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TRANSITIONAL AID RESEARCH PROJECT FOR EX-OFFENDERS

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FINAL REPORT

ON

ACTIVITIES

OF THE

TRANSITIONAL AID RESEARCH PROJECT

OF THE

COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES

U.S. DEPARTMENT OF LABOR
GRANT NO. 21-11-75-19

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16. Abstracts

This report documents the background and development of the two State (Georgia and Texas) Transitional Aid Research Project for Ex-Offenders and notes the problems and difficulties encountered in implementing the project. In addition, it explores various judicial, social, political, legislative and other issues involved in providing short-term financial and/or job placement assistance to ex-inmates newly released from prison as did the Georgia-Texas endeavor. The aim of the TARP project was to test whether transitional monetary support (comparable in amount to weekly unemployment compensation) and job placement services would enhance rates of employment and reduce rates of rearrest among former offenders.

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LIST OF ATTACHMENTS

*This attachment, which is an independent monograph, is not appended to this report, but may be obtained from the U.S. Department of Labor, Employment and Training Administration.

I. INTRODUCTION

In two recent laws,[1] Congress directed the Secretary of Labor to provide manpower training, related assistance and supportive services to offenders. The Secretary also is authorized to conduct special studies on the offenders' employment and unemployment problems. The Department of Labor (Department) has actively responded to this mandate, utilizing a comprehensive, multifaceted approach, ranging from direct support of inmate work skill programs to highly innovative federal bonding for ex-offenders, Mutual Agreement Programming and Model Ex-offender Programs, to name but a few.[2] The related research, more than a decade old now, has carried through every phase of the offenders' contact with the criminal justice system -- arrest, trial, probation or incarceration, release and post-release.

During the course of these research projects, and in particular George Pownall's examination into the employment status of released prisoners,[3] a recurring fact emerged. Not only did the typical ex-offender suffer in the labor market, but, upon release from a correctional institution, he/she also had scarce financial resources with which to weather the shock re-entry period.

To combat this, the Department elected in 1971 to explore the feasibility of providing temporary relief, styled after unemployment insurance, to the new prison releasee. The underlying theory was that this aid would fill a financial vacuum while affording the releasee a transition period in which to secure gainful employment. It was believed that a higher employment rate among prison releasees would produce a concommitant lower recidivism rate, as fewer releasees would resort to criminal activity out of economic desperation.

Baltimore was selected as the pilot site in which to put this theory to test. The Living Insurance for Ex-offenders Project (LIFE) was a tightly controlled experiment. Half of the project's 432 participants, newly released prisoners, were given financial aid ($60/week for 13 weeks) and half were not. The net result was that the money group exhibited a significantly lower rate of recidivism, as measured by arrests, than the control group. The control group rearrest rate was 30.5% while that of the experimentals was 22.2%, an effective reduction of 27%. For a complete discussion and evaluation of this experiment, see Unlocking the Second Gate[4] (attachment A). A second

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1. The Manpower Development and Training Act of 1962 (MDTA) as amended (1966) and its successor, the Comprehensive Employment and Training Act of 1973 (CETA).

2. For a summary of these activities, see the testimony of Sec. Ray Marshall, April 5, 1978, before the House Subcommittee on Crime.

3. Pownall, Employment Problems of Released Prisoners (Washington, D.C., U.S. Department of Labor, 1969).

4. Lenihan, Unlocking the Second Gate--The Role of Financial Assistance in Reducing Recidivism Among Ex-Prisoners, R&D Monograph 45, Department of Labor, Employment and Training Administration, 1977.

major evaluation which derived from LIFE was a cost/benefit analysis.[5] This work assessed the costs and benefits of the Baltimore project from several distinct perspectives. Based upon the favorable recidivism results, the analysis concluded that a program of financial assistance could yield a significant cost savings.

II. TARP INCEPTION

While LIFE was a carefully conceived, well-executed research project, the Department believed that before it could recommend major policy changes on the basis of the LIFE hypothesis, a replication of the project on a larger scale and with some methodological adjustments, was called for.[6] Out of this judgment was born the Transitional Aid Research Project (TARP). On June 30, 1975, the American Bar Association's Commission on Correctional Facilities and Services (Commission) was awarded a grant from the Department, 21-11-75-19, to administer this major research effort.[7]

The ABA's primary duties as outlined in the original grant proposal were to: "(a) provide national coordination, direction, integration and assessment of a two-state demonstration program...(b) determine whether released offenders receiving weekly payments for stipulated periods comparable to weekly unemployment benefits will exhibit a better record of avoidance of new criminal activity...(c) ascertain how existing state and federal legislation, administrative regulation and agency procedures would need to be adjusted or modified..." to accomplish the goals of this project. Subfunctions identified included, among others, acting as a clearinghouse, analysis of relevant state laws and regulations, drafting model legislation, project monitoring and performance of a cost/benefit analysis based on the two state outcome.

III. EARLY TARP

Personnel. During the initial year, a number of major ABA-TARP activities took place. The first, quite naturally, was the engagement of project personnel. Dr. Kenneth J. Lenihan was hired as a project consultant to serve as the principal investigator. His selection resulted from his identical role for LIFE. James Hunt, already

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5. Mallar, Thornton, A Comparative Evaluation of the Benefits and Costs of the LIFE Program (Washington, D.C.: American Bar Association, 1978).

6. The LIFE experiment excluded certain classes of released offenders, including alcoholics and heroin users, first offenders, women, those never convicted of property offenses, individuals over forty-five and those with over $400 in savings. TARP did not exclude these groups, but was open to all releasess planning to stay in the test state as long as they had no detainers outstanding.

7. The LEAA also contributed to the funding of this project. However, sole administration and oversight responsibility was lodged in the Department.

project director of the Commission's Ex-offender Employment Restrictions Project, was designated Project Director on a one-half time basis. In January, 1976, Melvin Axilbund, Staff Director of the Commission, succeeded Mr. Hunt on a one-quarter time basis. The Commission's daily administration of TARP was the responsibility of Assistant Project Director, Robert Horowitz.

Site Solicitation and Selection. Thirty states made preliminary responses to the Department's request for proposals. Of these, seven states actually submitted proposals. The Department and Commission selected Georgia and Texas[8] as demonstration states. These states were chosen because of their large inmate population, which would assure the filling of the research cells in relatively short time. In addition, it was believed these inmate populations were sufficiently diverse to provide for a fuller study.

Initial Meetings. After state selection, a series of meetings were convened in Huntsville and Atlanta, headquarters for the state activities, for the purpose of planning the start-up phase and establishing a time schedule for work to be performed before the first participants were to be released into the project on January, 1976. Dr. Lenihan made near weekly trips to both project states to assist in the programs design phase. During this period, state inter-agency cooperation was established, flow charts designed and the necessary forms (e.g., notice of participation, weekly request for aid, job placement reports) and interview sheets developed.

This period witnessed interaction between the distinct TARP components at its peak. The frequent meetings aired numerous problems, both current and anticipated. Fears over the impact of privacy regulations were resolved. Disagreements as to research methodology were settled so that the conclusions reached in both states could be validly compared. Major design decisions were made such as group sizes, work penalties and service locations and randimization techniques. Following these start-up conferences, the ABA scheduled periodic joint-state meetings at the several participants' headquarters in Huntsville, Atlanta, and Washington, D.C. These gatherings provided a forum to discuss problems and present progress reports. Dr. Lenihan prepared chart outlines so that both states could present similar data, including cell sizes, interview rates, rearrest figures, job placements, etc.

Advisory Board. While TARP was being organized, an inter-disciplinary advisory committee was empanelled to provide project guidance.

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8. The test states each received independent grants from the Department to conduct the experiment. In Georgia, the Department of Labor received the Department grant, the Department of Corrections was the named grantee in Texas. Whereas both states have independent reporting obligations little attention is paid to the individual state TARP programs in this report.

Membership consisted of the following individuals:

Dr. Gilbert Geis, Professor, Social Ecology Program, University of California;
Dr. Robert Martinson, Professor, Crime Deterence, City College of New York;
Mr. W.J. Estelle, Jr., Director, Texas Department of Corrections;
Mr. Copeland Pace, U.S. Department of Labor (Atlanta);
Mr. Edward Pischedda, U.S. Department of Labor (Dallas);
Mr. George Bohlinger, LEAA;
Mr. Nick Pappas, LEAA;
Dr. Howard Rosen, Director, OMRD, U.S. Department of Labor;
Mr. William Neukom, ABA Commission;
Dr. Hans Zeisel, University of Chicago Law School;
Mr. Bruce Cook, LEAA (Atlanta);
Mr. Richard Fortenberry, Director, Texas Board of Pardons and Parole;
Mr. Lee Arrendale, Fieldale Corporation (Georgia).

The history of this body was to be short lived. Three meetings (December 2, 1975; June 23, 1976; November 4, 1976) were convened, all of which were sparsely attended. Given the range of expertise focus was drawn on such topics as alternatives to unemployment insurance and plotting of national strategy in the event of TARP's success. Due to the apparent disinterest, it was decided to disband this group.

Sub-contracts. During the first year, several contracts were entered into by ABA-TARP in furtherance of its responsibilities. The first was with the Roper Organization, Inc. to conduct a public opinion survey. The survey, actually conducted in January, 1976, posed the following question:

> At the present time, most men, when released from prison, receive between twenty and fifty dollars to start life over. Would you favor or be opposed to providing released prisoners with some form of financial support, like unemployment insurance, until they found a job?

For those responding in the negative or expressing uncertainty, a follow-up question was asked:

> Would you be in favor if it were shown that such support reduced crime among men coming out of prison?

In response to the first question, 63% answered positively and 23.5% negatively. From the group given the follow-up question, 64% turned positive for an overall favorable reply rate of approximately 87%. These affirmative replies transcend all tested independent variables. When inspected by race, education, employment, marital status, income, political party affiliation, age and sex, every sub-group showed up positive. While the survey results register favorable, they do not record the "firmness" of the support expressed. Most likely

the affirmative replies are soft-core and easily subject to change by adverse publicity or personal experience with crime. More traditional public attitude toward the ex-offender has been less generous, exemplified by surveys that have shown that employers often refuse to hire individuals solely on the basis of their record.[9] Discrimination due to prior criminal behavior remains strong. Therefore, the value of this survey as a pillar for future attempts to institutionalize a financial assistance program is undermined. It may show, however, that there is potential public support for measures which can be shown to work.

The now notorious Proposition 13 also augurs poorly for future public support of a permanent financial assistance program. It takes little imagination to predict the outcome of the original survey question if the California voter was queried June 6 on the way to the polls. With reduced tax revenue, California, and other states which might follow suit, may be expected to critically cut criminal justice programs. One estimate offered by California state criminal justice planning director Douglas Cunningham is that California's city and county criminal justice agencies face a 60% across-the-board reduction in funding as a result of Proposition 13.[10] According to Marty Mayer, director of the criminal justice planning unit of the League of California Cities, "(S)oft programs, such as diversion, are more likely to be cut from budgets because it is harder to show they are cost-effective, which will be the key word."[11]

Cost consciousness, of course, did not arise from Proposition 13. The Department and Commission had long before recognized the importance of a cost analysis for a financial assistance program. Two contracts accordingly were executed by ABA-TARP to conduct cost/benefit studies. The first contract (May, 1976) with John Hopkins University was for a cost/benefit analysis of the then concluded LIFE project (see footnote 5). The findings from this economic analysis were quite impressive. Benefit/cost estimates were computed from four perspectives: society, budgetary, non-participant, and participant. Depending upon which viewpoint was being used, the factors going into the equations included benefits from reduced criminal justice costs (police, courts, corrections), lesser welfare expenditures, savings due to less property damage and personal injury, and increased tax revenue. On the cost

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9. Seventy-four percent of those interviewed in a 1968 poll said they would feel uneasy working with or hiring an ex-offender. Ryan, J.; Webb, R.; and Mandell, N., "Offender Employment Resource Survey for the Minnesota Department of Corrections."

10. As reported in Criminal Justice Newsletter, Volume 9, June 19, 1978, p. 1.

11. As reported in The Pretrial Reporter, Volume II, November 3, June, 1978, p. 4.

side were administrative expenses and the actual transfer payments. Table I displays these benefit/cost estimates:

Benefit/Cost Estimates for the Financial Aid Program of LIFE*

Perspective	Lower Bound	Upper Bound
Society	4.021	53.731
Budgetary	0.491	2.669
Non-participant	0.777	3.987
Participant	1.935	3.760

* At 1.00, benefits are equal to costs

Since many of the factors considered appear as a range, two bounds are displayed, a minimum and a maximum. In addition, some savings, such as reduced psychic harm from less crime, are impossible to quantify and, therefore, go unrepresented in the equations. Their omission tends to make the findings conservative. According to these findings, a permanent LIFE program may be a prudent investment by the government, provided there is a recidivism reduction of a significant magnitude. Corrections costs, not being immune to price inflation, alone suggest that even a small reduction in recidivism may merit a financial assistance program. A recent accounting of the cost of incarcerating one individual at Rikers Island (NYC jail facility) showed an eye-popping 26 thousand dollars per year ($71.87/day).[12] Figures such as these eloquently speak for the need of reducing inmate populations. Financial assistance is but one response to the problem. Others include decriminalization of certain offenses, alternative community sentences, shorter prison terms, and even a prison construction moratorium.

A second cost/benefit study, contracted with Albert Madansky, director of the University of Chicago Center for the Management of a Non-Profit Public Enterprise, was for the TARP project itself. This analysis was to be performed in two parts. Part one called for a literature survey and equation design. The second part involved the actual computation. Due to dissatisfaction with the preliminary design and the null TARP effects, the second phase was cancelled. A literature review (bibliography) was delivered to the ABA-TARP which identified sources of cost factors, crime statistics and related materials for an economic analysis. A subsequent contract with Mathematica Policy Research, Inc. to perform a cost/benefit study for TARP was also curtailed midway due to the lack of positive recidivism results from the experiment.[13]

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12. "The Cost of Incarceration in New York City" prepared for the NCCD by Coopers and Lybrand, 1978.

13. The second cost/benefit contract for TARP was executed with Mathematica to enable Dr. Charles Mallar, author of the similar LIFE report, to continue his study for TARP.

Another major sub-study of TARP involved an examination of the effects of financial aid upon the families of the released individuals assigned to a TARP experimental cell. The University of Houston Center for Human Resources undertook this task. One hundred women in each state, Texas and Georgia, whose husband, son or boyfriend participated in TARP (50 controls, 50 experimentals), were interviewed.

While women prison releasees were included in the TARP study, they were not part of the family study sample. Due to the relatively small female inmate population, the number of female releasees were too small to contribute toward a significant family inspection. The interviews attempted to unearth what effect, if any, the financial aid had upon the home life, in particular the economic condition, companionship activities, and affective states. Overall, the observed effects were negligible. The full study may be found in attachment B.

IV. GATE MONEY REPORT

The primary premise on which TARP was conceived may be expressed in three sequential parts: (1) most prison releasees are broke, (2) few private or public resources are available to support them during their early release period, and (3) therefore, economic pressure pushes them toward crime. While the actual experiment was to prove or disprove the last point, the building blocks still needed verification. Dr. Lenihan, in 1971, compiled a table of gate money levels and collateral sources of releasee support.[14] Overall, he found low stipend figures and few additional sources for financial aid. Ten years earlier, Daniel Glaser had amassed similar data.[15] His low findings led to perhaps the earliest expression of qualifying releasees for unemployment insurance.

Since these two studies, partly due to expanded judicial interaction with correctional systems, there have occurred some sweeping changes in penal institutions. Had gate money been affected? In 1976, ABA-TARP replicated Lenihan's earlier survey[16] and found that gate money remains the chief, sometimes only, source of public support. For the most part, the intervening years experienced little change in the payment levels, and where increases occurred, they tended to trail inflation, resulting in an actual decrease in spending power. The only significant increases took place in Texas and California, which elevated the releasee stipend to $200, a generous figure compared to most states. The study also concluded that most prison releasees do not qualify

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14. Lenihan, K., The Financial Resources of Released Prisoners (Washington, D.C.: Bureau of Social Science Research, Inc., 1974).

15. Glaser, D.; Zemans, E.; Dean, C., Money Against Crime: A Survey of Economic Assistance to Released Prisoners (Chicago: John Howard Assoc., 1961).

16. Horowitz, R., Back on the Street - From Prison to Poverty (Washington, D.C.: American Bar Assoc., 1976).

for traditional transfer payments which are primarily designed to assist the aged, disabled, or fatherless household. Two years after our initial survey, a follow-up questionnaire was sent to the states. We were interested in discovering whether any other jurisdiction had followed California's and Texas' lead in anteing up their release stipends to $200. The answer was no. Only a few states had altered their gate money allotments and as usual these changes were marginal. Combined with earlier, documented proof of the pervasive employment problems confronting ex-offenders,[17] TARP could now confidently aver that releasees, as a whole, would be receptive to our aid. Whether they would favorably respond to this stimuli through lower crime rates was left to the test.

V. MAJOR ONGOING ACTIVITIES

Literature Dissemination. There have been four published TARP related materials -- introductory brochure, final LIFE report, LIFE cost/benefit study, and the gate money study. Each of these materials have been sent to individuals on a mailing list comprised of governors, attorney generals, heads of corrections departments, state criminal justice planning agencies, and pertinent legislators. Requests for publications were also handled by ABA-TARP. Due to the favorable cost/benefit findings for LIFE, a press release (Attachment C) was issued through the normal ABA communications channels. As a consequence, requests for this piece exceeded the others. While TARP failed to show positive recidivism results, through the distribution of these materials, TARP has, hopefully, contributed by sensitizing select groups and individuals to the crushing needs of ex-offenders.

Clearinghouse Activities. Primarily four groups looked upon TARP as a source of information. The first were the prisoners themselves. Through our publications, the grapevine, or suggestiveness of project title, a number of inmates wrote in the hopes that either we could give them financial assistance, or could lead them to other sources. For the most part, these requests affirmed, on a very personal level, what our gross statistics revealed. The releasee has no source of immediate income if unemployed at the time of release and not previously employed in a work release program. What these letters also suggest is that the post-release blight is perceived while still incarcerated. It may be surmised that such despairing thoughts have an "anti-rehabilitative" impact. There is no light at the end of the tunnel.

