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Research Memorandum No. 405

THE MENTALLY RETARDED OFFENDER

Prepared by Cathy Helm

December, 1977
Legislative Research Commission
Frankfort, Kentucky

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M E M O R A N D U M

TO: Vic Hellard, Jr.
FROM: Dianna McClure *DM*
RE: Mentally Retarded Offenders
DATE: December 21, 1977

At the request of Representative William Donnermeyer, the Legislative Research Commission adopted a motion directing the LRC staff to perform a study to identify the number of adult mentally retarded offenders who are a danger to their families and communities but for whom there appear to be no facilities to which they can be committed. The staff was further directed to try to determine appropriate facilities in which these individuals could be placed.

Ms. Cathy Helm, Legislative Intern, conducted this study which includes a definition and profile of the target population, incidence rate of mentally retarded persons in the Commonwealth and of retarded offenders in adult correctional institutions, and suggestions for proper and just treatment for these individuals both in their community and within the criminal justice system.

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GLOSSARY

The following definitions are taken from the Manual on Terminology and Classification in Mental Retardation, 1973 Revision, American Association on Mental Deficiency.

1. Achievement level - the particular position, rank, or degree of success attained in some general or specific academic area, as indicated by standardized tests or teaching judgment; may be general or in a specific area such as reading vocabulary achievement level.
2. Adaptive behavior - the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.
3. Developmental disability - a disability attributable to mental retardation, cerebral palsy, epilepsy or another neurological condition of an individual which is closely related to mental retardation or to require similar treatment, and which originates in childhood, is likely to continue, and constitutes a substantial handicap to the individual.
4. Evaluation - the application of techniques for the systematic appraisal of physical, mental, social, economic, and intellectual resources of an individualized program of action to be followed by periodic reappraisals as appropriate; it determines the extent to which the presenting problem limits, or can be expected to limit, the individual's daily living and working activities, and will be expected to be removed, corrected, or minimized by specific intervention services.
5. Intelligence quotient - a number held to express the relative level of intelligence of a person; formerly determined by his mental age (as shown by intelligence tests) multiplied by 100 and divided by the person's chronological age; now all major standardized individual intelligence tests present I.Q. in terms of standard scores which provide comparisons with the tested individual's chronological age peers.
6. Mental retardation - refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.

CHAPTER I

INTRODUCTION

The Legislative Research Commission was directed to undertake a study of the types of treatment programs which would be appropriate for the mentally retarded offender in prison and in his community.

Currently no comprehensive data exists regarding the numbers, problems, and treatment of retarded offenders within the criminal justice system in the United States. However, certain data does suggest that a significant number of offenders are handicapped in varying degrees from mild to severe; yet significantly, retardation is not the inevitable or sole reason for antisocial behavior. The relationship between criminal behavior and retardation seems largely based on opinion, as little factual information has been established. Historically, the belief has existed that criminal behavior was attributable to impaired intellect and that an aggressive nature characterizes the mentally retarded, making them prone toward acts of violence. However, today many scientists and correctional specialists strongly maintain that mental retardation bears no casual relationship to crime. Furthermore, the American Orthopsychiatric Association suggests that crime and mental retardation are more significantly related to environmental factors than to each other.

Approximately 20,000 intellectually impaired offenders are in the American prison system today with approximately 3,300 classified as moderate to profoundly retarded. (Footnote 1) Within the Kentucky system there are approximately 539 offenders with I.Q. scores below 85; of these, 122 inmates have I.Q. scores 70 and below. Even though the number of retarded offenders as shown in Table I in Kentucky is small when compared to the total prison population of approximately 2,190 nonretarded offenders, the problems of these prisoners are significant, particularly in terms of the negative impact of penal life on the offender and the possibility of habilitation. (Footnote 2)

Organizationally, the mentally retarded offender in Kentucky poses a special problem because he falls into a gap between two state agencies, the Department for Human Resources and the Bureau of Corrections. The Bureau of Corrections is basically a custodial service provider lacking in appropriate rehabilitative services; whereas, the Department for Human Resources is a social services, income maintenance, and health service provider lacking appropriate security provisions. To adjudicate the retarded offender to either of the bureaus, both of which do not offer the scope of comprehensive services relevant to these individuals, limits the future of proper care warranted by the retarded offender. The scope of this study includes definitions of mental retardation, a profile of the mentally retarded offender, and suggestions for proper and just treatment for these individuals both in their community and within the criminal justice system.

