;
2) juvenile delinquency as a perceived problem;
3) major problem with the criminal justice system;
4) recommendations for improving the criminal justice system.

When analyzed from the perspective of jurisdiction or agency size, only one significant result was indicated - the relationship between jurisdiction and drug abuse as a perceived problem ($X^2 = 3.29$ 1DF $p.>0.05$). The implications of this finding are that statistically, police agencies (or at least those persons responding to the questionnaire) are homogeneous in their perceptions of criminal justice problems. It is interesting, if not significant, to note that the majority of agencies responding listed manpower shortages and court related matters as the problem of greatest concern. The fact that 26.4% of the county agencies and 36.7% of the municipal agencies listed court matters as significant problems implies that those agencies perceive their function as being primarily law enforcement oriented.

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