While every inmate letter merited our response, scant encouragement could be given. In the case of federal inmates, they were informed that they were eligible for up to $100 in gate money and a $150 loan from the government. However, even these minimal amounts are tenuous. A 1972 GAO study reported that most federal releasees received far less than the gate money maximum and almost no releasee was given a loan.

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17. By TARP's inception, this was so well documented as to become common knowledge in the criminal justice field. Major works include Glaser, D., The Effectiveness of a Prison and Parole System (Indianapolis: Bobbs Merrill, 1976) and the previously cited Pownall study, Employment Problems of Released Prisoners.

Otherwise, the federal inmate was advised as to the nearest volunteer organization equipped to deal with and assist ex-offenders. These groups almost never provide financial aid. Usually they offer career guidance and job placement services. ABA-TARP was able to identify such local groups from a directory of ex-offender aid groups which had been compiled by the Commission's Ex-offender Employment Restrictions project. State inmates received similar replies -- information on their gate money rights and the name of local volunteer organizations.

A second type of inmate letter concerns institutional programs, conceived of and/or managed by inmates, covering a broad spectrum. Most frequently, they concern a pre-release employment orientation or some job skill training. These letters usually look for our comments and criticisms, which are often based upon what we have learned from other inmate correspondences. From the volume received, it would appear that there are many imaginative inmates who are cognizant of the post-release needs, rehabilitation program deficits, and top heavy administrative delays, and who are able to articulate alternative prison programs using to greater advantage the inmate talent pool. The Department may wish to explore the feasibility of utilizing its resources on inmate-operated programs which appear worthwhile.

Another form of correspondence has been the "irate citizen," beefing over what he views as another government giveaway. At one time, this view was shared by Senator Proxmire in his monthly search for candidates for his government waste citation -- the now notorious Golden Fleece Award. The ABA and Department have jointly responded to such critics. Armed with information furnished by the ABA, the Department not only convinced Senator Proxmire that TARP did not merit his censure, but it resulted in a 180 degree reversal by the Senator (see attachment D). The Senator ultimately endorsed TARP as a valuable social science research project.

Other legislators, primed by complaints of their constituents, have inquired about TARP's raison d'etat. For the most part, the Department's responses have followed the letter to Senator Proxmire, citing the CETA mandate, successful LIFE program, and releasees' needs.[18] These public concerns over TARP's wisdom affirmed an earlier decision made by the project to maintain a low profile. This route was chosen for two reasons. The first was a methodological concern that the experiment would be tainted if the participants learned about the status of fellow TARP members or if employers found that some potential employees had a supplemental source of income. The second reason was simply to limit the above referred to critical letters until TARP had a chance to return data.

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18. The ultimate public scathing came in the supermarket gazette, the National Inquirer, which depicted TARP as a ludicrous government giveaway. Oct. 4, 1977.

A more positive interchange with Congress involved Representative John Conyers (D. Mich). As chairman of the House Judiciary Subcommittee on Crime, which includes LEAA oversight responsibilities, Mr. Conyers has become deeply enmeshed in the unemployment-crime link debate. While reviewing LEAA expenditures, he noted the TARP project and sent a Subcommittee staffer to a TARP meeting. Generally disgusted with LEAA funding of police hardware, Mr. Conyers looks upon TARP as positive LEAA involvement. Since then, his Subcommittee has held a number of hearings in Washington and the field involving the issue of unemployment and crime, shedding light on the growing belief that there is a cause and effect relationship between the two.[19]

While publicity was minimized, it was by no means absent or censured. Newspapers in both project states did carry early accounts of TARP's creation. To assure that these stories did not adulterate the program, Dr. Lenihan had written into the pre-release participant interview a question to test his/her knowledge of any publicity. This question showed an overall ignorance of the program. As previously stated, a press release also followed the LIFE cost/benefit report. Perked by this, a Baltimore Sun reporter interviewed Lenihan, Horowitz and Mallar, resulting in a favorable LIFE story.

An inkling of the future press reaction to a grandiose, permanent LIFE-like program may be gleaned from the California experience. In 1977, California enacted a prototype LIFE program.[20] Many California newspapers, through editorials, commented on this legislation. The majority favored opening government coffers to the prison releasee on the promise, or evidence supported hope, that the State would benefit through less crime. A sampling of these editorials may be found in attachment E.

The final participants in our clearinghouse activities have been corrections departments. Through our literature dissemination, every department has been made aware of our existence. Consequently, when any internal efforts are considered to upgrade gate money, we have been consulted. The most promising experience was with the Mississippi Board of Corrections. In October, 1976, Charles Young, acting chairman of the State's Correction Board, directed the corrections department to

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19. While TARP grew out of a belief in the existence of this relationship, it was not conceived to directly test it. Nevertheless, given the wealth of data collected on the nearly 4,000 participants, statistically supported observations about this relationship are possible. The data evidences a relationship between unemployment and crime. This partnership will be fully explained in the forthcoming analysis of the TARP project by Dr. Peter Rossi of the University of Massachusetts, Social and Demographic Research Institute, expected in January, 1979.

20. This will be discussed in detail in the next section.

report on inmate release procedures. He expressed particular concern over inadequate gate money amounts:

> "We have a person who is released from the institution and he is given anywhere from $25 to $75, and yet he is asked to come back to a society where even people on menial existence have more to live on."
> Commercial Appeal, Memphis
> October 16, 1976

Ronald Welch, director of the Mississippi Prisoners' Defense Committee brought this act to our attention and requested that we support this effort through direct communication with Chairman Young. Immediately, copies of the gate money report, the LIFE study bibliography, model gate money legislation, California bill, and cost/benefit analysis, were sent to Young and the corrections department. Unfortunately, no follow-up legislation was introduced.

Another important clearinghouse function has been supplying information to legislators considering TARP-related bills.

VI. LEGISLATIVE WORK

California Groundbreaking. The most prominent and rewarding ABA-TARP legislative experience concerned a California bill, SB 224. California State Senator Peter Behr (R.), partially motivated by the LIFE results,[21] introduced legislation, calling for the incorporation of state inmates into the state unemployment insurance system. Qualifying wage credits are to be based upon hours worked by inmates while incarcerated. The entrance wage level during the base year is $1,500 or twice that required for regular, non-institutionalized workers. This level far exceeds the reach of the working inmate. By state law, inmates are limited to a wage maximum of $.35/hour. Based upon a 40-hour week, even if an inmate worked a full year, the most he/she could earn would be $624. To overcome this disability, the new law creates a wage fiction, assuming for the purpose of unemployment insurance eligibility and benefit entitlement, that the inmate earns the minimum wage.[22] The new law went into effect July 1, 1978 and has a sunset legislative renewal in 1982.[23] At the time of this writing, the mech-

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21. While this law places California in the vanguard of TARP aspirations, its snowballing potential must be weighed with an understanding that California sometimes marches to the beat of a different drummer. Other near unique California corrections laws includes a recent OSHA bill for prison industries.

22. To complement its TARP-LIFE research, the Department intends to provide partial funding of the California evaluation.

23. Interestingly, California conducted its own mini-TARP experiment, Direct Financial Assistance to Parolees, in 1972-73. Its outcome could be labelled moderately successful, with 80% of the experimentals retaining active parole status after six months compared to 71% of the controls.

anics of the new act are still uncertain -- with questions remaining as to what constitutes prison labor (e.g., should it include hours spent on vocational training?). A copy of the new law is attachment F.

When Senator Behr introduced this legislation, it faced stern opposition.[24] Among the most vociferous opponents was the State's District Attorneys Association. A critique by their legislative branch attacked the LIFE findings, thereby challenging the California bill's foundation. Dr. Lenihan, by letter to Senator Behr, refuted this critique. In addition, Senator Behr solicited our aid in securing his bill's passage. A letter was submitted detailing the chronic economic need of releasees and reviewed SB 224. The California law represents a tremendous stride toward post-release prosperity. On January 1, 1978, Corrections Magazine census of national state inmate population totaled 247,913, of which California housed 20,91[illegible], or nearly 10%. Although TARP's shortcomings had been duly reported to Senator Behr, the law still stands, subject to the challenge of its own evaluation three years hence.

Other Legislative Assistance. ABA-TARP was receptive to any call for assistance from legislative sources. Usually, the response was informal, as most requests were for information about suggested literature, others states' practices, or TARP-LIFE activities. On three instances, in addition to the letter to California Senator Behr, we prepared formal responses to government inquiries. The first went to the Small Business Administration in response to a request for comments to a proposed rulemaking concerning parolee eligibility for loans.[25] Under SBA internal policy, loan requests submitted by these individuals had routinely been denied. The proposed rule change offered to reverse this policy. ABA-TARP, by letter to the SBA administrator for finance and investment, applauded this tentative change. Responding to specific questions posed in the published notice, we cited national studies which recommended loan assistance to the prison releasee, and, in general, endorsed the concept that the parolee and probationer should be treated like any other loan applicant, with the circumstances of his crime taken into consideration but not dispositive of the outcome (attachment G). This stance is consistent with previous policy, promulgated by the Commission's Offender Employment Restrictions Project and adopted by the ABA, which calls for the abolition of per se employment restrictions frequently applied to ex-offenders.[26] On

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24. A similar bill had been presented in 1975 but was tabled in Committee.

25. Federal Register, Vol. 41, No. 239, 12/10/76, p. 54002.

26. Consistent with this policy, the Commission and its affiliate projects, including TARP, collaborated in the writing of an amicus curiae brief to the Supreme Court in the case of Carter v. Miller, 434 U.S. 356 (1978). In this case, the respondent had successfully challenged a Chicago municipal ordinance which barred some ex-offenders from receiving a public chauffer's license while affording those who already held licenses at the time of their conviction

(continued on p. 13)

June 22, 1978, the SBA administrator finally rendered his verdict. It was a resounding defeat. Not only did he reject the proposed rule, but elevated the previous internal policy by publishing it in the Code of Federal Regulations. As grounds for its decision the Agency stated that (1) the SBA is not in the business of rehabilitation, (2) that a good character finding is essential to credit transactions, and (3) it did not wish to run the risk of "absentee management in the event of reincarceration." ABA-TARP decries this nearsighted determination and takes exception to the stated grounds. Most of our objections may be found in the original support letter. The Agency has retreated to the regressive attitude that a criminal record forecloses any doubt as to the ex-offender's bad character. If a case-by-case loan decision were made, the deserving applicant would be given the opportunity to amerliorate the impact of his record and allay the fears that he would recidivate. The SBA's timid stance on rehabilitation is inconsistent with the relevant Congressional declaration of policy.[27] Within this declaration is the concept of promoting "growth of personal initiative," with emphasis placed on small business concerns "located in urban or rural areas with high proportions of unemployed or low-income individuals" or "owned by low-income individuals." We would submit that the typical releasee fits the latter and that rehabilitation, almost by definition, involves the growth of personal initiative.

The second formal response also concerned loans for ex-offenders. This was directed to Representative Kastenmeier, chairman of the House Judiciary Subcommittee on Civil Liberties and the Administration of Justice, who cosponsored a bill to upgrade the federal loan provision for released federal inmates from $150 to $600 (H.R. 7050, 95th Congress, 1st Session). As of June, 1978, the bill has remained at the Subcommittee level with no action having been taken. More recently we learned of a 1978 Hawaii bill along the lines of the California unemployment insurance legislation. This prompted our transmitting a letter to its sponsor with general information about the need and desirability of financial aid. This also, for the first time, presented us with the problem of how to promote such measures while admitting TARP's shortcomings. Our reaction was to stress the chronic financial need but not hold it out to be a panacea for the recidivism problem. In keeping with this, the legislative packet which accompanies this report makes no pretense as to offering a solution of crime. Instead, it is a compilation of materials which call for or underscore the desirability of financial aid to prison releasees on other grounds, ranging from humanitarian to the possibility that some recidivist tendencies may be waylaid.

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26. (continued) the opportunity to retain it. The ABA supported the lower courts opinion that such a licensing scheme violated equal protection guarantees. The brief also went one step further, arguing that licensing determinations based on fitness should be individualized, i.e., no per se restrictions due to the existence of a criminal record. The Supreme Court split 4-4, thereby upholding the lower court's decision.

27. 15 U.S.C.A. §631 (1976).

Another entree to Congress has been our association with staff on House Committee on Education and Labor. Its senior minority member, Rep. Albert Quie, has considered prison labor issues and, through his staff, solicited from us information on research in the field. In 1975 Mr. Quie cosponsored a bill to amend Title 18 of the United States Code by repealing laws which divest prison made goods of their interstate commerce nature, provided that the inmate worker received at least the prevailing wages (H.R. 2715, 94th Congress, 1st Session, 1975).

VII. AN EYE TO THE FUTURE

When the ABA first became involved with TARP, prospects for a future permanent financial aid program appeared strong. LIFE had recently concluded with impressive results, and numerous commissions, researchers, penologists, and the like supported the principle of giving aid to fresh releasees. Operating under the optimistic assumption that TARP too would prove fruitful, the ABA-TARP performed several tasks with an eye toward that day when a march upon our legislative halls would lead to permanent programs. In preparation of that event, ABA-TARP began by seeking official approval of its parent organization, the American Bar Association, of a resolution calling upon Congress and state legislatures to significantly upgrade its gate money policy (attachment H). This resolution was adopted by the Association's governing body at its annual meeting in August, 1976. Armed with this mandate, we next addressed a series of questions concerning how best to implement a serious financial assistance program. More specifically, three primary questions arose -- who should receive assistance, should it be a federal or state program, and should it be modeled after unemployment compensation?

Eligibility. All three questions are interlaced. For example, if a releasee's income transfer program is modeled after the unemployment insurance system, then funding and eligibility questions will be partially resolved. Still, some independent factors remain. As to eligibility, the basic issue was with what subset of the entire inmate population should we be concerned? The entire set consists of adults sentenced to federal institutions, state facilities, jails (usually county or municipally operated); juveniles placed in a juverile detention center or other housing unit; and individuals locked up during the pre-trial and trial phase. If for no other reason than the number is too great, the entire set could not be accommodated, necessitating a weeding out process till the optimal number was reached. Overall, inmate populations are rising. Each year tens of thousands of these individuals re-enter the community. The states alone lawfully released over 100,000 inmates during 1975, most of whom had served felony sentences exceeding one year. Federal inmate releasees for the same year easily raised the combined figure to over 120,000 individuals. The impact of adding all jail and juvenile releasees to this total would be dramatic. Though no jail release figures exist, the very nature of these facilities, short-term, high turn-over detention centers, suggests that the amount is very high.[28]

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28. In one of the few discussions about jail population figures, the late Hans Mattick estimated that the total annual commitment lies (continued on p. 15)

First to be axed were the jail releasees that had not served a sentence. These would include those arrested but whose case was dropped or won in the adjudication stage, as well as those released on bail or personal recognizance prior to their trial. While these individuals have avoided a conviction and, therefore, in many respects merit our sympathies for any disruption caused by confinement, their deletion from a financial assistance program rests on several grounds. Their forced removal from society tends to be shorter than their sentenced fellow inmates, thereby being less disruptive. As a consequence, many may be able to retain the job they held before arrest or collect unemployment insurance.[29] In any respect, the reintegration period should be minimal. The debilitating "ex-con" stigma is less likely to attach to them. In a very practical respect, the "arrestee" has an advantage over one convicted of a crime, since, according to EEOC regulations and case law, a prospective employer may ask about past convictions but not arrests where no conviction followed.[30]

Having excised the arrestee, next to go were the remaining jail population, those serving a sentence. Most sentenced jail inmates are misdemeanants. A substantial portion of these are detained for traffic violations, disorderly conduct, vagrancy and other petty offenses. It may be posited, or at least argued, that these non-property crimes will not be diminished through post-release aid. Sentences for these crimes also tend to be short, usually less than one year (the maximum sentence statutorily permitted for most misdemeanors). Again, this relatively short absence from the community should be less disruptive than a multi-year felony sentence. One North Carolina study of earnings and jobs of ex-offenders discovered that ex-felons had more stigma attached on release than did ex-misdemeanants.[31]

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28. (continued) between 1.5 and 5.5 million, and is probably around 3 million. This is the population equivalent of a very large city, or a medium-sized state, and is at least four times the number who annually pass through state and federal prisons combined. Mattick, H., "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," in Glaser, D., ed., Handbook of Criminology, 777, 780, 795 (1974).

29. Where the term of incarceration is less than the benefit period under the state unemployment insurance law, an eligible jail releasee may still be able to file a timely claim.

30. While financial aid for this group may not be appropriate other public policy initiatives could come to their rescue. For example, Daniel Skoler has suggested a cooling off or grace period during which time an employer could not lay off an arrested employee. For a fuller explanation of this idea, see Skoler, "Crime, Job Retention and Justice System Climate: A Cooling Off Period for Arrested Employees," in Crime and Employment Issues (Institute for Advanced Studies in Justice, 1978).

31. Witte, A., "Earnings and Jobs of Ex-Offenders: A Case Study," Monthly Labor Review, V. 99, Dec., 1976, p. 34.

Juveniles were the second major population removed from our consideration. Again, a plethora of grounds existed. Many juveniles when released return to the relative financial security of their family. Where the family cannot provide this support, welfare payments (AFDC) frequently substituted. The juvenile releasee often does not comport with the TARP rationale -- maintenance income until a job is secured -- as many of them will be returning to school and, therefore, not entering the labor market.

Before proceeding it should be noted that our exclusion of these large inmate groups does not necessarily reflect our belief that upon release many or most of them have no need for financial aid. On the contrary, many of them may have a greater need for government assistance than state or federal inmates. In 1976 we sent over 100 questionnaires to county and local jails in every state, hoping to be able to draw a picture about the jailed inmate and in particular his financial status. The paucity of responses (16) prevents us from reaching any valid conclusions. However, it is worth noting that only three jails had gate money policies, the greatest being $5. There also seems to be less opportunity to earn money on a work release program than in the federal or state institutions. A table compiling the responses to our questionnaire may be found in attachment I. The juveniles need for aid may be the greatest, as youths, in general, and Black teenagers, in particular, represent the hardest hit by unemployment.