Table I

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

<u>Age</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No I.Q. Score</u>	
	#	%	#	%	#	%
18-22 years	21	17.7	617	28.3	50	10.6
23-27 years	32	26.9	590	27.1	76	16.1
28-35 years	30	25.2	439	20.2	138	29.2
36 years & up	36	30.2	532	24.4	208	44.1
# Inmates	119		2,178		472	
# Inmates with No Age Reported	3		12		4	
TOTAL	122		2,190		476	

<u>Race</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No. I.Q. Score</u>	
	#	%	#	%	#	%
White	92	76.0	1,535	70.4	338	71.2
Non-White	29	24.0	646	29.6	136	28.8
# Inmates	121		2,181		474	
# Inmates with No Race Reported	1		9		2	
TOTAL	122		2,190		476	

<u>Sex</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No. I.Q. Score</u>	
	#	%	#	%	#	%
Male	120	98.4	2,101	95.9	465	97.8
Female	2	1.6	89	4.1	11	2.2
# Inmates	122		2,190		476	
# Inmates with No Sex Reported	0		0		0	
TOTAL	122		2,190		476	

Source: Legislative Research Commission, Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions

CHAPTER II

AN INTRODUCTION TO MENTAL RETARDATION

One of the major and long standing problems within the field of developmental disabilities is the almost complete lack of understanding on behalf of the public about mental retardation. Therefore, the first step in discussing programs for mentally retarded offenders must be the establishment of a conceptual framework of mental retardation which includes definition, diagnosis, and incidence both nationally and in Kentucky.

Definition of Mental Retardation

The most widely accepted definition of mental retardation was developed by the American Association on Mental Deficiency. The Manual on Terminology and Classification of this Association states that "mental retardation refers to subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior." (Footnote 3) Irv Bailer adds to this definition. As he explains, an individual is considered to be mentally retarded if

1. he has achieved a general intelligence test score (generally, in the form of an I.Q.) which is more than 1 standard deviation, (now, 2 standard deviations) below the mean of the sample upon which the test was standardized;
2. the etiologic agent (whatever its nature) was operative before the age of 16 years; and
3. he is unable to meet the culturally-imposed demands of personal independence and social responsibility which are expected of his age-mates or peers. (Footnote 4)

An even better understanding of mental retardation can be gained by knowing what skills the mentally retarded often lack. Robert Smith in his book, An Introduction to Mental Retardation, provides an excellent overview of areas in which the mentally retarded need additional training for their development, he writes:

In a fundamental sense, then, the mentally retarded as a group seem to show poor general aptitude in the performance of many basic skills which most of us take for granted, but which constitute vital areas for development in order that more complex tasks can be dealt with in a satisfactory way Such competencies as discriminating among sounds, associating words and objects, language development, and understanding the intention of others from the facial expressions are all illustrations of areas in which the mentally retarded often suffer from lack of skill (Footnote 5)

These fundamental skills can be developed by the mentally retarded through appropriate programming, which is described later. Basically, mental retardation should be viewed as a condition which induces slower development. For the mentally retarded, their basic life skills take longer periods of time to develop. However, the mentally retarded are capable of becoming an asset rather than a burden to their community, as proven by the high rate of success in all treatment areas occurring in recent years. Through sheltered workshops, vocational training and other services, the mentally retarded individual can be expected to be a contributing member in his community. As Menolascino writes, "It is important to stress that 29 out of every 30 mentally retarded citizens can be helped to grow and develop into useful, productive and happy members of the community, possessing a considerable degree of self-sufficiency." (Footnote 6)

Diagnosis of Mental Retardation

The area of diagnosis in mental retardation is a controversial one. In the field of variety of diagnostic methods are being used with different advocates promoting the appropriateness of each one. Ideally, in this evaluative process, a person is diagnosed as mentally retarded by an interdisciplinary team consisting of a social worker, educator, psychologist and medical doctor. (Footnote 7) Unfortunately, this procedure is not always practiced, as the majority of mentally retarded individuals are classified as such during their school years. Those individuals found to be slow in their classwork normally fail a grade of school and subsequently are placed in a special education class after classification. The majority of these people lose their label once they leave the school system and can function in society without needing extensive treatment beyond vocational training.

Adaptive behavior plays an important role in the diagnosis of mental retardation. There must be a deficit in adaptive behavior in addition to a low I.Q. score according to Menolascino, who defines adaptive behavior as primarily referring to

. . . an objective of how well the individual copes with the educational, vocational, and social demands of his environment. The major facts of social-adaptive behavior are (1) the degree to which the individual is able to function and maintain himself independently, and (2) the degree to which he satisfactorily meets the culturally imposed demands of personal and social responsibility. (Footnote 8)

Three primary indicators of adaptive behavior during an individual's life are maturation during pre-school years, learning during school years, and social adjustments in the adult. (Footnote 9) Therefore, if an individual has a low I.Q. score but has socially adaptable behavior, he should not be diagnosed as mentally retarded.

Incidence of Mental Retardation

The national incidence rate for mental retardation in the United States

is three percent. In Appalachian areas, which comprise many Eastern Kentucky counties, a much higher incidence exists due to social and cultural factors which limit adaptive skills. Using the three percent incidence rate, the Commonwealth has approximately 101,635 retarded citizens based on the July 1, 1975, Kentucky population estimate. Considering this information, the number of mentally retarded offenders within correctional facilities reflect a disproportionate representation of mentally retarded individuals. On a national level, Brown and Courtless found 0.5% of the nation's inmate population to be mentally retarded offenders. (Footnote 10) In the same study, 18.9% of those individuals who were tested had I.Q.s which were in the borderline category, ranging on the scale from 85 to 70. (Footnote 11)

Included below is a sample (Beta Category) scale indicating the percentage distribution among Intelligence Quotients among the inmates at Kentucky State Reformatory as of April 24, 1974. This sample scale also serves to give the reader an idea of the range of I.Q. scores and their associated intellectual functioning level.

Table II
BETA I.Q. SCORE PERCENTAGE DISTRIBUTIONS

Beta Category	Standard Distribution	KSR Population	100 Oldest KSR scores	100 Newest KSR scores
129 and up very superior	2.2	.06	---	---
120-128 superior	6.7	3.80	3.0	7.0
110-119 bright normal	16.1	18.17	9.0	26.0
90-109 average	50.0	51.69	43.0	52.0
80-89 dull normal	16.1	14.92	22.0	8.0
71-79 borderline	6.7	6.08	13.0	3.0
70 and below defective	2.2	5.25	10.0	4.0

Source: Bureau of Corrections, Kentucky State Reformatory

CHAPTER III

PROFILE OF THE MENTALLY RETARDED OFFENDER

Research has determined certain characteristics exist which distinguish the mentally retarded offender from the non-retarded offender. Moreover, these distinguishing characteristics ultimately hinder the mentally retarded from receiving equal justice with the non-retarded offender in the present criminal justice system. Generally, mentally retarded offenders, in addition to having developmental disabilities, are more likely to have a history of detention in a juvenile detention center, (Footnote 12) to have no previous military service, to be older than the non-retarded offender, and finally, to be a member of a minority group. (Footnote 13) In addition, certain personality variables negatively affect the behavior of the mentally retarded offender once he enters the criminal justice system.

Personality of the Mentally Retarded Offender

The personality of the mentally retarded offender is different from the non-retarded offender. Mentally retarded persons are easily persuaded and manipulated. This factor could predispose these individuals to an unfair disadvantage during police interrogation. For example, the Atlanta Association for Retarded Citizens in a study of Georgia's criminal Justice System cited the findings of Courtless and Brown where, in 59% of the cases studied, the accused mentally retarded pleaded guilty. In a total of 66% of the court cases in the same study, the mentally retarded accused made either a confession or gave incriminating statements to the police during interrogation. (Footnote 14) This tendency to be easily persuaded and manipulated could also have a negative effect while the offender is in prison. Santamour and West point out that even though security is present in a prison, the mentally retarded offender needs extra protection from abuse and exploitation. Retarded offenders often find themselves the brunt of practical jokes and can be scapegoated or used as a sexual object by their more intelligent peers. Santamour and West also report that because of difficulty in comprehending prison expectations, rule infractions will occur. (Footnote 15) Finally, they found the mentally retarded offenders were quite likely to be anxious about being accepted by others, to be quick to engage in conversation, quite adept in covering their limitations to others, and prone to demand attention. (Footnote 16)