Through the process of elimination, the major prison populations left were the federal and state systems. The question then arose, in light of equal protection considerations, could this population be further eroded until that group most likely to be benefitted by a financial assistance program is targetted. A series of memoranda addressing this exclusion issue was prepared (attachment J) focusing in on the consitutional ramifications of excluding releasees from among this subset. These memoranda reviewed the case law in related areas and concluded that a state could limit its payments, if it chose to do so, for such rational criteria as need, length of incarceration, nature of correctional facility, participation in work or rehabilitation program, and nature of offense for which incarcerated. (In fact, our gate money survey revealed that many states currently do grant gate money on a discretionary basis, typically on unarticulated grounds or ill-defined need criteria.) So operated, a releasee income maintenance program would be akin to existing social welfare programs in which the recipient of benefits does not contribute to the program's financing. The courts have held that legislative and executive bodies have wide discretion in designating eligible recipients. With the exception of race and sex distinctions, most government decisions are upheld in this area. Thus, if a state elected to distinguish among its inmates who should receive financial aid, it need merely state a rational basis. For example, had TARP shown that only those over 30 years of age convicted of theft crimes manifested lower recidivism rates, then that finding could have supported a state decision to target its aid to these releasees. (This would be similar to parole boards deciding who should be paroled, based upon predictive studies, a practice the courts have upheld.)

A corollary concern is putting a price tag on a permanent program. Both ABA-TARP and Dr. Mallar computed estimates for a national program based upon past state inmate releasee counts and unemployment insurance benefit levels. Different base figures for numbers of releasees and number of weeks of benefit receipt were used so that the two computations are not identical. However, both studies show that the total annual cost (even for a maximum program where every releasee receives full benefits) would be a fraction of one percent of the total expenditure for unemployment insurance benefits. Both computations are in attachment K.

Funding. Where would this money come from? The choice here boils down to the federal or state governments. This issue was also addressed by memorandum (attachment L). At this juncture, it appears that a permanent program would have to be initiated and funded at the state level. While the federal government absorbs the burden for most national income maintenance or welfare programs such as AFDC (to which the recipients had not made prior contributions), it is highly unlikely, in view of the TARP findings, that Congress could be induced to enact a broad program. In fact, Congress more recently, in amending the unemployment insurance system, legislated against the interest of the inmate (see next section). Any legislation and appropriations, therefore, would have to emanate from the state capitols, as did California's groundbreaking bill.[32]

Vehicle. The last question, what mode should the financial assistance take, remains moot. While the unemployment insurance system most frequently has been bandied about, it would take significant amendments to bring most prison releasees within its scope. Efforts to incorporate released inmates into the UI system would have to be stylized to meet the peculiarities posed by prison. The new California law is an example. In order to merit UI entitlement, the miniscule prison wages had to be overcome. The law, therefore, creates a minimum wage fiction to support UI claims. This need not be the only way to amend the UI laws. In a state having small inmate work programs alternative approaches may benefit more releasees. Earlier, ABA-TARP memoranda (attachment M) set forth both the problems in using the present UI system, and suggested amendments to bypass them. Each problem/solution depends upon which work period benefits are to based on -- pre-incarceration labor, institutional labor, and/or work release.

Utilization of the unemployment insurance system does have several attractive selling points. The first is an equity argument. Both the Georgia and Texas arms of TARP were asked to prepare studies on the number of inmates who would have been eligible for unemployment insurance had they lost their jobs for reasons other than incarceration, and the magnitude of the benefits lost. Their findings (attachment N) showed a significant percentage fell in this category, with a

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32. Any release assistance based upon the unemployment insurance system would most likely be state supported. The inmate would be treated like any other state employee, for which the state is responsible for reimbursing the unemployment insurance fund for any benefits (continued on p. 18)

large gross benefit loss. In Georgia, between June 1, 1976 and March 31, 1977, 4,842 offenders received prison sentences. From this group, 727 (15%) were eligible to receive unemployment insurance had they not been incarcerated. This group, had they all collected their maximum UI amounts, would have received $570,776. These lost benefits represent a windfall to the state as they fatten the unemployment insurance funds.[33] More practical arguments favoring the unemployment insurance vehicle is that if it is based on the inmate's work efforts, then it can be said he is entitled to the same fringe benefits and labor protections as any other worker. At present, 97% of the entire labor force receive unemployment insurance safeguards. The administrative cost for a permanent, TARP-like program, would also be diminished, as the addition of releasees to the employment services' work load should not require significant new expenditures or set-up costs.

Even if the unemployment insurance system is not exactly suited to TARP purposes, it has certain features which would serve well in a releasee stipend program. These are primarily the periodic, weekly payments which, at least in theory, are dependent upon a work search effort by the recipient. Any alternative to unemployment insurance would be wise to incorporate these features, especially a rigorous work-search or educational or vocational training requirement.

VIII. MONITORING

H.R. 10210. The right to unionize, accrue pension rights, receive minimum wages, and qualify for unemployment insurance are but some of the many protective labor laws benefiting the working force. Congress, with the exception of worker's compensation, has not seen fit to extend these protections to the working inmate. During the course of TARP, Congress addressed the very issue of our concern -- unemployment rights for released prisoners. In 1976, major amendments to the Federal Unemployment Tax Act (FUTA) were enacted. Under them, state and local government employees received unemployment insurance rights.[34] Certain

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32. (continued) ultimately paid to these individuals. There is, however, precedent for federal funding of such programs. Prior to the 1976 amendments to FUTA, Congress had authorized unemployment insurance entitlement to state and local government employees under the Special Unemployment Assistance Act, a temporary provision paid for by the Federal Government.

33. While a "windfall," it is not an unfair enrichment. Thousands of employees regularly have unemployment taxes paid to the state based upon their labor yet never receive benefits as they stay at their jobs or do not suffer any aberration in their employment history. This fact is built into the system and tax rates are set accordingly.

34. While the state UI systems are not obligated to accede to FUTA requirements, their failure to do so would result in the loss of federal tax credits on the employers' UI tax, a sanction resulting in all states complying with the federal dictates.

categories of employees were exempted, however, including prison inmates.[35] This exemption is a carryover from earlier amendments which had mandated coverage for certain employment.[36]

ABA-TARP learned of this proposed exemption at the 11th hour, as the amendments were being reported out of Committee. In an attempt to combat this exclusion, a detailed memorandum (attachment O) was transmitted to the Department of Labor legislative liaison's office. Due to the late hour, the Department chose not to challenge this section (the amendment as a whole had strong backing from the Administration). This exclusion, in reality, should not have harmed future TARP efforts with Congress had we experienced positive results.

Even had the 1976 amendments not specifically deleted inmates, nothing would have changed. Most corrections departments and in turn the courts refuse to deem the working inmate an employee, citing such grounds as lack of contractual relationship, real wages and rehabilitative purpose behind prison labor. Even if inmates earned employee status, their actual wages are too miniscule to enable them to overcome the threshold income level needed to qualify for unemployment insurance.

Federal Legislation. In addition to watching developments transpire in the unemployment insurance field, ABA-TARP has closely monitored other relevant congressional activity. This task arose not only from our proximity to Capitol Hill but also from the precedent-setting value of federal law. For example, the Federal Government was the first to extend a form of worker's compensation protection to inmates under its jurisdiction.[37] Shortly thereafter, several states followed suit.[38]

The following is a list of those relevant bills, their purpose, and status as of July, 1978:

-- S. 1437, 95th Congress, 1st Session (1977) - recodification of federal criminal law includes increase in federal gate money provision to a range of $200 to $500. Eliminates the $150 loan provision. Passed by the Senate, but the tentative draft House version of June 27, 1978 would retain the current $100 federal gate money level.

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35. This exemption permits the states to elect whether or not to cover inmates. Following the 1976 FUTA amendments, every state opted to exclude prisoners from the unemployment insurance programs.

36. In 1970 FUTA was amended to require coverage of state hospital employees. Inmates working in hospitals on correctional grounds were specifically exempted.

37. 18 U.S.C. §4126.

38. See, e.g., Md. Ann. Code Art. 10 §35 (1972); Ore. Rev. Stat. §655, 505 (1967); Wisc. Stat. §102-55 (1972).

-- H.R. 2715, 94th Congress, 1st Session (1975) -- to remove interstate commerce restrictions on prison made goods provided that the inmate workers receive the prevailing minimum wages. Referred to Committee on Education and Labor Subcommittee on Labor Standards - no action.

-- H.R. 2803, 94th Congress, 1st Session (1975) -- to establish minimum prison and parole standards including minimum wages for federal prisoners and unionization rights. Referred to House Subcommittee on Courts - no action.

-- H.R. 7050, 95th Congress, 1st Session (1977) -- to upgrade loan assistance to federal releasees from a maximum of $150 to $600 and establish a revolving fund for this purpose. Referred to the House Judiciary Subcommittee on Civil Liberties and Administration of Justice - no action.

-- H.R. 7802, 94th Congress, 1st Session (1975) -- to improve inmate employment and training by providing program and training loans conditioned on prevailing wages, marketable training and other labor law protections but not unemployment insurance payments while incarcerated. Referred to Judiciary Committee - no action.

-- H.R. 10130, 95th Congress, 1st Session (1977) -- to provide social security coverage for work performed in prison industries and other services performed for renumeration by inmates. Referred to the House Committee on Ways and Means - no action.

With the exception of S. 1437, designed to rewrite Title 18 of the United States Code, none of the other measures escaped Committee. It is difficult to assess why Congress has failed to actively consider these measures. One may speculate that prisoner's rights occupy a low status on the congressional priorities list, that S. 1 and its offspring have sapped most of Congress' energy in the criminal justice field, or that emphasis evidenced by an explosion of crime victimization bills, is being placed on the victim and not the offender. Nonetheless, it is difficult to envision Congress taking an active lead in major financial assistance reform for the prison releasee.

Litigation. In the past decade, courts have taken an increasingly active role with respect to corrections issues. Whereas the bench once routinely deferred to the "expertise" of corrections officials, they now review corrections matters with an eye toward the constitution. Increasingly, inmates are afforded constitutional guarantees, like any other citizen, unless they interfere with the running and security of the institution. Under the Eighth Amendment's cruel and unusual precept, courts have issued decisions calling for sweeping reforms in individual corrections systems.

Due to this growing judicial activism, ABA-TARP has kept a close eye on corrections related court cases. In spite of this intensified court involvement, there is currently no evidence to indicate that

a court would find a releasee entitled to unemployment compensation benefits based upon either pre-incarceration employment or work while in the institution.

When inmate claims for various protective labor law rights have arisen, the courts have rejected them on several grounds, the most damaging being the Thirteenth Amendment, which expressly permits involuntary servitude "as a punishment for crime whereof the party shall have been duly convicted." Other grounds for denying inmates' labor rights include the attitude that the working inmate is not an employee due to lack of a contractual relationship and that these rights would be in conflict with security demands of the institution. A Supreme Court decision handed down this past term hints at how the Court would respond to inmate labor challenges. In Jones v. North Carolina Prisoners' Labor Union, Inc., 430 U.S. 927 (1977), the Court withheld from the unions the right to use their most expedient unionization approaches for soliciting inmate membership -- bulk mailings and meeting rights. Although prison unions per se were not banned, they received a serious, perhaps fatal setback.

In several instances, the specific issue of unemployment insurance benefits for the releasee has been litigated. These cases have involved claims for benefits based on pre-prison work. Most often the court has affirmed the administrative decision denying benefits. Denial is based either on a specific disqualification statute concerning loss of work due to incarceration and conviction (see, e.g., Jefferson v. California Unemployment Insurance Appeals Board, Cal. Court of Appeals, Fourth District, Division 1. Civ. 14618, June 15, 1976) or more universal disqualifying laws such as loss of work due to job misconduct or a voluntary quit. In either instance, the courts upheld unemployment insurance denial, viewing criminal activity resulting in incarceration as personal fault tantamount to a voluntary quit.[39]

IX. GATE MONEY AND ITS SUPPLEMENTS

Although TARP failed to return favorable results, with no discernible reduction in the recidivism rate for those who received assistance, the principle of giving assistance to the releasee still has merit. What has been lost is the capacity to promote improved assistance on LIFE-type grounds.

Without the reduction in recidivism and the accompanying cost/benefit break, income maintenance as an anti-criminogenic agent is no

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39. These cases only arise when the claimant has been incarcerated for less than his benefit period under the state UI law. If incarcerated for longer than this period, his/her rights to benefits automatically have lapsed at the time of release. While incarcerated, the inmate is not entitled to collect benefits for he/she cannot fulfill the basic pre-conditions, availability and looking for work.

longer feasible. Income maintenance alone can not be expected to overcome employment-crime problems. Rather, it must be presented as an integral part of a comprehensive package aimed at reducing unemployment among ex-offenders. Even without this package, the need for some post-release aid still persists. Traditional gate money simply ignores the fact that releasees confront considerable early financial problems which seriously impede their reintegration, regardless of whether or not they resort to criminal activity. While a brief support period at the $60 a week level may not deter those criminally inclined, it could significantly ease the reintegration process for those who "stay straight." The needs of this group must be addressed. If, given the TARP results, we can not focus in on the identity of this group, then the whole, including those that will most likely recidivate, should be profited for the good of the majority that ostensibly avoid future criminal behavior.

Under this rationale -- give a helping hand -- principles such as "aid to avoid criminality," or "aid until employment," lose their appeal. In its place emerges the theory of a government boost or shot in the arm to ease the transition back to society. This sounds like the gate money philosophy, but at a meaningful level. There is some indication to suggest legislative bodies would be receptive to this. California and Texas have, in the past few years, upped their individual gate money allotments to $200. Although only two states, they rank number one and three, respectively, in inmate population, cumulatively representing over 15% of the nationwide state inmate population. If only New York followed in their footsteps, this triumvirate would represent over 20% of the total state inmate census. There is also a possibility that the federal prison system will be authorized to increase its gate money. If S. 1437, the bill to rewrite the federal criminal code is enacted, federal releasees will be entitled to receive at least $200 and up to $500 upon release.[40] Current practice affords a maximum of only $100, and even here the experience has been to award around half this amount to less than all federal releasees.

Staying, for the moment, within existing structures, additional action may be taken to improve the releasee's financial situation. Greater utilization of welfare or government benefits may aid some inmates upon release. Given the large size of the inmate population comprised of veterans, veterans administration (VA) benefits leap to mind.[41] Although no study has been conducted to ascertain the number of ex-offenders who take advantage of VA entitlements, a recent examination by the Georgia State Bar Commission on Correctional Facilities

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40. The House's tentative draft version retains the current $100 level.

41. According to the LEAA 1974 census of state inmates, 27% of the total population had at one time been in the U.S. Armed Forces (51,200). From this group, 90% received honorable or general discharges, making them eligible for VA benefits, and 44% had been discharged within ten years, the time limit for educational aid.

and Services[42] of military veterans in Georgia prisons suggests that these benefits are underused. Less than 20% of the inmate veterans reported receiving any VA benefits while incarcerated. Georgia TARP compiled similar data. They found that between July 1, 1974 and September 30, 1977, 22% of incoming Georgia state inmates were veterans, with the vast majority representing the Vietnam era. Due to the nature of incarceration, many inmate veterans naturally are unable to use this assistance. Unless the inmates take a correspondence course, the institution has a VA-approved educational program, or the inmate is eligible to participate in a community release program, educational assistance may not be obtained. By regulation, inmates' VA pension rights are held in abeyance. In addition to delaying benefit receipts, the low level of assistance reported by Georgia suggests that upon release the ex-offender veteran, without a prior experience and habit of dealing with the VA, may ignore a valuable source of assistance.[43]

An information program may be called for to educate this population about their potential VA rights. To assure maximum exposure, this program should initiate at the institution level. To a certain extent, the VA has already begun these efforts. By regulation a VA representative is obligated to annually visit each federal and state correctional facility in order to answer inmate questions. However, evidence indicates most prisoners are still unaware of their rights. According to the aforementioned Georgia study, one VA regional officer ascertained that only three of seventeen prisoners attending a junior college through an educational release program were receiving the benefits to which they were entitled. This is not surprising in light of prior research which showed that social service agencies are largely unaware of parolee needs and tend to presume parole agencies take care of them.[44] In response to this problem, ABA-TARP has prepared a draft pamphlet (attachment P) explaining the elementary rights and benefits to which inmates may be entitled. The Department may wish to explore, through the Veterans Administration and national prison groups, such as the American Correctional Association, distribution of this or a similar pamphlet in institutions. In addition, more work needs to be done at the institution level to have their internal education and vocational programs become VA certified.

Current Programs. Returning to the original concept, that financial aid should be a cog in the anti-recidivism machinery, ABA-TARP has identified current correctional programs which may supplement or, in some instances, replace gate money. These are work programs which afford the inmate an opportunity to earn money, and thereby amass some savings. Additional benefits of well conceived and administered work

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42. Through grant assistance of the Commissions' BASICS Program.

43. VA aid most suitable to these individuals would be educational aid and disability insurance.

44. See, e.g., Studt, E., "Reintegration From the Parolee's Perspective," U.S. Dept. of Labor Criminal Justice Monograph, 1973.

programs are that they may teach the inmate work skills which he may apply after release. The historical shortcomings of most prison skills' programs has been well documented elsewheres[45] and is beyond the purview of this project. Our concern is with the wages they pay.

The programs being discussed are work release, prison industries and institutional labor (maintenance, laundry, kitchen, etc.). At present, only the first pays meaningful wages, enough to enable the participant to save money for post-release use. For many prison administrators, work release is seen as a practical alternative to gate money. Larry Parnell, public information officer of the Massachusetts Corrections Department, stated that:

> Gate money is fast becoming a thing of the past in Massachusetts. The big push is for work release so that guys can support themselves.[46]

The savings potential has contributed toward a growing body of opinions supporting payment of real wages in institution work programs.[47] Several other grounds have been presented in support of these wages. Some are apparent, such as savings. Some are more indirect, such as an easing of prison tensions. Real wages, as demonstrated by work release, creates a uniquely symbiotic relationship between inmate and state. The inmate prospers through increased income. In return, the state collects taxes, recoups some wages for room and board, and may reduce its welfare rolls by striking the families of some work releasees. More recently, a third party has entered this relationship as a beneficiary. Increasingly, programs are earmarking a portion of the workers' wages for victim restitution.