Implications for Prison Life

Other personality characteristics create a less than satisfactory adjustment to the prison culture for these individuals. Since the mentally retarded have limited coping skills, handling institutional pressures is difficult. As a consequence, the retarded offender tends to act out frustrations through inappropriate means such as aggressive or violent behavior. (Footnote 17) Significantly, Brown, Courtless, and Silber (1970) hypothesize in relation to serious crimes committed usually against a person, that the retarded offender experiences not more and perhaps less aggressive motivation than his

Table III

INSTITUTIONAL ASSIGNMENT OF KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY

<u>Institutional Assignments</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No. I.Q. Score</u>	
	#	%	#	%	#	%
Academic	5	4.3	162	7.4	17	3.6
Vocational	1	.9	202	9.3	13	2.8
Industry	11	9.5	283	13.0	53	11.3
Farm	8	6.9	182	8.3	63	13.4
Segregation	10	8.6	59	2.7	31	6.6
General Maintenance	56	48.2	1,014	46.5	214	45.5
Hospital/Geriatrics	3	2.6	38	1.7	10	2.1
Unassigned	21	18.1	202	9.3	55	11.8
Admissions & Orientation	1	.9	40	1.8	4	.9
# Inmates	116		2,181		460	
# Inmates with No Institutional Assignments Reported	6		9		16	
TOTAL	122		2,190		476	

Source: Legislative Research Commission, Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions

Table IV

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

<u>Time Served</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No. I.Q. Score</u>	
	#	%	#	%	#	%
6 mos. or less	17	14.3	539	24.6	100	21.1
6 mos. - 1 year	17	14.3	443	20.3	76	16.0
1+ - 3 years	35	29.4	691	31.6	138	29.1
3+ - 10 years	36	30.3	431	19.7	126	26.6
10+ - 15 years	5	4.2	39	1.8	17	3.6
15 years and over	9	7.6	44	2.0	17	3.6
# Inmates	119		2,187		474	
# Inmates on Whom Time Served Not Reported	3		3		2	
TOTAL	122		2,190		476	

Source: Legislative Research Commission, The Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions

non-retarded counterpart. However, because of poor impulse control and an inability to grasp the significance or anticipate the consequences of their acts, a crime will be committed. (Footnote 18)

Parole board members look critically at the motivational characteristics of a prisoner and his record of involvement in educational training or counseling programs as a major factor for granting parole. Yet vocational and educational curriculums in most prisons tend to be standardized toward offenders with normal developmental levels and exclude programs appropriate to handicapped individuals. In Kentucky only 5.2% of the retarded offenders are assigned academic or vocational programs, compared to 16.7% of the non-retarded offenders. (See Table III.) Therefore, from the perspective of the parole board, the credentials of the retarded offender will be lacking in proof of motivation toward self improvement. A longer term (See Table IV.) may be served because of the apparent low esteem and low motivation which is an injustice for those persons who do not have the same level of abilities as fellow potential parolees. As Table V indicates, in Kentucky only 35.2% of the retarded offenders received parole deferments, compared to 45.9% of the non-retarded offenders. (Footnote 19) The larger of parole deferments can probably account for part of the higher incidence of mentally retarded individuals in prison than in the general population.

Table V

PAROLE DEFERMENTS OF KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY

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

Source: Legislative Research Commission, The Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions

Implications for Court Room Behavior

Several factors are linked to mental retardation which hinder these offenders from obtaining the same justice in a court room as received by a non-retarded individual. For instance, the mentally retarded individual has trouble remembering small details, in locating witnesses and in testifying with an adequate amount of credibility. (Footnote 20) These problems inhibit retarded individuals in giving testimony which will appear plausible to a judge or jury. Also, this person is not likely to fully understand the complex criminal justice procedures which can prevent him from using all the ave-

nues of justice available. Another closely linked factor is that only a small number of mentally retarded offenders have guardians who could be valuable in assuring that these offenders receive fair treatment and justice. (Footnote 21)

Certain data indicate an existing lack of concern or knowledge about the exceptional qualities and status of the retarded offender. The study of the Atlanta Association for Retarded Citizens cited the finding of Courtless and Brown where in 92% of the court cases involving mentally retarded individuals, no issue of competency to stand trial was raised. In 78% of these court cases, there was no pretrial psychological evaluation. Furthermore, in 88% of the cases no appeal was ever made, and no post-conviction release was sought in 84% of the cases. In addition, 80% of the cases were tried and convicted on the original charge; thus the usual plea bargaining for a lesser offense is not as readily used with mentally retarded offenders. (Footnote 22) Considering the high positive relationship between criminal behavior and lower socio-economic status and between mental retardation and its link to lower socio-economic status, to find that most mentally retarded offenders come from the lower economic strata of society is not unusual. Consequently, according to the Atlanta Association's reference to the study by Courtless and Brown, we also find the mentally retarded offender largely (69%) to have had court appointed counsel during their involvement with the criminal justice system, the implication being their legal representation was not as complete as the legal service received by offenders who can afford to seek it in the private sector. (Footnote 23)

Issue of Competency

Another complicating problem in the administration of justice to mentally retarded people is the issue of competence. Miles Santamour and Bernadette West believe "competency can be defined generally as the ability to cooperate with one's attorney in one's own defense and the awareness and understanding of the consequences of the proceedings." (Footnote 24) For the mentally ill, a declaration of incompetency frequently results in a commitment to an institution until competency is restored. However, the possibilities of the mentally retarded individual being restored to a mental status which will allow him to stand trial are limited. A commitment to an institution for the retarded person results in a lifelong or indeterminate sentence without ever having the determination of guilt rendered. (Footnote 25) A change in this legal mechanism is needed. Appropriate diagnosis and evaluation programs would function to diminish the possibilities of institutional commitment.

Types of Crimes

The research completed on types of offense most frequently committed by the retarded offender has generated differing conclusions. Among the factors involved which create confusion or misconceptions regarding these conclusions are the varying sizes of the sample studied. The population of retarded offenders is much smaller than the normal offender population, thus inflating the size of the percentage figure denoting the prevalence of a particular offense. Another factor would be the number of retarded offenders convicted

of property crimes who are referred to other facilities and are not considered in data gathering. Also, as plea bargaining is used less frequently and parole is granted less frequently than with normal offenders, the sample is affected as more convictions have occurred and the retarded offender remains imprisoned for a longer period of time. Also affecting research conclusions are the inconsistent and diverse attempts to diagnose the mentally retarded among prison populations, frequently making valid comparisons impossible.

Santamour and West (1976) cite several studies such as the Tennessee Research and Demonstration Project (1976), Haskins and Friel's Survey of Texas (1973), and the national survey completed by Brown and Courtless (1968) in an attempt to identify offenses most frequently committed by mentally retarded offenders. Haskins and Friel reported little difference between the retarded in types of offenses most frequently committed. The Tennessee Research and Demonstration Project noted a decrease in crimes against persons as intelligence decreased. Brown and Courtless found: "In comparison with offenses committed by non-retarded persons, institutions reported that homicide was more frequently committed by retarded offenders." (Footnote 26) However, Wolfgang (1967) comments that homicide is more obvious a crime than any other and more convictions are obtained for this crime. Therefore, considering that the defense of retarded offenders is frequently not equitable to the non-retarded offender, this data may be biased. Also, in Kentucky (1975), the data indicated that 63.1% of the retarded offenders were incarcerated for crimes against a person and alternately that 36.9% were incarcerated for property crimes. (Footnotes 27) (See Table VI for a more explicit breakdown of types of offenses committed by adult offenders in Kentucky.)

Kentucky's correctional facilities, as stated previously, have approximately 200 mentally retarded offenders, using the 5.2% projection figure. On a nationwide basis, 9.5% of the incarcerated offenders have an I.Q. below 70. Furthermore, the majority of these lower functioning inmates fall into the borderline category and the mildly retarded classification, a group which can readily benefit from habilitation programs. (Footnote 28) In addition, this group is comprised mainly of functionally retarded individuals, which provides an even healthier prospect for treatment because there is no brain damage to physiologically hinder treatment approaches in this group. (Footnote 29) This consideration is important in planning programs both in the community and within the institutions.