A hidden benefit of real wages will be the elimination of a major cause for inmate disturbances. Examinations have revealed that miniscule wages are a significant bone of contention for inmates who riot. This was the case in Attica and has been documented for several federal prison uprisings.[48] Another less obvious benefit should be a significant improvement in prison work programs. As these programs become more costly, pushed up by higher wages, the onus will be on the administrators to make it more cost efficient. For example, the prison industries will have to emulate private industry business practices. Their antiquated equipment and buildings will require modernization.

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45. One such recently concluded study was prepared under a Department grant. Levy, G.; Abram, R.; LaDow, D; Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey (Columbus: Battelle Laboratories, 1975).

46. New Orleans Times Picayune, Sept. 25, 1977, p. 8.

47. This provision is included in the ABA's Tentative Draft Standards Relating to the Legal Status of Prisoners.

48. New York State Special Commission on Attica, Attica, 49-51 (1972); An Investigation and Analysis of Federal Prison Strikes (Washington, D.C.: Nat'l Coordinating Committee for Justice Under Law, 1973).

For all these reasons, greater utilization of work programs at higher wages is being advocated. One of our test states, Texas, has experienced this reform movement. The Texas prison industries is quickly becoming a leader in modernized shops. Twenty-one different industries operate within Texas prisons, including tire recapping, printing, computer key-punching and canning. The over eight million dollars earned by these industries has helped to make Texas' cost per inmate among the lowest in the country. In a 1974 report of its Citizens Advisory Committee to the Joint Committee on Prison Reform, a recommendation that inmates receive reasonable wages for their labor was included. In the accompanying commentary, the Committee suggested that these wages would contribute toward savings that would ultimately "reduce economic pressures to return to crime." Unfortunately, the Texas legislature has yet to heed this advice.

While ABA-TARP took notice of the benefits and growing list of inmate minimum wage supporters, we knew that too often implementation of prison reform required a judge's order. As part of our legacy, we have prepared a legal memorandum which sets forth arguments to include inmates under the minimum wage protection of the Fair Labor Standard Act as amended 1974 (attachment Q). This memorandum was forwarded to the Department with a recommendation that pertinent personnel from the Wages and Hours Division be consulted. A copy also went out to the ACLU National Prison Project.

Our original charge did not include litigation activities. If reform in the nature of real wages or unemployment insurance eligibility is to come via the courts, another group must pick up the banner. Reform through remedial legislation has been our goal. To understand the future trends with respect to post-release financial stability, we have, throughout our life, maintained close ties with state legislatures. The next portion of this report contains our findings in this area, along with our conclusions.

X. CHANGES

A growing body of opinion decries unemployment as a major cause of crime. Inspections of our prisons affirm this view, at least circumstantially. Disproportionately, correctional facilities house poverty level citizens who represent the chronic unemployed. Working against the inmates' employability is race, lack of education and meager work histories. The addition of a criminal record and prison term merely builds onto these. Under one theory of criminal motivation, full employment then would provide an unanticipated benefit, a substantial reduction in crime. While the answer looms apparent, its implementation proves another matter. In an era where six percent unemployment is an acceptable level and where young black males face a rate alarmingly higher,

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49. It has been estimated that between 1940-1973 each 1% increase in unemployment produced, after a lag, a growth in the state prison population of 3,340. The population reduction has not been separately estimated for decreasing unemployment. Brenner, H., Estimating the Social Costs of National Economic Policy: Implications for Mental and Physical Health and Criminal Aggression (Washington, D.C.: Joint Economic Committee, 1976), p. 5-6.

meaningful jobs for the ex-offender are scarce. Without the requisite skills and training, most prison releasees find themselves mired at the bottom of the job market. Though mindless, no-skill jobs may be obtained, their inadequacies both in direct remuneration and phychic rewards reduce their value as a crime disincentive.

How can the ex-offender, recently released from a correctional facility, enter the labor force at a rewarding level? If he or she enters prison without the skills and necessary work background, the positive transformation must take place, or at least begin, while in the institution. Contemporary corrections theory reflects this thought. Every recent study of institutional work and rehabilitation programs echoes the same theme -- inmates must learn skills which are marketable upon release.

While this theory has been embraced by penologists and criminologists, the question remains whether policy makers have accepted it, and if so, are they willing to implement appropriate programs. To ascertain this, we have surveyed the states' legislative bodies and collected copies of bills for 1976, 1977 and 1978 that concern prison labor. The major areas scanned were prison industries, work release and furlough programs. Tables 1 through 3 note the legislation introduced in these areas. Beginning on page forty (40) are charts containing more detailed information concerning these bills.

Most bills represent minor changes in the current state systems. There is, however, one significant departure that merits further consideration, the introduction of private industry on correctional property. Minnesota is in the vanguard of this movement, already having private industry operating plants at their corrections sites.

In 1974, Minnesota enacted legislation,[50] empowering the corrections department to lease space at any state adult correctional institution to a private corporation "for the purpose of establishing and operating a factory for the manufacture and processing of goods, wares or merchandise." The following year this legislation was amended and expanded to include the leasing of property for any "business or commercial enterprise deemed by the commissioner of corrections to be consistent with the proper training and rehabilitation of inmates." As a condition of operating on the institution's grounds, private industry must engage inmate labor. To promote private industry involvement, the Minnesota legislature waived restrictive legislation limiting interstate commerce of prison made products and sales in limited markets, provided that the inmate worker receive at least the "prevailing minimum wages for work of a similar nature performed by employees with similar skills in the locality in which the work is being performed." Contrarily, federal law, of course, limits the applicability of this state act. This prevailing wage qualification addresses labor and business concerns that prison made products would unfairly compete in the market if "slave" wages were paid.

The private industry experience in Minnesota to date has been favorable. As of February 1, 1977, 150 inmates were employed in this

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50. Minn. Stat. Ann. 243.88.

program. Private industries engaged inmates in manufacturing (games, fishing lures), computer programming, institutional food service, metal fabrication, cabinet making, and repair work (mobile homes). The wages paid varied, ranging from the minimum federal wage to over $4 per hour plus overtime at time and a half.

The state receives a direct monetary benefit from this system. Each inmate pays federal and state taxes as well as a monthly maintenance charge to the institution (up to $120/month). In August, 1977, it was announced that in the prior nine month period participants in one institution contributed over $20,000 from their earnings towards room and board. The 12 month record for three other facilities shows another $20,000 paid in taxes and over $55,000 voluntarily sent for family support. The one area where there has been disappointing returns is in the recidivism rate. Former private industry workers have recidivated at the same rate as the general prison populace. To correct this, plans are being made to implement a post-release placement program. Plans are also in the works to introduce some type of post-release unemployment compensation. One funding proposal is to use money accrued by the worker in the form of vacation pay. In the past year, the Minnesota legislature has also addressed a concern of those who oppose minimum wages for inmates. According to one school of thought, such wages will foster economic classes within the institution, with industries workers earning decent salaries while inmates employed in institutional upkeep receive token payments. To close this gap, the commissioner of corrections may provide any pecuniary compensation he deems proper to inmates under his control, dependent upon the quality and character of the work performed. Inmates unable to work due to illness or physical disability are also entitled to a minimal amount per day.

Following Minnesota's lead, other bills to bring private industries on corrections property have been introduced, in Arizona, Connecticut, Iowa, Louisiana, Nebraska, Oklahoma and Tennessee. Each bill is basically modeled after Minnesota, calling for the employment of inmates at prevailing wages. An innovation in several of these measures is the introduction of restitution. In addition to the typical wage distribution scheme modeled after the work release experience of having inmates pay taxes, room and board and support, a portion of the wages earned through private industry is earmarked to go to the offender's victim. The Tennessee bill calls for 20% of an inmate's net wage to go to his victim. Louisiana provides 30%.

With respect to wages, members of a few state legislatures recently have introduced bills calling for minimum or prevailing wages in their state-industries (Maine, New York, South Dakota, Alaska) but none of these measures passed. It is unlikely that any state-use industry will ever pay minimum wages, despite numerous recommendations to the contrary from an impressive array of commissions, including the President's National Advisory Commission on Criminal Justice Standards and Goals and the Attica Commission.

In addition to surveying state legislatures, prison industries directors were contacted in 1977 in order to discover "significant"

changes instituted at the administrative level. Prior to this (1976), industry wages and size of inmate participation was also ascertained. This latter information is displayed in Attachment R for those states which responded to our questionnaire. A brief reading confirms the prevalence of meager wages.[51] At these rates, the compensation can barely cover the individual's commissary expenses, let alone provide a contribution to the institution, dependents and/or victims.

While most states reported no alterations, where changes took place, they tended to favor rehabilitation by employing more inmates at jobs which might teach skills usable in the free labor market. Significant changes may be found in Table 4.

With the major exception of the spread of private industries in correctional facilities, little legislative activity has occurred to change prison industries meaningfully. For the most part, the restrictive legislation has remained intact, confining these industries to limited product lines and profitability.

Work Release. In the past few years, work release has undergone very few changes. Two opposing viewpoints seem to dictate state developments. On the one hand is the opinion that work release poses a potential danger to the community by releasing unsupervised inmates. As a consequence, some bills attempt to impose more stringent requirements on release qualifications either through excluding altogether certain inmates based on crime committed and/or limiting the length of participation (e.g., Delaware, Louisiana). Concurrently, some states have drifted the other way, expanding their work release programs to encompass more inmates and/or prolong the periods of participation (e.g., New York, Arkansas).

The principle behind work release -- the encouragement and promotion of community contacts immediately preceding release to assist in the reintegration process -- has gone unscathed. With the exception of some limitations, the trend seems to favor greater utilization of this program. To facilitate these programs, usage of community centers to house work releasees is being upped. A 1978 study by the Federal Evaluation Branch of almost 800 federal releasees showed that those released through a Community Treatment Center enjoyed better employment records during the first months after release.

With minor changes, the wage scheme has remained the same. The states will insist on prevailing or minimum wages in order to protect the free labor force. Wage distribution entails payment for taxes, dependent support, institutional maintenance, and inmate savings. In addition, as seen in prison industries, some states are beginning to earmark a percentage for victim restitution.

At the time our 1977 survey questionnaire on gate money and industries was sent to prison administrators, a question concerning

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51. More recently, the Citizens United for Rehabilitation of Errants, surveyed the states to ascertain 1978 prisoner wages. Attachment R displays a map with this information.

"significant" changes in work release was asked. Eleven states responded there had been such changes. Eight states reported an increase in work release (Alabama, California, Colorado, Delaware, Georgia, Michigan, Utah, and Washington). North Carolina, the first state to initiate a work release program, and a major supporter, has legislated mandatory work release for all inmates serving a sentence of less than five years. In New Jersey, due to a series of incidents, the work release program had been terminated and then restarted at a drastically reduced level. In Michigan, a bill aimed at the heart of TARP was introduced to exclude work releasees from unemployment compensation participation. Whereas ex-offenders had problems in the labor market, it was found that a disproportionately high percentage of work releasees, compared to the general labor force, collected unemployment insurance benefits, thereby driving up the work release employer's tax rate. This made it more difficult for the corrections department to recruit employers, leading to the proposed legislation.

South Carolina reported an innovative work release pilot program. In cooperation with a major corporation, fifty inmates were hired to work at a nuclear station located outside Columbia. The preliminary evaluation for this program, recently concluded, reports significant achievements. Most participating inmates are still working for the same company or another firm. Less than 20% have been removed from the program, the chief cause for termination being excessive drinking. Most participants still employed have received work promotions and overall supervisors acknowledge satisfaction with their work.

Furlough Programs. Most states permit qualifying inmates to participate in a furlough program. Such programs permit the inmate to be released unsupervised into the community for a limited time period, and for a limited purpose. The most frequent justification for furlough release are attendance at a kin's funeral, visit a terminally ill relative, participate in an educational or vocational training program, contact prospective employers, and the catchall, maintain community ties.

Over the past three years, most bills introduced in this area have been expansive, augmenting the grounds for and extending the length of furloughs. As in work release, there has been some reactionary legislation introduced aimed at diminishing the program. Such reductions have been aimed at excluding lifers and those convicted of certain crimes (usually murder and rape) from furlough eligibility. Again, this has taken a back seat to the expansionist thrust. Delaware presents an interesting dilemma representative of both sides. A 1977 court order compelled the State to reduce its inmate population due to institutional overcrowding. The legislature responded in part by expanding the furlough program to relieve some of this congestion. Shortly thereafter, this same body issued a recommendation urging the appropriate body to refrain from furloughing inmates who had been convicted of murder or rape.

At the other extreme is Hawaii, which in 1977 attempted to enact legislation granting 48-hour social reorientation once a month following service of one-third of the minimum term, provided the individual qualifies for furlough. In all cases, there would be a rebuttable presumption that the inmate is entitled to a furlough.

The accompanying three tables identify state legislation introduced in 1976, 1977 and 1978 (limited to the first quarter) pertaining to prison industries, work release and furlough programs. In reading them, the following keys are to be noted:

Code	Meaning
6	Legislation introduced in 1976
7	Legislation introduced in 1977
8	Legislation introduced in 1978
v	Governor vetoed
p	Legislation passed and signed into law

It was our original intention to be able to report on the status of each bill. This, however, proved to be impossible as many state reference bureaus supplied incomplete information. This was especially true for 1977 and 1978 bills since, in most cases, final action had not been taken when our questionnaires were returned. In those relatively few instances where we have learned the bill's final outcome, it is so designated in the tables.

TABLE 1

Prison Industries

State	Establish Industries	Sales Restrictions[1]	Wage Change[2]	Restitution	Private Indust.[3]	Indust. Boards[4]	Public Works[5]
Alabama	6p	6p	7				7p
Alaska	6	7					
Arizona		8	6 8	8	8	8	
Connecticut		8	8		8	7 8	
Delaware							
Hawaii	7						
Idaho		6					
Indiana							
Iowa			7		7	6 7	
Louisiana		6	8	6	6		
Maryland		8					
Minnesota							
Missouri						6	
Nebraska			8				
New Mexico		7	6 8				
New York		7	7				
North Carolina						7	
North Dakota		7p					
Oklahoma		7	7p		7p	7p	
South Dakota							
Tennessee				7p	7p		

1. Sales restrictions refer to the laws limiting interstate transportation of prison made goods and the market to which they may be sold. No proposed bill would substantially change the status quo unless it is part of an effort to induce private industries to locate on correctional property.

2. Wages remain small. For example, a 1978 Louisiana bill would raise the maximum hourly rate to $.20. Again, the exception is where it is part of an overall plan to use private industry, in which case, the pertinent state and federal hour and wage law would apply.

3. These bills are along the lines of the Minnesota plan discussed in the text.

4. These are interdisciplinary boards, normally comprised of representatives from business, labor, community and corrections, charged with giving guidance to prison industries.

5. Increasingly, states are looking to inmate labor for public works.

TABLE 2

Work Release

State	Establish	Wages	Expand	Limit
Alabama	6,7	6,7		
Arkansas			7p	
Connecticut	6			
Delaware			7	
Iowa			7	
Kentucky		8		
Louisiana				7v,8
Maine				
Maryland		7p		
Missouri				
New Hampshire			7	
New Jersey			6	
New York	6,7			
North Carolina			7	
New Jersey		8		
Ohio		8		
Pennsylvania				7
South Carolina			7	
South Dakota		8		
Utah			8	
Virginia				7

TABLE 3

Furlough Programs

State	Program Established	Expand Participation	Limit Participation
Alabama	6p		
Delaware			8p
Hawaii	7		
Louisiana	7		7
Massachusetts			6
Maine			7
Montana			7
Minnesota	6		
Missouri	6		
Nebraska		8	
New Hampshire	7		
New York		6,7	
Pennsylvania			7
Tennessee		7p	
Virginia			7
Wisconsin	7		

TABLE 4

Prison Industry Changes - 1977

State	Inmate Expansion	Product Expansion	Higher Wages	Restitution Added to Wage
Alabama	X[1]	X[2]		
California	X	X		
Colorado		X[3]		
Connecticut		X	X[4]	
Delaware		X		
Florida		X		X
Kansas		X		
Louisiana		X		
Massachusetts	X	X	X	
Michigan			X	
North Carolina			X	
North Dakota		X		
Ohio	X	X		
Oklahoma		X		
South Carolina	X	X		
Tennessee				X
Virginia		X		
Washington	X	X		X

1. It may be expected that each state reporting an expansion in products will also hire more inmates. The states identified under this column specifically identified a large growth in inmate participation.

2. This includes the introduction of new products and the expansion of already existing ones. In each case, this growth occurs in industries for which there may be a labor market upon release from prison. The most frequently cited new lines include data processing, upholstering, furniture manufacturing, printing and tire recapping. At the same time, two states report cessation of their automobile tag plants (Kansas and North Dakota).

3. New legislation mandating an 8-hour work day (prior practice averaged 4-6 hours).

4. These increases are minimal and frequently include an incentive or bonus pay scheme.

Not reported on in these charts is the move toward increased utilization of community based corrections. This move has taken two primary routes. One is a sentencing alternative in which the judge, in lieu of ordering time at an institution, permits the offender to work off his sentence in the community, typically for a non-profit or public organization. Such sentencing alternatives is in the embryonic stage, being imposed in place of a fine or probation, rather than cases in which incarceration is the traditional sentence. The second mode more closely trails work release. Here, an inmate is transferred from the institution to a facility in the community, thereby making it possible for him to work in the surrounding area. In 1977-78 alone, the legislatures of South Dakota, Wisconsin, Oklahoma and Mississippi considered such measures.

Community based corrections, from the TARP perspective, may obviate the need for financial aid by (1) permitting the offender to maintain his current job or find new employment in the community, (2) allowing him to maintain community ties, and (3) mitigating the negative impact of incarceration. A number of evaluations for existing programs confirm this view. Des Moines community-based corrections program may serve as an example. A look at its community correctional facility reviewed its social effectiveness.[52] As of February, 1974, the employment rate of its clients rose from 63% (41/65) at the time of admission to 95% by termination. Not only did employment increase, an appreciable employment upgrading into the semi-skilled category took place. Of particular importance to TARP is that a significantly larger proportion of clients relied on their own employment for support following program termination than at the time of placement.