Table VI

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

<u>Current Offense</u>	<u>Retarded</u>		<u>Non-Retarded</u>		<u>No. I.Q. Score</u>	
	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
Murder	24	19.7	172	7.9	70	15.0
Manslaughter	13	10.7	214	9.8	35	7.5
Rape/Sex Crimes	16	13.0	174	8.0	45	9.6
Armed Robbery	9	7.4	344	15.7	72	15.4
Assault	15	12.3	138	6.2	25	5.3
House Breaking/ Burglary	26	21.3	431	19.7	95	20.3
Forgery/Fraud	4	3.3	188	8.6	32	6.8
Robbery/Larceny	13	10.7	255	11.7	43	9.2
Drug Offenses	0	0	146	6.7	37	7.9
Miscellaneous Property Crimes	2	1.6	125	5.7	14	3.0
# Inmates	122		2,187		468	
TOTAL	122		2,190		476	

Source: Legislative Research Commission, The Mentally Retarded Offenders in Adult and Juvenile Correctional Institutions

CHAPTER IV

HABILITATION PROGRAMS

Although the retarded offender is rarely habilitated, in the present penal system he can be expected to continuously move toward a more self-sufficient and fuller existence if appropriate treatment and training programs are made available. The possibility of a positive prognosis for the future of these persons is improved, with the majority of retarded offenders falling into the mild classification, a category of individuals known to readily benefit from developmental training. (Footnote 30) In order to effectively design a complete program of services for the retarded offender, certain changes are required in the development of programs within the Department for Human Resources and the Bureau of Corrections which would recognize the special needs of retarded offenders. Planning for services should not be segmented, rather full integration of programs in a coordinated fashion should be followed.

Certain premises must be present in program planning. As the retarded offender can be negatively affected by a punitive environment, normal healthy settings must be provided. (Footnote 31) Also, both mental retardation and criminal behavior must be jointly approached in the development of program components, as both factors require attention to effectively habilitate the offender.

Three areas to be addressed when designing a habilitation program for the mentally retarded offender are: (1) education programs for professionals in the criminal justice system, (2) treatment programs connected with institutions, and (3) pre-release planning and parole. Some attention is also given to the right to treatment issues that are presently beginning to affect the treatment of offenders within the criminal justice system.

Programs for Professionals in the Criminal Justice System

As many decision makers lack knowledge of what mental retardation is and how diagnosis is made, training programs on these subjects are recommended for policemen, public defenders, lawyers, judges, and other criminal justice personnel. (Footnote 32)

Policemen have the first contact with the offender and their initial response could radically change the process experienced by those handicapped with retardation. Fewer arrests would occur if policemen were trained to recognize mental retardation. Additionally, if arrests were made, knowledge of the presence of mental retardation would affect the subsequent court proceedings involving sentencing and placement. (Footnote 33) Moreover, during the court proceedings, four points exist where mental retardation can be exposed: during determination of the individual's competency to stand trial; when the issue of the admissibility of the confession is resolved; when the issue of criminal responsibility is resolved; and during a mental examination. (Footnote 34) However, presently, even with these junctures providing

opportunities to ascertain the mental status of the offender during the trial, only a few retarded offenders are acknowledged.

Lack of knowledge about retardation, indifference to the fact of retardation, and ignorance about what legal alternatives are available in processing the case are factors which seem to explain the failure of the system to properly contend with these offenders.

Model Law Enforcement Program for Policemen

The Atlanta Association for Retarded Citizens developed recommendations for the Georgia police training programs taking place both in the State Police Academy and through statewide training programs. Included in these recommendations were separate and specific instructions in mental retardation, training in techniques to improve interpersonal communication skills with the retarded offender, and annual routine training in the area of mental retardation. Included in this educational process would be identification of community resources that can be of assistance to the officer. (Footnote 35)

In Kentucky there are approximately 20 hours of state police training in the area of mental health, of which two hours are directed toward the subject of mental retardation. As these are two separate and distinct categories with skills appropriate for each, the training should reflect these differences. By explaining the time allotted to the subject of Mental Retardation, Kentucky could effectively replicate Georgia's program both by including more detailed information on mental retardation and improving the officers' communication skills with the retarded offender. The idea of annual routine training has relevance for Kentucky also. Finally, if such a program were implemented in Kentucky, the listing of community resources could contain the telephone numbers of local comprehensive care centers, lawyers who will offer legal assistance to retarded individuals, local associations for retarded citizens, sheltered workshop employees who could identify the offender, and psychologists and social workers with training in the field of mental retardation.