Other indicia of policymakers' views toward skill training for prisoners are the various reports and studies of individual prison systems, sanctioned most often by the state correctional agency. At this level, support of skills training is unanimous.

Major analyses and studies of prison industries systems have been conducted recently in the past several years in South Carolina and Maryland. Seven states (Colorado, Connecticut, Georgia, Illinois, Minnesota, Pennsylvania, and Washington) participated in a major study of prison industries sponsored by the LEAA. Each and every report endorses restructuring of prison industries in order to provide inmate participants marketable job skills, higher wages and a more civilian-like work environment. At the same time, the states are expected to accrue benefits consistent with these goals, including more harmonious prison conditions, increased profits and better community relations. Although the enabling legislation for prison industries in most states involves a rehabilitation purpose, the various studies reveal that as presently operated and restricted, these industries fail to live up to this obligation. The following table briefly identifies the major recommendations issued by some of these reports. The means of obtaining these ends are not described here as they often differ among the studies.

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52. One of four components with pre-trial release, supervised release and probation/pre-sentence investigation. The evaluation of all programs may be found in an LEAA exemplary project report, 1976.

TABLE 5

Specific Actions Recommended in Reports and Studies Concerning State Correctional Industries

State	Marketable Skills	Private Indus.	Modernization	Higher Wages	Normalize Working Conditions	Remove Sales Restr.	Generate Revenue
Maryland[1]	X	X	X		X		X
South Carolina[2]	X	X	X	X			
Florida[3]	X	X	X				X
National[4]	X		X	X	X	X	X
New Mexico[5]	X	X	X	X		X	
Michigan[6]	X			X			X
LEAA[7]	X	X	X	X	X	X	X

1. Study of Maryland's State Use Industries (Cambridge: ABT Associates, 1976). Division of Corrections of Maryland contracted with ABT to assess the current status and possible future roles of Maryland State Use Industries.

2. The Correctional Industries Feasibility Study, (Columbia, S.C., South Carolina Dept. of Corrections, 1972). Study for Department to develop detailed implementation plans for one or more correctional industries that will provide meaningful employment at fair wages.

3. Department of Offender Rehabilitation Prison Industry Commission, "Commission and Department Objectives," April 4, 1977.

4. Institute of Criminal Law and Procedure, The Role of Prison Industries Now and in the Future, (Washington, D.C.: Georgetown University Law Center, 1975).

5. Standards and Goals adopted by the Governor's Council on Criminal Justice Planning.

6. From state department of corrections memorandum to the Governor, December 2, 1977, outlining legislative priorities for the 1978 legislature.

7. From Study of the Economic and Rehabilitative Aspects of Prison Industry (Princeton: Econ, Inc., 1976).

Policy may also be gleaned from a broader base, namely commissions and study groups with a national jurisdiction empaneled to evaluate corrections programs. In the past decade, the most often cited commission has been the National Advisory Commission on Criminal Justice Standards and Goals. In its Corrections volume support for the concept of rehabilitation, including vocational training, job skill obtainment, decent work assignments and fair compensation for inmate labor may be found.

The preceding, while far from exhaustive of the growing body of literature in this field, highlights the opinions of officials at several decision making levels. In no instance does there appear a significant divergence from one central theme -- if prisons are to have a place in the rehabilitation process, they must provide job skills which may be utilized in the free labor market.

As previously stated, the implementation of full employment for ex-offenders is extremely difficult. Even with better training and employment programs within the institutions, many individuals departing a correctional facility will undergo a lengthy period of unemployment and, consequently, their legal access to money will be limited. Given the findings of TARP, the prognosis for a permanent income maintenance program for released offenders is less promising. Therefore, alternative money sources need to be identified. Minimum wages for inmates as a source of amassing savings is discussed elsewheres. Extra-institutional assistance may be selectively identified for each releasee, consisting primarily of ongoing income maintenance programs, veterans benefits and special loan programs and credit unions,[53] which are few in number. The income maintenance eligibility should be ascertainable through contacts with a social worker. For the most part, the releasee will be ineligible for these programs as age and/or disability requirements will not be met. This cut-off from the federal and state coffers contrasts with the practice of several European countries which qualify prison releasees for various welfare programs. Attachment S identifies these countries and practices.

What then are we able to recommend at the conclusion of TARP to satisfy the money need? A national TARP-like permanent program by itself can not be promoted. Even a Humphrey-Hawkins-like full employment bill for ex-offenders may not produce the desired reduced recidivism results. The typical ex-offender's problems are too deeply rooted to be overcome by a one-step approach. A combination of programs are called for which may include at the last stage, after the underlying problems are addressed, a special income maintenance program. For example, looking back over this section, one approach might entail the following steps:

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53. Since the inception of TARP, an innovative credit union has blossomed in Oregon. After its first year, the Mill Creek Credit Union, owned, operated and created by felons, attracted 550 members and $40,000 in share deposits. For its initial year (chartered 1976), it made 74 loans totalling almost $20,000. A similar union now operates in Colorado and others are being contemplated. Informational materials on the Mill Creek Credit Union may be found in attachment T.

(1) Effective prison industries programs in which meaningful job training is provided;

(2) Period of time to readjust to the community before final release; and

(3) Financial assistance at release while job hunting.

Within each step there are a number of ways to achieve the desired end. Prison industries may be improved by bringing in private industries, following Minnesota's lead. Even without resorting to this step action may be taken to upgrade current industries programs. The most significant change would be to do away with restrictive legislation. If prison goods are permitted to enter the free market, the prospects of operating at a profit and, thereby raising investment capital to improve the programs, would increase. There are abundant examples of legislation which has previously been introduced that would repeal the confining laws. The Georgia State Bar, Committee on Correctional Facilities and Services, in exploring means of improving Georgia prison industries, has drafted state and federal legislation designed to permit interstate commerce and open market sale of prison made goods (attachment U). Such proposals, as the quid pro quo for lifting restrictions, require the working inmates receive minimum wage protection and are generally covered by other federal and state labor laws. From these wages the inmate in turn is obligated to repay the state for his room and board, in addition to taxes, family support, savings and frequently restitution.

The second stage, period of readjustment, also may be implemented in several ways, none of which require new ideas. Greater utilization of existing programs such as furloughs, work release and community based corrections will accomplish this goal. Again, progressive legislation may provide a boost here. Laws creating alternative sentencing, longer periods of work release and furloughs, and expanded grounds for the latter will contribute toward increased community release. While this may cause a fear in the community over offenders walking their streets, well conceived programs,[54] use of community residential facilities and public education may help allay these worries.

The last phase in this model, financial assistance, is, of course, the heart of our concern. It should be stressed here that the three-stage sequence above is but one model. Others may be posited and transitional steps have been left out. Intensive job placement assistance could properly be inserted as 2.a. Basic Education and vocational training in many instances will be required before going to Step one. Regardless of what is done, there will come a time for some releasees

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54. In 1978 the Louisiana legislature introduced legislation to order the department of corrections to evaluate their furlough and work release programs. The goal being to ascertain predictive characteristics on which to base future release decisions.

when, stripped of support provided by the corrections department, they will re-enter the community, jobless and broke. Hopefully, with successful institutional programs, the former status will be temporary and less frequent. But while it lasts, what can be done to guarantee the releasee's sustenance? Here, several things may be proposed. The first and simplest is to raise gate money to a meaningful level, an effort already supported by the Senate in S. 1437. The Senate's sensitivity toward this issue is revealed in the Judiciary Committee's report on the bill. According to this report, the Committee "concluded that a small amount of financial assistance may be sufficient to get an offender started in the right direction, but that the $100 maximum sum permitted under the existing law may often be inadequate."

Another financial assistance model is the California unemployment insurance law. This scheme closely parallels the original TARP goal. However, due to TARP's findings, any effort to promote this model may best be placed on the back burner until California has had an opportunity to evaluate its program.

A third form of financial assistance is dependent upon the successful use of the first two steps in our scheme. If the releasee participated in a work program which afforded the opportunity to set aside savings, then upon release the money may now be turned over, preferably in installment payments.

Finally, an assortment of special post-release programs may fill some of the financial vacuum. Ex-offender credit unions and other loan programs, tailored to the peculiarities of its particular loan population, may supplement government programs.

XI. CONCLUSION

It would be natural to end this report negatively by emphasizing the failure of transitional aid to reduce recidivism as expected. But that would be a mistaken course because it obscures what we know about the complexity of the crime problem. A better statement would be that financial aid as we provided it was not sufficient -- alone -- in reducing the rearrest rate of the TARP releasee cohort.

As TARP was beginning, Robert Martinson's short-hand conclusion that "nothing works" was receiving notoriety. In the intervening years, Dr. Martinson has altered his own position and his critics have come to realize that what he really said was that "nothing works for everyone." An accurate corollary of that conclusion is that some things work for some people. The problem seems to be in the difficulty and cost of accurately diagnosing the needs of individuals and burdens which individualization of treatment impose on correctional agencies. If the TARP hypothesis had been proven, corrections would have found the "quick fix" it needs. No doubt, the search for shortcuts will go on.

Equally productive in the long run -- and perhaps more so -- would be a programmatic approach that responded fully to data and wisdom we

have accumulated in the last decade about offenders. An example of a possibly sound sequential approach was outlined in the preceding section. While money is an integral part of that proposal, it is the final element, applied after efforts to remediate the offender's deficiencies in education, work skills, and work history are overcome. In addition to specific efforts focused on the individual offender, other steps appear necessary to reduce society's shunning of offenders and the psychological damage the typical offender has suffered while being reared in poverty circumstances. The place of financial aid in the scheme outlined is simply to give the releasee the lead time necessary to find a job, it obviously cannot guarantee either the releasee's qualifications or the economy's receptivity to his employment.

Recognizing that correctional administrators can only do so much -- that other must play their roles too -- what does seem open is to marry financial aid to programs which import skills. The new California law has the potential to succeed because the UI benefits it will provide are tied to prison labor and/or vocational preparation activities. The ECON proposal mentioned in Table 5, page 35, would underscore corrections' responsibility by charging the industries director with the obligation of placing released "graduates" of the industries program in occupations for which they have been trained. By stipulating that the worker receive compensation when he cannot be placed in a suitable job at adequate compensation, the current lack of incentives to make the industries meaningful and realistic -- in terms of the free market -- can be overcome.

It is conceded that the releasee has an economic need, intensified by an unfriendly job market. TARP/LIFE was the first stab at testing a single treatment -- financial aid -- upon a mixed population of prison releasees. Its shortcomings is not surprising. Crime is a complex issue with many roots, requiring an equally diverse solution. Rather than suggesting that efforts in this direction be abandoned, the TARP experience indicates that follow up research, in which economic assistance is tied to other "treatments," might prove fruitful.

SYNOPSES OF

PERTINENT LEGISLATION

INTRODUCED IN THE

STATES

PRISON INDUSTRIES

STATE	BILL (year)	STATUS
Alabama	To establish a prisoner rehabilitation program including farming for prison consumption. (1975)	Law
	Begin to develop inmate work force capable of constructing corrections facilities and other state facilities. (1976)	Law
	To establish a prison-industries program authorizing Board of Corrections to acquire equipment, personnel, etc. for manufacturing products needed by institution or agency supported in whole or part by state or any political subdivision thereof. Such institutions or agencies must purchase from Board of Corrections. No open market sales. (1976)	Law
Alaska	To create correctional industries. Authorizing corrections to establish industries, with sales to state departments, municipalities and private, non-profit organizations. No profit provision. State agencies must purchase. Salary structure in accordance with prevailing wages and no less than the minimum wage. Wages disbursed for room and board, administration, for support of prisoner's dependents, for clothing and commissary items, pre-existing debts, balance to prisoner at release. No collective bargaining or right to join a labor union. (1976) (1977)	Not Passed
	Resolution for a study into feasibility of correctional industries. (1977)	In Committee
Georgia	To remove exclusive sales provision whereby state agency must purchase first from Georgia Correctional Industries.	Not Passed
Hawaii	Bill ordering examination and revision of Correctional Industries. (1977)	Carried Over to 1978
Iowa	Develop jobs for inmates at prevailing wages to foster good work habits, marketable skills and enable inmates to provide for family, restitution, room and board, and savings. Create "Industries Board" comprised of members from agriculture and the manufacturing and construction industries, labor organizations and groups administering vocational and technical education programs. Aim is to promote stated objective. Exclusive sales provision. Provision for private industry to operate a factory on corrections property. Provision for increasing pay of inmate maintenance workers through room and board collections of industries workers. (1977)	Carried Over to 1978

STATE	BILL (year)	STATUS
Louisiana	Creation of Louisiana Restitution Industries demonstration projects by contracting with private industry to operate within correctional complex using inmate labor. Wages paid to inmates shall not be less than the minimum wage. Wages distributed according to Dept. of Corrections but no later than time of release. Inmates covered by workmen's compensation. May deduct from wages taxes, restitution, room and board, and family support. (1976)	
	Permit public sale of surplus fresh vegetables and all of the sugar produced by Dept. of Corrections. Beef cattle raised by Department may also be sold at public auction sales. (1976)	
Maine	Working inmates considered "employees" and regarding those employed in institutionally-administered programs, Department of Mental Health and Corrections shall be considered "employer" within meaning of the Federal Fair Labor Standards Act. Allow for deductions for room and board, medical, family support, and restitution.	Withdrawn
Missouri	Create a correctional industry advisory board represented by organized labor, industry, education, and corrections. Long-range objectives include training of marketable skills, manufacturing of articles for state and maintenance state institutions. (1976)	Died in Committee
New Mexico	Act to remove restrictions on public sale of prison industries products. (1977)	Not Passed
New York	Prison labor to be compensated at no less than prevailing minimum wage. (1977)	In Session
	Remove exclusive sales right to state and its political subdivision. (1977)	In Session
North Dakota	Authorize director to engage in new prison industries as he deems necessary. Abolish license plates and road signs industries. (1977)	Law

STATE	BILL (year)	STATUS
Oklahoma	Creation of Private Prison Industries Board to govern all private industrial programs employing prisoners. Representative include labor, private industry, and corrections. May recruit private industry to employ and train inmate population. Includes duty to recommend standards for wages and working conditions for private prison industries so that they approximate wages and conditions in private sector. Wages may be doled for inmate savings, personal use, dependents, victims, creditors, and costs for incarceration. At least 209, maintained in an account, payable to prisoner at release. (1977)	
	Wages set at $25/month for 8% population, $20/month for 8% of population, and $15/month for industries and agriculture workers. (1977)	
	Inmates in prison industries are not state employees, may not join unions or other employment related organizations, may not strike, slowdown or partake in collective bargaining. (1977)	Law
South Dakota	Pay prison industries employees state minimum wage. (1975)	Tabled in Committee
Tennessee	Establish demonstrative-type projects involving private industry and inmate labor to be known as Tennessee Restitution Industries. Permit private industry to operate within correctional facility. Wages paid to inmate shall be not less than that prescribed by the Tennessee Prevailing Wage Act of 1975. Included in workmen's compensation but not state unemployment compensation program. Wages used for compensating victims of crime, room and board, support of spouse and children, and inmates personal trust fund. (1977)	Law

WORK RELEASE

STATE	BILL (year)	STATUS
Alabama	To establish a work-release program. Wages paid to Department for disbursement. Prevailing wages. (1975) (1976) (1977)	Not Passed
	Create restitution centers to secure employment for minimum risk offenders. (1977)	
	Board of Corrections may withhold up to 50% (up from 25%) of inmates' wages for costs incident to confinement. (1976)	Not Passed
Delaware	Permit work release for certain felons except during final six months of their term. (1977)	
	Stricter requirements on releasing inmates for work release programs. (1976)	Law
Iowa	Expand housing facilities for work releasees and allow for a work release placement for longer than six months with the unanimous consent of the committee. (1977)	Held Over
Louisiana	Restrict those eligible for work-release. (1976)	Not Passed
Maryland	Work releasees covered by the minimum wage law. (1977)	
	Earnings surrendered to warden, used for room and board, travel expenses, dependent support, restitution, and savings. (1977)	
Maine	Permit inmates who have completed 1/3 of their minimum sentence to partake in work-release.	Withdrawn
Missouri	Restrict work release to last three months of incarceration and limit daily time away from institution to nine hours. (1976)	Died in Committee
Nevada	Creation of a work release and furlough program. Eligible during final six months of confinement. Wages disbursed for room and board, work expenses, family support, debts, and savings. (1977)	
New Hampshire	Authorize superintendent of a county facility in addition to the court to permit persons to be on a work release program. If superintendent denies right, inmate may petition the court. (1977)	Tabled

STATE	BILL (year)	STATUS
New York	Creation of an urban rehabilitation work program designed to rehabilitate buildings located in blighted urban areas. In cooperation with private employers and labor unions. Payment of minimum wages to inmates, distributed as victim compensation, support, etc. (1976)	
South Carolina	Create an extended work release program for qualified work releasees. Permit them longer placement in the community with the privilege of residing with an approved community sponsor. (1977)	
Virginia	No work release jobs at place of business where there is a lockout, strike or work stoppage. (1977)	Died in House
	In event of legal strike at convict's place of employment, cease working for its duration. (1977)	Vetoed
Washington	No marketing restrictions on goods made on work release jobs. (1975)	
Wisconsin	Make those serving life sentences eligible for work release. (1975)	

FURLOUGHS

STATE	BILL (Year)	STATUS
Alabama	Act permitting temporary release of state inmates for the purpose of (1) studying at an institution under proper supervision (educational or vocational), and (2) seeking employment and a place of residence in community where he will reside after release. (1976)	Law
	To repeal above law. (1977)	Not Passed
Hawaii	Qualified inmate to be released on a 48-hour social reorientation furlough once a month beginning after served one-third of his minimun term. Rebuttable presumption that person is eligible. May show person is threat to society, thereby negating furlough right. If denied, person may reapply 90 days later. (1977)	Carried Over to Next Session
Iowa	Inmate serving an uncommuted life sentence is not eligible for furlough. (1976)	
	Unless previously released, all state inmates shall be released six months or one-quarter of their sentence, whichever is the least, prior to the expiration of their sentence. Such inmate shall be supervised. (1976)	
Louisiana	Act to prohibit authorization of furloughs to certain classifications of inmates. (1977)	Died on House and Senate Calendars
Maine	To prohibit furloughs and work release for persons convicted of certain serious crimes. (1977)	
Maryland	Expand furlough program to include the Baltimore City Jail. (1976)	Law
Minnesota	Authorize commissioner to grant furloughs to inmates of medium minimum security facilities for periods up to five days, except those convicted of certain serious crimes. (1976)	Law
New Mexico	To create an inmate furlough program. Maximum furlough 48 hours except under exceptional circumstances when it may last for 72 hours. (1977)	Not Passed
	Inmate furlough program for those within six months of release. (1977)	Vetoed

STATE	BILL (Year)	STATUS
New York	Remove furlough eligibility restriction that inmate has served a minimum of six months. (1977)	
	Expand grounds for furlough to include participation in an approved program of counseling or rehabilitation. Expand furlough time from three days to seven days. (1977)	
	Expand furlough participation by extending from one year to two years before release earliest eligibility. Also make participation in temporary program a right instead of a privilege, subject to revocation. (1977)	
	Extend furlough program to county inmates and local inmates in a city with a population exceeding one million. (1977)	
	Permit prisoner whose parole is conditioned upon employment a furlough for a reasonable time in which to seek work. (1977)	
Tennessee	Expand eligibility from 90 days prior to release to 180 days prior to release. Provision for notifying police in county to which inmate released on furlough. (1976)	Law
	Extend furloughs to county inmates. (1977)	Law
Virginia	Any inmate convicted of a felony committed while on a furlough program shall be ineligible for work release or parole while serving the prior and subsequent sentences. (1977)	Died in House

Report of an Experiment:

THE IMPACT OF FINANCIAL AID ON THE HOME CONDITIONS AND FAMILY RELATIONSHIPS OF EX-OFFENDERS

Russell L. Curtis, Jr.
and
Sam Schulman, Jr.

Center for Human Resources
University of Houston

*This is an excerpt from the full report. Copies of the original may be obtained from the Center for Human Resources.

Submitted to:
The Department of Labor and
The American Bar Association
in Fulfillment of Grant No.
21-11-75-19

CHAPTER I

INTRODUCTION

This is a report on a study of the impact of financial aid to 198 male ex-offenders in Texas and Georgia on the family, social, and work lives of themselves and of their families as reported in interviews by the significant women in their lives. The study focuses on samples of released male prisoners who were pre-selected by the Department of Corrections in Texas and the State Department of Labor in Georgia, and includes only those men who were returning to home situations with a woman present (one of whom was designated by the ex-offender as most important in the situation).

The larger study, called the Transitional Aid Research Project (hereafter: TARP) focuses on the impact of financial and employment assistance on the socio-personal adjustments, work histories and eventual arrest and reincarceration record of approximately 4,000 ex-offenders. The experiment generates comparisons based on the presence or absence of financial assistance, employment counseling and assistance, and of pre- and post-interviews with the ex-offenders.

The purpose of the larger study is to assess the overall experimental effects of financial and employment assistance on the eventual social and legal adjustments of ex-offenders. The purpose of this the family study, is to assess how the affect of the first, financial assistance (under conditions of presence or absence), impacts on the home adjustments of ex-offenders with their significant women (wives, mothers, others), other family members, and significant persons outside of the family. An additional component of this study, to be completed

later, is an assessment of how these home adjustments contribute to the ex-offenders' eventual legal statuses; i.e., their arrest and/or reincarceration profiles. This will be accomplished by a merger of these data with those from the larger study.

There are several reasons for believing that a male ex-offender's financial resources will be related with the quality of his post-release home relationships and that these relationships will, in turn, contribute to his overall successful adjustments. These rationale, however, are suggested inferentially since the available studies only indicate (or suggest) an impact in the direction of stability of family lives on the success of financial and work conditions of ex-offenders (cf. Lenihan, 1976) rather than the other way around. This is not to say that the literature negates a reverse interpretation that already available financial resources of ex-offenders have a systematic impact of the success of their home, post-release adjustments but, only, that it is a question of available information.

One reason for this conclusion is that many ex-offenders have so few resources (cf. Lenihan, 1975), that there is little reason to give serious attention to the question. Obviously, we could argue, for example, that ex-offenders with white collar work training and experiences would make more successful adjustments to their post-release marital and/or family lives than those without such skills, but the available evidence suggests that persons from higher socio-economic backgrounds typically have happier married lives, per se, than those from working or blue-collar levels (cf. Blood and Wolfe, 1960; Hicks and Platt, 1970). As such it is probable that there were significant differences between the white collar and blue collar ex-offenders' marriages prior to

incarceration. In essence, the experimental conditions of this study offer us a novel assessment of the impact of financial resources of ex-offenders on their adjustments to home and/or family reentries.

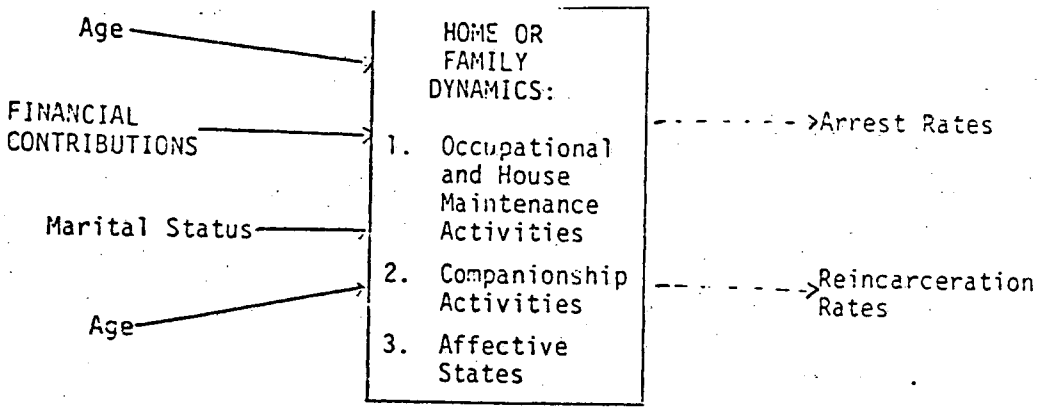
One reason for arguing for a money effect is that the ex-offender without financial resources would be a drain on the existing family buying power. A large body of research indicates that the financial stresses of low income families lead to higher divorce and family dissolution rates than for the rest of the population (cf. Udry, 1976; Udry, 1977). One presumes that this would also be true even if the ex-offenders were unmarried, i.e., were returning home to mothers, aunts, etc.

Another reason for arguing for a financial impact is that the ex-offenders's financial resources and/or employment could be systematically associated with whether the significant woman has to be employed. Taking marital happiness literature as a point of departure (but noting that they characterize only 22.7% of the significant women in this study), it has been found that among lower class women (the class position of the overwhelming majority of significant women in this study), working wives were less happy. This has been found for an Anglo sample (Nye and Hoffman, 1963) as well as for a Mexican-American sample (Bean, Curtis, and Marcum, forthcoming). Further, Orden and Bradburn (1969) found a greater imbalance of satisfactions over tensions for both husbands and wives when the wife worked by choice rather than out of necessity or not at all. Whether or not these associations will obtain for significant women other than wives or for families as a whole is an empirical question. The literature cited above, however, is at least suggestive.

Overall, this study is guided by the basic assumption that available money is a resource which will make a positive impact on the ex-offender's readjustments to him home life. However, money is only one impact. Others considered crucial for this study are marital status, age and race. Lenihan (1976), in a study of an earlier experiment with financial contributions, found that older ex-offenders were less likely to be re-arrested than younger ex-offenders. Additionally, financial contribution had a more positive impact on older than younger ex-offenders. Also, the same study reports a significant main effect favoring marital rather than single status although the presence of money conditions had a more significant impact on the single ex-offenders. A stabilizing effect of marriage is also indicated by Brodsky's (1975) study of the in-prison communication patterns of 140 offenders in Illinois. The greatest number and longest letters were written to spouses. Finally, while no studies were located which indicated any racial differences in the adjustments of ex-offenders to their home lives, the differential employment opportunities and arrest rates between racial and ethnic groups (here: Black, White, Mexican-American) argue for this variable's inclusion as a possible main effect.

Based on a review of studies of family dynamics and the purposes of the overall experiment, three components of family dynamics were chosen for examination here. These are: economic conditions and work activities, companionship activities, and affective states.

The inferences from the data are guided by the following theoretical formulation of directions of impact and relationships:



Home or family dynamics, as reported by significant women, are interpreted as intervening between financial contributions (experimental conditions), age, marital status, and race, on the one hand, and arrest and reincarceration rates on the other. Again, the data for analysis here are the effects of the four independent variables, with critical emphasis on the financial experimental conditions on the relational and home conditions.

Because the other independent variables of age, marital status, and race may be systematically related with the major independent variable of this study, financial contributions (under experimental conditions) their major theoretical import in this study will be that of control variables.

CHAPTER VI

CONCLUSION AND IMPLICATIONS

In this study of 198 significant women in the lives of recently released ex-offenders in Texas and Georgia, we attempted to ascertain what the impact of financial aid might be on the lives of the interviewed women, the ex-offenders in their lives, and other family members and friends. Basically, our findings indicate that financial aid did not have a consistently positive association with household operations--financial, maintenance, etc.--or with the companionship or with the affective components of the lives of the interviewed significant women. However, there was an extremely important exception to the above interpretation: wives.

The following were variables found to be negatively associated with financial aid when the significant women were mothers or others but positive when they were wives: (a) the percentages of men returning to the significant women and being present at the time of the interview; (b) the percentages of men reported to be making weekly financial contribution to the household; (c) the prospect that the significant woman would be in the work force (considered positive impact of money if she were not; (d) the length of time to obtain a job on the part of those ex-offenders who were employed (shorter length of time considered to be a positive impact); (e) satisfaction with the activities of the ex-offender around the household; (f) favorable evaluation of ex-offender's friends as being industrious and hard-working; (g) the number of significant problems which are imputed to the ex-offender in his getting along in the home, in the neighborhood and at work; (h) the percentages of women reporting quarreling; and (i) the proportions of women who were "sure" that the ex-offenders in their lives would not return to prison.

Whites seemed to maintain a more positive personal posture. Patterns of racial discrimination interacting with the discrimination facing ex-offenders provide an obvious explanation for this phenomenon. However, again, these data are only suggestive on this point. We mention it here as a possibly important consideration for future research.

What are the implications of these data for possible policy implications? With respect to the provision of financial aid to ex-offenders, per se, we interpret them as a strong indication for not rejecting a thesis of no differential impacts. For sure, these data do not show financial aid to ex-offenders to have an across-the-board positive impact on their personal, social, occupational and home adjustments. On the other hand, the consistent differences between the reports of wives as contrasted to mothers and others suggest that a combination of existing family and relational structures with contingent financial benefits is a highly useful consideration. In essence, these data suggest that the primary thrust of any policy explorations should focus on the characteristics of ex-offender families rather than on ex-offenders, per se. Relatedly, such a policy exploration should include as a primary consideration the idea that the recipients of such benefits should be families and not individuals.

AMERICAN BAR ASSOCIATION
DIVISION OF COMMUNICATIONS
1155 E. 60th Street, Chicago, Illinois 60637

RELEASE: Immediate

CONTACT: Gail-Joy Alexander
PHONE: 202/331-2293

FINANCIAL ASSISTANCE PROGRAM HELPS EX-PRISONERS STAY OUT OF JAIL

WASHINGTON, D.C., Feb. 25 -- A financial assistance program for released prisoners reduced recidivism and virtually paid for itself, an American Bar Association study said today.

The report, "A Comparative Evaluation of the Benefits and Costs from the LIFE Program," was released by the ABA's Transitional Aid Research Project (TARP).

The project analyzed findings of the Living Insurance for Ex-Prisoners (LIFE) program which provided transitional aid to a sample of newly released prisoners in Maryland.

The study sought to determine if reductions in recidivism resulting from financial aid justified the cost.

The project's report concluded the program not only was cost-effective, but "a financial aid program would probably pay for itself and not require additional funding."

- more -

PRISON RELEASE PROGRAM, Add One

The major program costs were for administrative expenses and for transfer payments.

The report found substantial savings to the criminal justice system through less crime, including reductions in police, court and corrections costs; reductions in welfare payments and increased tax revenues due to the releasee's expedited return to the labor force.

The project examined the program's cost effectiveness from four perspectives -- the viewpoints of the taxpayer, the program's participants, the non-participants and society as a whole. In each instance the cost/benefit ratio was positive, with the benefits of a temporary income maintenance program outweighing its costs by as much as 54 times.

In addition, the report adds, certain benefits of reduced recidivism, such as personal anguish and other psychic costs averted when crimes are reduced, cannot be accurately represented in money terms.

Major conclusions of the report have been summarized in a 5-page paper. Copies are available from the American Bar Association, Transitional Aid Research Project, 1800 M Street, N.W., Washington, D.C. 20036.

Copies of the entire 62 page report are also available from the American Bar Association.

- more -

PRISON RELEASE PROGRAM, Add Two

TARP is sponsored by the ABA's Commission on Correctional Facilities and Services. The project is managing an effort to conduct LIFE experiments involving 1,950 former inmates in Georgia and Texas.

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U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

APR 9 1976

Mr. Morton Schwartz
Legislative Assistant to
Senator William Proxmire
United States Senate
Washington, D.C. 20510

Dear Mr. Schwartz:

I am forwarding to you the material requested from Dr. Howard Rosen, Office of Research and Development, Employment and Training Administration on April 7, 1976, concerning the Transitional Aid Research Project for Ex-Offenders (TARP).

We are enclosing a copy of the Comprehensive Employment and Training Act of 1973 which directs the Secretary to be concerned with the employment and unemployment problems of offenders. A copy of a survey of "The Financial Resources of Released Prisoners" which indicates the provisions for "gate money" in State statutes in 1971 is also enclosed. The leaflet of the American Bar Association describes the project and lists the advisory committee which was established to provide guidance and policy direction for the project. The Commission on Correctional Facilities and Services of the American Bar Association is coordinating and evaluating the project which is being conducted in Georgia and Texas. Mr. Axilbund of the association will be pleased to discuss their role in this project.

The report "When Money Counts" describes the feasibility study "Living Insurance for Ex-Offenders" (LIFE) which was conducted in Maryland from September 1971 until July 1974. The Maryland study indicated that there was an effective reduction of 27 percent in theft arrests among offenders who received transitional financial aid. This differential was maintained during the 2-year followup. I wish to stress that this study used the criterion of "arrests" not "convictions" in studying the effects of financial aid. Let me also note that this is a preliminary report which is being reviewed both within and outside the Department.

A group of specialists in penology, research design, labor market analysis and corrections reviewed the "LIFE" project in February 1975. Based on their review of the findings, this group recommended that the Department of Labor try the transitional assistance experiment on a larger scale. A request for proposal was directed to the States to solicit interest in conducting such a project. In all, 30 States expressed interest in the project, and seven States actually submitted proposals. The seven States were: Connecticut, Georgia, Illinois, Missouri, Ohio, Texas and Washington. The Employment Security Agency of the Georgia Department of Labor and the Criminal Justice Division of the Office of the Governor in Texas won the awards to conduct the TARP project.

I should like to point out that the State of Washington has already enacted legislation to provide transitional financial assistance to ex-offenders; and California, Connecticut, Oregon, Minnesota and Nebraska are considering legislation which might also provide similar aid.

The Department of Labor and the Law Enforcement Assistance Administration are together contributing about $2.1 million for this 27-month project. About $1.3 million of this amount is being paid as financial assistance to 1,150 ex-offenders in both States. Georgia and Texas are also contributing funds to this effort. The groups in the experiment are distributed in each State as follows:

A. Experimental Groups

1. 175 persons to receive financial assistance for 26 weeks--when unemployed--no job placement assistance

2. 200 persons to receive financial assistance for 13 weeks--when unemployed--no job placement assistance

3. 200 persons to receive financial assistance for 13 weeks (This money is provided on a sliding scale to induce unemployed workers in this group to seek work. Their income will be supplemented if they find a job.)

4. 200 persons to receive only job placement assistance for 1 year (They receive no money.)

B. Control Groups

1. 200 persons to receive neither financial nor job placement assistance (They will be interviewed only.)

2. 1,000 persons to be followed solely by analysis of computerized data

The participants for the respective groups are selected randomly and directed to report to the Unemployment Insurance office nearest their homes in Georgia and Texas. The unemployed in the experimental groups 1 through number 3 will receive financial assistance. All participants will be interviewed at regular intervals to collect information on their jobseeking efforts and their adjustment to life outside the prisons.

Professor Charles Mallar of Johns Hopkins University is conducting a study of the cost benefit of the Maryland (LIFE) project. We are in the process of selecting a researcher who will do a similar type of analysis for the Georgia and Texas (TARP) project.

The last item I am forwarding is the report prepared by the Texas Department of Corrections, "A Study to Determine the Number of Inmates in the Texas Department of Corrections Who Were Eligible for Unemployment Insurance Prior to Incarceration." This report concludes that the amount of money available to the 105 inmates who would have been eligible to receive benefits totalled $74,981.

Let me conclude by noting that section 3824 of S. 1 would provide an increase of $500 of transitional assistance in gate money to offenders leaving Federal prisons. Furthermore, standard 12.6 of the National Advisory Committee on Criminal Justice's Standards and Goals recommended in its 1973 report on corrections that, "State funds should be available to offenders so that some mechanism similar to unemployment benefits may be available to inmates at the time of their release in order to tide them over until they find a job."

Please call on Dr. Rosen if you want additional information on the Transitional Aid Research Project for Ex-Offenders.

Your interest in our project is most appreciated.

Sincerely,

JAMES H. HOGUE
Deputy Under Secretary
for Legislative Affairs

Enclosures

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San Rafael, CA
Independent-Journal
(Cir. 6xW. 45,429)

Released inmates need state money

I would like to respond to Joseph Arone's letter on SB 224, a measure to provide modest financial aid to newly released inmates.