Regional Evaluation Facilities for the Judiciary

To combat the problem of non-recognition of mental retardation among the judiciary, the Atlanta Association recommended the development of a statewide system of evaluation facilities to provide the courts pertinent information about the nature of retardation and the retarded offender. The evaluation process could be available at three levels: first, a cursory or screening of the offender at a local center involving information from a medical, psychological, vocational and educational examination; second, this level of evaluation would be predicated on the need for a more extended period of observation and evaluation necessitating referral through the courts to a community mental health facility; third, this level of evaluation would be for those offenders requiring more security at a facility designed for that purpose, such as a hospital with security provisions. (Footnote 36)

A second recommendation for the education of the judiciary was the provision of instruction in mental retardation to judges, lawyers, and court workers focusing on an understanding of mental retardation and its causes, the

legal problems involved in dealing with retarded offenders, and definition of those treatment and habilitation programs that are designed for the mentally retarded person. It was suggested this instruction be given to groups such as the Bar Association, the District Attorney's Association and the various associations for judges. (Footnote 37)

In Kentucky 15 regional comprehensive care centers already exist. If a cooperative agreement could be reached between the comprehensive care centers and the courts throughout the state, these facilities could be used by the courts for the diagnosis and evaluation of mentally retarded offenders. Furthermore, these centers could serve as a referral source to the community counseling or training programs which could be used in habilitating some mentally retarded offenders instead of incarceration in correctional facilities. Also, as suggested by the Atlanta Association, an educational program could be developed by the Kentucky Association for the Retarded and presented to the various and appropriate professionals groups associated with the Kentucky judiciary.

Treatment Programs Within Institutions

The goal for the treatment of mentally retarded offenders should be making them productive, independent people. The main emphasis should be to provide vocational training and the social skills which are necessary to maintain employment. (Footnote 38) Also included would be a focus on independent living skills to make the transition back to the community an easier task for the individual. (Footnote 39) Special education coupled with vocational training are the tools for habilitating the retarded offender. Equally important to the types of programs is they must be flexible enough to allow for each individual's difference to be considered in treatment plans. (Footnote 40) Finally, the programs must be designed to serve a heterogenous group of individuals, rather than strictly structured designs for everyone, which could in the end benefit no one.

Several treatment areas which the Georgia study considered as relevant to the retarded offender are: (1) special education; (2) vocational habits and skills; (3) a salable vocational skill, especially with today's tight job market; (4) improvement of self-image; (5) increase in motivation toward improving one's self; (6) daily living skills; and (7) personal and social adjustment. (Footnote 41) Ultimately basic skills and behaviors essential for success in the competitive job market are provided.

Treatment Programs

A program recommended by Santamour and West is "prevocational education, training, cognitive education and training, and vocational education and training." (Footnote 42) Prevocational training is usually required for the development of good working habits and skills. Therefore, the first step in providing help to the mentally retarded is to teach those skills which will enhance a retarded person's employability. Sessions on basics such as filling out job applications, Social Security forms, income tax forms and related job information should be taught to these offenders. (Footnote 43) Development of

workshops which teach prevocational skills precede focusing on the actual training for vocational skills.

After prevocational programs are organized, training programs start to emphasize vocational skills which can best be acquired in a sheltered workshop. (Footnote 44) A sheltered workshop is a simulated work environment in which individuals receive vocational training and experience. The workshop is a helpful teaching tool, as the retarded person benefits from repetitious role-playing in a realistic environment. The sheltered workshop also serves to provide data on how each individual will function in a competitive job setting. Besides the focus on specific job-related skills, development of the important social skills which go along with a job is emphasized. The end goal is to move an individual into competitive employment; although, if this is not possible, the mentally retarded are employed at the workshops rather than being left with idle, non-productive time.

Residential Component

A residential component for offenders who require more constant supervision is an integral part of a program. Ideally, a continuum of residential units with varying degrees of security imposed upon residents would be created. Florida has designed a system which has seven different levels of security maintained in the residential units. (Footnote 45) This continuum allows a resident to progress through the various steps at his own pace and helps the person to make the adjustment to community living through a gradual process. Initially, in Kentucky at least one residential facility should be constructed to house the mentally retarded offenders. As mentioned before, the retarded offender does not appropriately fit into the facilities operated by the Department for Human Resources or the Bureau of Corrections. In Corrections, the mentally retarded inmate is abused by higher functioning inmates; in the mental retardation facilities, the retarded persons with no history of criminal activity would likely find themselves abused by the mentally retarded offender, who may be higher functioning and very streetwise. (Footnote 46) Obviously, neither setting meets the special needs of the mentally retarded offender.