As you know, most state inmates of state prisons have few financial resources and no jobs when they are released. Many of their friends are often ex-offenders. Their family, if they have one, is usually poor and required some public assistance while they were in prison. They must find a job quickly with only $200 gate money to cover all future living expenses. A prior criminal record obviously makes job-seeking difficult.

These are some of the reasons many ex-convicts are poor parole risks and return to a life of crime. To prevent this is my primary reason for introducing SB 224.

Behr

SR 224 enables newly released prisoners to qualify for minimum unemployment benefits, up to $59 a week, and obtain the job counseling services which state employment offices provide. They qualify by completing a certain amount of required work while on prison jobs.

A project of financial aid conducted by the U.S. Department of Labor and the American Bar Association in Baltimore was so successful in reducing recidivism that new projects have sprung up in Texas and Georgia. The California financial assistance project in 1973 also significantly reduced recidivism. Washington has provided aid for four years with similar results.

Disregarding humanitarian goals, the savings to society are substantive if only a small percentage are able to stay out of prison. We pay $8,400 annually to house each prisoner in California. New individual prison units cost $30,000 to $40,000; the Governor proposed spending $94.2 million on building or renovating prisons this year alone. We achieve double savings to society when ex-inmates turn from crime and become lawful wage earners for their families.

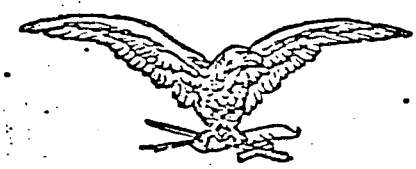
SB 224's disparate group of supporters, including the California Bar Association and the state AFL-CIO has caused Senators to [illegible] program in some detail and I believe the [illegible] of support reflects a thoughtful consideration [illegible]ue. Thank you.

Peter H. Behr
State Senator

Sacramento

Los Angeles Times

HARRISON GRAY OTIS, 1882-1917
HARRY CHANDLER, 1917-1944
NORMAN CHANDLER, 1944-1960



4 —Part II WEDNESDAY MORNING, APRIL 13, 1977

Help for the Ex-Con

Legislation to provide financial assistance to newly released California state prison inmates deserves serious consideration. SB 142, sponsored by Sen. Peter H. Behr (R-San Rafael), would enable ex-inmates to qualify for minimum unemployment benefits up to $59 a week for 26 weeks and to be eligible for job counseling from state employment offices. Those who qualify must have completed a certain number of hours of required work while in prison.

Supporters of the bill emphasize that most released inmates have few financial resources and little prospect of immediately finding a job. The purpose of SB 142 is to help them make the transition without resorting to crime.

The cost is estimated at $1 million a year, but supporters of the bill, like the California Bar Assn., argue that financial aid to newly released prisoners would be a good investment for society, if the program helps even a small percentage of ex-convicts stay out of prison and become wage earners for themselves and their families. They report a project of financial aid for released prisoners has worked well in Baltimore, Md., and that similar projects have been adopted in Georgia and Texas.

These factors, among others, should be weighed carefully when the Senate Industrial Relations Committee holds a hearing on the bill April 20.

Palm Desert, Calif.
Palm Desert Post
(Cir.W.3,200)

JUL 14 1977

Outside the gates

The most crucial and difficult period for convicts released from state prisons is the initial reentry period that begins when they walk out the prison gates.

They get $200 in "gate money," which is all the money most of them have. They face a hostile society, suspicious of ex-convicts and grudging of employment.

The $200 is soon spent and a job is not easily found, despite the best efforts of private aid groups, parole officers and the state department of employment.

This is the period when the former prisoner is most in need of help if he is to go straight and not become once again an institutionalized burden upon the taxpayers.

Senate Bill 234, introduced by Sen. Peter Behr, R-Tiburon, would provide such help. It passed the State Senate last week and was sent to the State Assembly. It should be enacted into law.

The measure provides unemployment benefits for prisoners who have earned wages in prison. A typical ex-convict would get $83 a week for 12 weeks after his release. That is not an extravagant amount but it might be enough to help him get back on his feet.

It would cost the state an estimated $1.5 million a year to pay the cost of the unemployment benefits. The remainder of the cost would be paid by the federal government.

The state's share might well come from a reduction in state parole services, which are of doubtful value either to the ex-convict or to society and which now cost California taxpayers $20 million a year.

Paying unemployment benefits after release would be another incentive for prisoners to participate in work programs, which we believe offer best hope for rehabilitation of prison inmates.

California prison authorities should work to expand prison work opportunities and to increase prisoners' wages. They should also support Sen. Behr's bill to provide post-release unemployment benefits.

Los Angeles Times

HARRISON GRAY OTIS, 1882-1917
HARRY CHANDLER, 1917-1944
NORMAN CHANDLER, 1944-1960

6 —Part II FRIDAY MORNING, SEPTEMBER 30, 1977

Help for Ex-Convicts

A modest proposal to help released state prison inmates reestablish themselves in society was signed into law Thursday in Los Angeles by Gov. Brown. SB 224, sponsored by Sen. Peter H. Behr (R-San Rafael), will enable prisoners to earn work credits to qualify, on release, for jobless benefits up to $59 a week for 26 weeks and to become eligible for job counseling from state employment offices.

Supported by the California Bar Assn. and other organizations, the bill recognizes the fact that most released prisoners have little immediate prospect of finding a job. If not forced to return to crime, they at least are severely tempted to do so.

The cost of the unemployment-benefit program is estimated at $1 million a year. That will be an excellent investment if it helps reduce by a small percentage the recidivism rate among some 7,000 inmates released each year from California prisons.

El Cajon, Calif.
Daily Californian
(Cir. D. 10,596)

SEP 23 1977

Allen's P. C. B. Est. 1888

Stopping the revolving door

The Legislature has done what we thought it could not politically afford to do. It has passed a measure making some ex-offenders eligible for minimum unemployment benefits after they are released from prison.

This represents a crowning triumph of reason over emotionalism. It gives to ex-offenders a brief period of time in which they can escape destitution and hopefully get a job, enroll in courses that will lead to a job or otherwise arrange their lives so they do not return to prison.

State Sen. Peter Behr sponsored the measure and won support from the California Bar Assn., the AFL-CIO, former San Quentin warden Clinton Duffy, the California Council of Churches and others who saw in this approach a way of breaking with past practice, which generally was to let the ex-offender fend for himself.

Too often the consequences of such indifference to the ex-offender's fate was a quick return to prison and another stack of bills for the taxpayers for keeping him there.

SB224 is designed to improve the odds for ex-offenders to make it outside the prison walls. Prisoners must earn double the number of credits from work assignments in prison that other individuals would have to earn to be eligible for the benefits. They can receive the money only for six months after their release.

It's estimated the cost of this enlightened approach to dealing with ex-offenders will be $1 million annually. The program will break even if just 46 of the 7,300 persons released from prison next year do not return.

Other states have reported dramatic success with this system. Maryland reduced its re-arrest rate by 27 per cent with a similar program financed by the federal government. Washington state reported a high rate of success, too.

Something must be done to reverse the revolving door that lets people out of prison and sweeps them back in on the next turn. We pay a high price for that unproductive system. SB224 at least holds the promise that a timely investment might reduce crime and give ex-offenders the helping hand they need for a more rewarding life.

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Senate Bill No. 224

CHAPTER 1149

An act to add and repeal Sections 135.8 and 633.4 to, and to add and repeal Chapter 5.8 (commencing with Section 1480) to Part 1 of Division 1 of, the Unemployment Insurance Code, relating to unemployment compensation, and making an appropriation therefor.

[Approved by Governor September 29, 1977. Filed with Secretary of State September 29, 1977.]

LEGISLATIVE COUNSEL'S DIGEST

SB 224, Behr. Unemployment compensation: prison inmates.

Existing law does not provide unemployment compensation benefits, extended duration benefits, federal-state extended benefits, and unemployment compensation disability benefits for former inmates of state prisons or institutions under the jurisdiction of the Department of Corrections.

This bill would include such former inmates, as permitted in the Constitution, for not exceeding 26 weeks of benefits, based upon wages in specified "employment" performed as an inmate, and would require that the additional cost of these benefits be paid by the state.

This bill would require a former inmate to have been paid wages for employment, computed at $2.30 per hour of employment, of not less than $1,500.

This bill would impose specified duties upon the Director of the Employment Development Department and the Department of Corrections in connection with such payments and benefits, and would require the Department of Corrections, in cooperation with the Employment Development Department, to report to the Legislature on the effectiveness of these provisions by July 1, 1981.

This bill would remain in effect only until November 1, 1983, and as of such date would be repealed unless a later enacted statute deletes or extends such date. Any new claim for benefits filed with an effective date prior to November 1, 1983, would continue to receive benefits provided by this bill, but no claim may use wages of inmates which are earned after July 1, 1982.

This bill would become operative July 1, 1978.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 135.8 is added to the Unemployment Insurance Code, to read:

135.8. "Employing unit" also means the State of California for the purposes of Chapter 5.8 (commencing with Section 1480) of this part.

SEC. 2. Section 633.4 is added to the Unemployment Insurance Code, to read:

633.4. Notwithstanding the provisions of Section 633, "employment" includes those services specified in Chapter 5.8 (commencing with Section 1480) of this part.

SEC. 3. Chapter 5.8 (commencing with Section 1480) is added to Part 1 of Division 1 of the Unemployment Insurance Code, to read:

CHAPTER 5.8. UNEMPLOYMENT COMPENSATION AND DISABILITY BENEFITS FOR FORMER INMATES OF STATE PRISONS OR INSTITUTIONS

1480. Notwithstanding Sections 2700 and 2791 of the Penal Code, or any other provision of law, inmates of any state prison or institution under the jurisdiction of the Department of Corrections shall be considered in "employment" for all purposes under this division in connection with any productive work by inmates who do or may receive compensation pursuant to Section 2700, 2762, 2782, 3323, or other provision of the Penal Code, or in connection with the participation by inmates in a vocational training program approved by the Department of Corrections as permitted in the Constitution. Except as modified by this chapter, any such inmate shall, after his or her release on parole or discharge, be eligible for benefits on the same terms and conditions as are specified by this part, and Part 3 (commencing with Section 3501) and Part 4 (commencing with Section 4001) of this division, for all other individuals, and unemployment compensation disability benefits on the same terms and conditions as are specified by Part 2 (commencing with Section 2601) of this division for all other individuals.

For unemployment compensation benefits purposes, an individual may use wages, as defined by Section 1481, only with respect to the benefit year established by the first new claim for unemployment compensation benefits, including any extended duration benefits or federal-state extended benefits related to that new claim. Notwithstanding any other provision of this division, in no event shall any such individual receive payments of unemployment compensation benefits, extended duration benefits, federal-state extended benefits, or disability benefits, separately or in any combination, for more than 26 weeks. No new claims for unemployment compensation benefits or first claims for disability benefits pursuant to this chapter may be filed with an effective date or period of disability commencing on or after October 31, 1983, if such claim uses wages as defined by Section 1481. No provision of this chapter shall apply to any inmate or individual who has a valid claim for unemployment compensation benefits pursuant to other provisions of this part, or who has a valid claim for disability benefits pursuant to Part 2 (commencing with Section 2601) of this division. Except as inconsistent with the provisions of this chapter, the

provisions of this division and authorized regulations shall apply to any matter arising pursuant to this chapter.

1481. "Wages of inmates" means an amount computed at two dollars and thirty cents ($2.30) per hour of "employment" as defined by Section 1480, commencing January 1, 1977, regardless of any compensation received by inmates.

1482. Subdivision (a) of Section 1281 shall not apply to wages as defined by Section 1481. An individual cannot establish a valid claim or a benefit year during which any benefits are payable for unemployment compensation benefits based on wages for employment, as defined by Section 1481, unless he or she has during his or her base period been paid wages for employment, as defined by Section 1481, of not less than one thousand five hundred dollars ($1,500).

1483. (a) In lieu of the contributions required of employers and workers under this division, the State of California shall pay into the Unemployment Fund in the State Treasury at the times and in the manner provided in subdivision (b) of this section, an amount equal to the additional cost to the Unemployment Fund, and an amount equal to the additional cost to the Disability Fund, of the benefits paid with respect to employment of, and payment of wages of inmates to, inmates of any state prison or institution confined under the jurisdiction of the Department of Corrections. Unemployment compensation benefits otherwise payable, irrespective of this chapter, shall be charged to employers' reserve accounts in accordance with other sections of this part and benefits, including extended duration benefits and federal-state extended benefits, shall be the liability of governmental entities or nonprofit organizations pursuant to Section 803, but the additional cost to the Unemployment Fund of the benefits, including extended duration benefits and federal-state extended benefits, paid pursuant to this chapter shall be borne solely by the State of California. Unemployment compensation disability benefits otherwise payable, irrespective of this chapter, shall be the liability of the Disability Fund in accordance with other sections of this division, but the additional cost to the Disability Fund of the unemployment compensation disability benefits paid pursuant to this chapter shall be borne solely by the State of California.

(b) In making the payments prescribed by subdivision (a) of this section, there shall be paid or credited to the Unemployment Fund and to the Disability Fund, either in advance or by way of reimbursement, as may be determined by the director, such sums as he or she estimates the Unemployment Fund and the Disability Fund will be entitled to receive from the State of California under this section for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the respective fund. Such estimates may be made

upon the basis of statistical sampling, or other method as may be determined by the director.

Upon making such determination, the director shall certify to the Controller the amount determined with respect to the State of California. The Controller shall pay to the Unemployment Fund and to the Disability Fund the contributions due from the State of California.

(c) The director may require from the Department of Corrections such employment, wage, financial, statistical, or other information and reports, properly verified, as may be deemed necessary by the director to carry out his or her duties under this division, which shall be filed with the director at the time and in the manner prescribed by him or her.

(d) The director may tabulate and publish information obtained pursuant to this chapter in statistical form and may divulge the name of the employing unit.

(e) The Department of Corrections shall keep such work records as may be prescribed by the director for the proper administration of this division.

(f) Notwithstanding any other provision of law, the State of California shall not be liable for that portion of any extended duration benefits or federal-state extended benefits which is reimbursed or reimbursable by the federal government to the State of California.

(g) The Department of Corrections shall provide each inmate, at the time of his or her release on parole or discharge, with written information advising the inmate of benefit rights pursuant to this chapter.

1484. The Department of Corrections, in cooperation with the Employment Development Department, shall report to the Legislature on the effectiveness of this chapter not later than July 1, 1981. Such report shall include, but not be limited to, a comprehensive analysis of the rate of new convictions of persons receiving payments under this chapter, and an evaluation of the extent to which payments under this chapter have been beneficial in the return to productive employment of persons receiving such payments, and in reducing the rate of recidivism.

SEC. 4. This act shall remain in effect only until November 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before November 1, 1983, deletes or extends such date. Any new claim for unemployment compensation benefits or first claims for disability benefits pursuant to this chapter filed with an effective date or period of disability commencing prior to November 1, 1983, shall continue to receive benefits provided by this chapter after November 1, 1983, provided, however, that no claim for benefits pursuant to this chapter may use wages, as defined by Section 1481, which are earned after July 1, 1982.

SEC. 5. This act shall be operative on July 1, 1978.

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COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES

AMERICAN BAR ASSOCIATION

1800 M STREET, N.W., WASHINGTON, D.C. 20036 TELEPHONE (202) 331-2280

January 11, 1977

Louis F. Laun
Administrator for
Finance and Investment
Small Business Administration
Washington, D.C. 20416

Dear Mr. Laun:

Last month the Small Business Administration published a notice in the Federal Register regarding the possible alteration of loan policies as they affect former offenders. In the last five years, principally through the Commission on Correctional Facilities and Services, the American Bar Association has devoted substantial attention to correctional issues. As a result of that effort, we have developed information and opinion which bear on the matter apparently open for consideration and revision. This letter is submitted to convey our views.

As regards the reintegration of offenders to the free community, the Association has adopted five highly pertinent policy statements in recent years. These are set forth in the Appendix. Although none is specifically directed to the questions posed in the SBA notice, the core principle which they suggest is that per se restrictions on the participation of former offenders in the working of society should be eliminated. Generally, no restrictions should apply to former offenders which are not justified by facts pertaining to the individual. Standard 4.3 of the Association's Standard Relating to Probation, approved in 1970, strikes most closely at the general principle: "Every jurisdiction should have a method by which the collateral effects of a criminal record can be avoided or mitigated following the successful completion of a term on probation and during its service."

The SBA notice of December 10, 1976, posed seven questions. We turn to them now, responding in the order of their presentation.

1. Should the current policy be continued or modified?

The SBA's blanket exclusion of parolees and probationers is a vestige of a system which viewed ex-offenders as second class citizens. This system assumed the continuing unworthiness of convicted persons as a class and then attributed this characteristic

to each of its members, ignoring individual circumstances or merit. The Corrections Commission of the American Bar Association, through its Clearinghouse on Offender Employment Restrictions, has had experience with similar arbitrary statutory restrictions in the licensing field, and has worked to modernize such legislation. These laws typically denied the ex-offender the right to work in occupations requiring a state license. Beginning in the early 1970's, the unfairness of such employment barriers produced a spread of legislation aimed at removing class limitations in favor of an individual, case-by-case approach. Increasingly, states which predicate the granting of a license upon good moral character have amended their practices so that prior criminal behavior, by itself, will not prevent the issuance of a license. Instead, states are adopting a direct relationship test, refusing to license only in situations where there is a clear relationship between the prior offense and the license sought. This reform was explicitly recommended by the National Advisory Commission on Criminal Justice Standards and Goals in 1973:

> "Each State should enact by 1975 legislation repealing all mandatory provisions depriving persons convicted of criminal offenses of civil rights or other attributes of citizenship. Such legislation should include: . . . Repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government . . . . Statutory provisions may be retained or enacted that: . . . Authorize a procedure for the denial of a license or governmental privilege to selected criminal offenders when there is a direct relationship between the offense committed or the characteristics of the offender and the license or privilege sought." (Report on Corrections, Standard 16.17, p. 597.)