The aim of the residential program is to develop adaptive social behavior in the residents. To achieve this aim intensive training is required, including creative leisure time activities. The program must be structured and have a high staff-client ratio to be effective. As Menolascino explains, "A high staff-client ratio and a physical setting that provides intensive supervision can be used to provide specialized treatment-management inputs for this program, and structurally impose controls from outside until the individual can be helped to further develop his own internal controls." (Footnote 47)

Community Alternatives

Community residential centers have been recommended for the mentally retarded offenders who do not necessarily require a tight security holding. If these alternatives are used, special programs for habilitating the offenders must be utilized. However, Santamour and West stress the importance of a

structured, routine program in whatever type of setting to habilitate the retarded offender. (Footnote 48) Wherever the setting, a good treatment program should be the main focus.

Staff

Santamour and West suggest a staff ratio for the residential center or any program to be one staff to every eight clients. Individuals working as staff must be knowledgeable about mental retardation and the developmental model with attitudes positively oriented toward the mentally retarded and their abilities to learn and grow. (Footnote 49) Also, the retarded person must feel that he is accepted by the staff, but that certain aspects of his behavior need to be changed. (Footnote 50) Significantly, the staff must accept deviant behavior and believe that a person is capable of changing. (Footnote 51)

Pre-Release Planning and Parole

Before the release of a retarded offender from security confinement, another important component of the habilitation system needs to be operative. This part of the system is a pre-release planning and parole which is a very important factor in reducing the recidivism rate for mentally retarded offenders. A system of prolonged support and guidance established in the community has proved very successful. Especially when an individual is placed within correctional confinement, a half-way house or transition period is necessary for the mentally retarded person to re-adjust to community living. (Footnote 52) The rationale is that a mentally retarded offender with slower learning abilities requires the additional time and support to make the same adjustment as a "normal" offender. An important part of any pre-release or parole program is sufficient support and guidance be provided to the individual. With adequate vocational training provided during the commitment period, this is one area, except for possibly locating a job, which the parole officer or citizen advocate would not be extensively needed. However, in regard to emotional support, the parole officer could prove very valuable to the retarded offender, especially since friendships will be slow to develop.

A program is operated by the Massachusetts Parole Board Community Assistance Program and citizen advocates are used to provide assistance and support for the parolees. (Footnote 53) In the Saginaw (Michigan) project (1959-60), an experiment was conducted which emphasized high quality pre-sentence investigation and changed the role of the parole officer "from supervisory to assistant and change agent." The implementation of this project resulted in a reduction from 36.6% to 19.3% in the number of retarded offenders originally given prison sentences. Also realized was a sizeable drop in the recidivism rate. Ultimately the conclusion of the project analysis was only 20% of the offenders probably needed to be incarcerated and recidivism rates can be decreased by placing more offenders on probation. (Footnote 54)

CHAPTER V

CONCLUSION

Presently, Menolascino writes, "Our current legal and judicial processes exclude the mentally retarded individual by failing to acknowledge the fact that he has the right to receive special treatment because of his intellectual deficit." (Footnote 55) As Allen explains, "The legal rights of the retarded are in reality but a single legal right; the right to equal justice under the law. . . ." (Footnote 56) In future years, more right to treatment cases can be expected to be found on the court dockets, especially with the increasing number of groups becoming interested in the plight of retarded offenders. The results of these cases could have a dramatic and instant impact upon the treatment programs which are offered in Kentucky's correctional facilities. The requirement of treatment programs for individuals with indeterminate sentences or indefinite commitments has resulted in several "treat or release" edicts from the courts. The U.S. Court of Appeals for the Fourth Circuit is one court which has ruled in this manner. (Footnote 57) Cases such as Newman v. Alabama, Davis v. Watkins, Rouse v. Cameron, and Wyatt v. Stickney have upheld the right to treatment and the right to protection. (Footnote 58) These cases are presently not applicable to the retarded offenders, but the trend should not be ignored by legislators or administrators.

With all the various component parts operating, the mentally retarded offender could be expected to greatly benefit from this service continuum. A reduction in the number of retarded offenders sent to prison and a lowering of the recidivism rate for those who are incarcerated would be realized. The retarded individual who comes in contact with the criminal justice system could be expected to have a much brighter future. Habilitation will work for the retarded offender and research on exactly what approach and treatment programs would be most effective is needed.

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FOOTNOTES

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