The call for adoption of a direct relationship test had been sounded in 1967 by the President's Commission on Law Enforcement and Administration of Justice:

> "But it is of even more basic importance to reevaluate all disabilities and disqualifications to design a system more responsive to the various interests of society as a whole, including the interests of convicted persons themselves. To do this it is necessary to consider each right or privilege individually to determine whether its forfeiture would be appropriate as a deterrent or means of protecting society, and if so what particular crimes should call for forfeiture, and for

what period of time. Where practical, cases should be considered individually to determine whether the various applicable disabilities and disqualifications are necessary and appropriate." (Task Force Report: Corrections, p. 89)

All change in this area has come slowly. For example, President Ford, in a June, 1975 statement on crime, directed the United States Civil Service Commission to ensure that as an employer the Federal Government did not unjustly discriminate against ex-felons. (A number of states have taken similar action.) In his message, the President recognized the overwhelming importance of fair treatment of ex-offenders and encouraged their hiring as both a means of reducing crime and improving our criminal justice system. His forthright action was a welcome but delayed response to the 1970 Report of the President's Task Force on Prisoner Rehabilitation which recommended that "The United States Civil Service Commission should devise and put into operation a plan to stimulate Federal employment of ex-offenders." (p. 10.)

These "enlightened" employment policies manifest a growing awareness of the necessity of affirmative action if the ex-offender is to "make it" in the community. The trust implicit in employment, including such "sensitive" areas as defense contract labor and corrections work, should not cease at the employee level. The individual parolee or probationer who demonstrates the requisite "good moral character" and presents a serious application should be afforded the same opportunity to receive SBA assistance as any other person.

The Commission on Correctional Facilities and Services encourages the Small Business Administration to adopt a policy paralleling the increasingly general approach in the licensing and employment fields. Instead of blanket, per se exclusions, loan determinations should be based upon an individual case-by-case judgment, taking into consideration both the degree of rehabilitation exhibited by the applicant, and the relationship between the offense committed and the business for which he/she is seeking support, in addition to the traditional concerns about the inherent soundness of the business plan.

2. Is a two-year period on probation or parole which is violation free, too long or too short a time?

As noted in the Appendix, the ABA has recently adopted a policy which urges states to provide greater financial assistance to the ex-offender during the immediate post-incarceration period. This policy stems from the recognition that the releasees' needs are often greatest immediately upon release, often prior to the obtainment of gainful employment. Apparently the SBA believes that a probationary or waiting period is necessary in order to gauge reincarceration

proclivities. The Commission recommends that the postulated two-year period be the maximum. Penologists and social science researchers agree that most recidivist activity and parole violations which result in reincarceration take place during the initial two-year post-incarceration period. Two years from release should, therefore, be a sufficient waiting period before applications from parolees and probationers will be approved. An extended period would produce marginal benefits where the concern focuses on default due to imprisonment.

It should be noted that SBA's concern over reincarceration may be exaggerated by an erroneous belief that the majority of ex-offenders recidivate. A recent study by Dr. Robert Martinson, Director for the Center for Knowledge in Criminal Justice Planning, rebuts this dogma. The study, which is still incomplete, examined over 100 recidivism surveys. It reveals that the average rate of recidivism for these surveys was below 30 percent. The apparent recidivism rate diminishes with each passing month in the early post-release period. For example, a South Carolina study presented data concerning the interval between release and readmission of 1972 releasees. At the end of three years, 18.9 percent of the total prisoners released had recidivated. However, during the first six-month release period, almost one quarter of the ultimate recidivism had occurred.

SBA field office staff may also reduce the reincarceration/default dangers by utilizing prediction studies. These studies identify factors most frequently shared by recidivists. Common findings are that older persons with fewer previous convictions are less likely to be arrested after release. Thus, in estimating default dangers, SBA staff may be able to make at least "educated" guesses based upon these empirical studies.

Affording employment and business opportunities to the ex-offender will also reduce reincarceration rates. Ex-offender studies demonstrate the highest success rates are for the employed individuals. (See, e.g., Robert Evans, Jr., "The Labor Market and Parole Success," Journal of Human Resources, Spring, 1968, pp. 201-212; Daniel Glaser, The Effectiveness of a Prison and Parole System (Indianapolis, Bobbs-Merrill 1964).) Evaluation of the federally-supported fidelity bonding program affirms this assertion and supports arguments in favor of government financial backing of the ex-offender for employment purposes. The Department of Labor provides fidelity coverage to ex-offenders who fail to qualify for regular bonding. Under this program, the default rate (1966-74) is under two percent, or claims have been paid on fewer than one in fifty bonds.

3. Should a distinction be made between felony offenses and misdemeanors, or between "serious" and "nonserious" offenses?

The Commission opposes these distinctions on the grounds stated in response to Question 1. These distinctions, if utilized in lending decisions, would result in determinations based upon rigid criteria, thus ignoring the merits of individual cases. Additionally, such tests would overlook the relationship between a particular criminal's history and the business purpose for which the loan application is made. Criminal convictions should be considered only to the extent actually relevant to fitness to participate in activities posing particular dangers to society. For example, a history of felonious assaultive behavior may be critical in evaluating a loan request involving work which would bring the applicant in personal contact with customers in situations where disputes might be anticipated. It would be of less significance where the business opportunity in question does not involve substantial personal contacts or where the likelihood of disagreements is small.

4. Should the definition of a serious offense relate to the maximum penalties that could be assessed, or to the degree of supervision actually involved in probation or parole?

Again, the choice is between rigid and flexible criteria. Although the Commission would not base loan determinations upon "seriousness" of the offense, given the above choices, we would focus on actual supervision levels as affording a more flexible response. Also, to a limited extent, this test may take advantage of a prior determination reached by a judge or administrative body in a parole or probation hearing. These judgments ideally and frequently are based upon an extensive examination into the individual's background and the prospects for successful community adjustment. A loan administrator would most likely consider the same factors in determining moral character. A maximum penalty factor also fails to account for the common practice of plea bargaining. These bargains, a guilty plea in exchange for a lesser charge, may result in objectively identical behavior being prosecuted as dissimilar offenses, subjecting the individuals involved to different potential maximum penalties. These differences are totally unrelated to the "moral character" of the individual, again underscoring the merit of a case-by-case approach.

5. Would it be wise to include a "first offender" provision?

A "first offender" provision would be of little value. Due to the nature of our criminal justice system, there is no guarantee that all "first offenders" would have uniform criminal backgrounds. Some may be pure first offenders, never having had prior contact with the criminal justice system. Others may have extensive juvenile records. Some may have committed previous offenses, but been released without prosecution in the exercise of prosecutorial discretion. And still others may have committed many criminal offenses but escaped arrest for all but one, thereby producing a deceptive criminal record. Of course, the completely successful criminal, the one who has avoided all detection, already qualifies for SBA loans.

6. Should parolees or probationers be required to submit recommendations from their parole or probation officers as well as other references?

Although the Commission has no objection to references from supervisory personnel, it does recommend that these reports be weighed on the basis of the writers' personal knowledge and not his/her position. An often cited problem in our criminal justice system is the burdensome caseload of parole and probation officers. Ben S. Meeker, Chief Probation and Parole Officer for the Northern District of Illinois, recently testified before a House Subcommittee that:

> The investigation demands have become so heavy that the supervision and surveillance duties of our officers are necessarily curtailed. Officer after officer is reporting that he can no longer do much more than handle major emergencies which arise on his caseload, as he is forced to devote most of his time to investigation. (Hearing before Subcommittee No. 3 of Committee of the Judiciary of the House of Representatives, 92nd Cong., 2nd S, Serial No. 15, at 107.)

Thus, heavy caseloads and multiple responsibilities result in a low incidence of contact, often limited to once a week by phone . Even this contact is superficial, frequently confined to verification of address and employment.

This infrequent association does not lend itself to providing the supervisor with a sound foundation upon which to make pertinent evaluative judgments, i.e.,does the parolee or probationer have business acumen, management experience or other business skills. Thus, in most cases, these individuals should narrow their references to opinions on the readjustment of the ex-offender to date. As part of the post-loan monitoring function, the SBA officer may wish to maintain contact with the parole or probation officer.

7. Would it be advisable to have all eligibility determinations concerning probationers and parolees handled by one central authority to insure uniformity of action, or should such determinations be delegated to field offices in the various states?

The Commission recommends that loan applications submitted by parolees and probationers be determined and administered according to routine procedures. Because we favor determinations on an individual basis, with prior record . factor but not determinative of the issue of moral character, decisions may be left to the discretion of field officers.

Since there will be an initial timidity towards extending loans to the ex-offender, these regional representatives may wish to assuage their anxieties by careful monitoring of loan usage and repayment. Uniformity in this context is not a necessity, as the needs of the ex-offender may vary according to the availability of resources in each community.

The responses to each of the above questions advocate a case-by-case approach to loan determinations. This method should not create additional burdens upon SBA personnel. Although there are thousands of parolees and probationers, they are disproportionately under 25 years of age, lacking a high school education, and deficient in employment skills and experiences. As a result, an ex-offender's initial employment is usually limited to entry-level jobs. It is the "exceptional" parolee or probationer who will have the requisite education and experience to merit serious consideration for a loan in order to originate or continue a business enterprise. It is this same individual who, according to experience, is least likely to commit further crimes, and thereby least likely to default due to reincarceration.

We hope these comments will assist the Small Business Administration in formulating new policies to better discharge its responsibilities to all citizens. If further information would be useful, the Commission would be pleased to attempt to provide it.

Sincerely,

Robert B. McKay

Robert B. McKay
Chairman

RBM:df

rules and regulations

[3410-02]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Reg. 596]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 7-13, 1978. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of Valencia oranges, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on July 3, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges continues to be seasonally slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.896 Valencia Orange Regulation 596.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period July 7, 1978, through July 13, 1978, are established as follows:

(1) District 1: 220,000 cartons;

(2) District 2: 330,000 cartons; and

(3) District 3: Unlimited

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: July 5, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-18866 filed 7-5-78; 11:45 am]

[8025-01]

Title 13—Business Aid and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 6, Amdt. 17]

PART 120—BUSINESS LOAN POLICY

Loans to Parolees and Probationers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On December 10, 1976, the Small Business Administration published a notice in the FEDERAL REGISTER (41 FR 54002) which stated that it was considering a change in loan policy which would permit loan eligibility for parolees and probationers who had satisfactorily completed 2 years without further violation, and who could meet other conditions. Subsequent to such publication, SBA received letters of comment, many of which were favorable to such a change, and many of which were unfavorable. The Agency has studied these comments over a considerable period and reached the conclusion that the present policy, heretofore not published in the FEDERAL REGISTER but only in the internal standard operating procedures used by loan officers and others, should not be changed. Chief among the reasons for this decision is the Agency's belief that SBA should not be involved in rehabilitation processes, that a finding of good character is essential in any credit transaction, and that the risk of absentee management in the event of reincarceration is too great for the Agency's responsibility to protect the taxpayers funds. Accordingly, the present policy remains in effect.

FOR FURTHER INFORMATION CONTACT:

Evelyn Cherry, Special Projects Division, Office of Financing, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, telephone 202-653-6696.

Pursuant to the authority contained in section 4(d) and reorganization plan No. 4 of 1965 (30 FR 9353) and section 5(b)(6) of the Small Business Act, 15 U.S.C. § 633(d) and 634(b), Part 120 of Title 13, Code of Federal Regulations, is amended by inserting a subparagraph (11) in § 120.2(d) to read as follows:

§ 120.2 Business loans and guarantees.

* * * * *

(d) Financial assistance will not be granted by SBA:

* * * * *

(11) If a proprietor, partner, officer, or director of the applicant is currently incarcerated, on parole or probation following conviction of a serious offense, or when probation or parole is lifted solely because it is an impediment to obtaining a loan.

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AMERICAN BAR ASSOCIATION*

ADEQUATE TRANSITIONAL FINANCIAL ASSISTANCE
FOR RELEASED PRISONERS

The American Bar Association urges Congress and all states to facilitate the reintegration into the free community of prisoners being released after substantial periods of confinement by amending existing law and practice regarding "gate money," the dominant form of transitional financial assistance, to provide:

a. Adequate means, in cash paid periodically, or in services, to secure necessary food, lodging, and clothing for a minimum of one month following release, and

b. Access to loan funds so that releasees can secure tools, uniforms, and other materials necessary for their gainful employmert.

* Approved by the American Bar Association's House of Delegates, August 10, 1976

County and Local Jail Inmates

Attached are two tables concerning jail inmates. The first table compares this population with its counterpart state prison populace. For the most part, these two groups are indistinguishable. Both are predominantly male, young, poor and undereducated. The chief difference stems from the primary distinction between jails and state prisons. The latter holds only those individuals already sentenced and serving a prison term typically in excess of one year. The LEAA 1974 survey of state inmates revealed that only two percent of this group received a sentence under one year. Seventy-three percent had maximum sentence lengths of five years and up. Most jails contain inmates sentenced to less than one year. They also hold individuals who, unable to meet or qualify for bail, are awaiting some step in the adjudicatory process. According to the 1972 survey of jail inmates, only 43 percent of those incarcerated in jails were actually serving a sentence; 36 percent were awaiting trial and the remainder were in some other stage of adjudication. Consequently, when compared to the state prisons, jail populations are transitory.

The second table summarizes the 16 responses received to date from a questionnaire sent out to fifty-five county and local jails nationwide. As for these 16 facilities, the following generalities may be made:

1. The majority of jail inmates are either awaiting some stage of adjudication or serving a sentence of under one year.

2. The average length of incarceration for sentenced inmates is usually under six months.

3. Most jails do not provide gate money. Where it is furnished, it is meager, amounting to only a few dollars.

4. Most jail inmates at release have an estimated net worth of under a few hundred dollars.

5. Most jails do not provide paying jobs for their inmates while incarcerated.

6. Transportation and/or clothing at release is seldom provided. When transportation is available, it is usually to the downtown area or nearest bus depot.

7. Cash accounts are maintained in about one-half of the jails reporting. Monies deposited therein come from pocket cash when first incarcerated and gifts from friends and family.

8. Those who participated in a work release program tend to have larger account balances on release than others.

9. The most common offenses for which jail inmates are incarcerated are burglary, robbery, drugs, weapons violation, intoxication, traffic offenses, assault, receiving stolen property, disorderly and prostitution.

A few jails also provided post-release employment statistics. The unemployment rates at the time of release are as follows:

75% Ada County Jail, Base, Idaho
25% Sedgwick County Jail, Wichita, Kansas
50% Milwaukee County Jail
20% Middlesex County Jail, Billerica, Massachusetts

These figures closely parallel the unemployment experience suffered by releases from state institutions.

From the aforementioned findings, it is apparent that many jail releasees are in the same acute financial strait as other releasees. Whether or not to include them in an income maintenance program depends upon a multiple of factors, with length of incarceration playing a paramount role. Especially for those serving at least a few months, there is little reason to discriminate against them solely on the type of institution in which they are confined.

COMPARISON OF JAIL AND STATE PRISON
INMATE CHARACTERISTICS*

Characteristic	Jail	State Prison
Sex		
male	95%	97%
female	5	3
Race		
white	56	51
black	42	47
other	2	2
Educational Attainment		
elementary only (0-8)	23	26
some secondary (9-11)	43	35
completed secondary (12)	24	25
college (more than 12)	10	9
Marital Status		
never married	50	48
separated, divorced or widowed	26	28
married	24	24
Prearrest Annual Income		
less than $2000	44	24
$10 or more	6	14

*Statistics for this table derive from two LEAA surveys; Survey of Inmates of Local Jails 1972, Advance Report and Survey of Inmates of State Correctional Facilities 1974, Advance Report. As such, the jail statistics cover inmates incarcerated in mid-1972 while the state prison information was collected in January, 1974.

COUNTY AND LOCAL JAILS, MAY, 1976

Facility (population)	Sentenced Inmates	Average Length Incarceration for Sentenced Inmates	Gate Money	Clothing	Transportation	Jail Employment Percent	Jail Employment Wage	Savings or Cash Accounts (average)	Net Worth at Release
San Diego City Jail (1076)	321	18 days	no[1]	yes[2]	yes	14	$.50/day	yes ($20)	$500[3]
Denver County Jail (549)	168[4]	154 days	no[1]	yes[2]	yes	6[5]	4.13/hour	yes ($101/work releasees $28 others)	
Dade County (Florida) Pre Trial Detention Center (845)			served 5 months or more $5; less than 5 months $3[6]	no	no	none		no	less than $50
Halawa (Hawaii) Correctional Facility (135)	35[4]		no	no	no	none		yes	less than $100
Lake County Jail (Crown Point, Indiana) (190)	20	90 days	no[1]	no	no	none		no	less than $50
Marion County Jail (Indianapolis) (600)	77	15 days	no[1]	no	no	none		yes	less than $50
Ada County Jail (Boise, Idaho) (65)	28	4 days	no[1]	yes[8]	no	none[7]		yes	less than $50
Linn County Jail (Cedar Rapids, Iowa) (41)	18	30-90 days	no	no	no	none		yes[9]	
Sedgwick County Jail (Wichita) (185)	108[4]	6 months	no[1]	no	no	20		no	less than $500

Facility (population)	Sentenced Inmates	Average Length Incarceration for Sentenced Inmates	Gate Money	Clothing	Transportation	Jail Employment Percent	Jail Employment Wage	Savings or Cash Accounts (average)	Net Worth at Release
Middlesex County Jail (East Cambridge, Mass.) (280)	280[4]	6-12 months	yes max. $4	yes[2]	yes	45	$2/day $3/day[10]	yes ($200-$300 work releasees; $20 others)	less than $50[11]
Macomb County Jail (Mount Clemons, Mich.) (247)			no	no	no	none		no	less than $300
Clark County Jail (Las Vegas) (486)	44	10 days	no	yes[2]	no	none		no	less than $10
Hillsborough County House of Correction (Goffstown, N.H.) (73)	73	4 months	no	no	yes	none		no	
Bergen County Jail (Hackensack, N.J.) (262)	X[4]	6 months	no	no	no	30	$.50/day	no	less than $20
N.Y.C. Correctional Institution for Men (1191 adult) (512 juvenile)	1703	5.5 months	misdemeants $1; felons $5.	yes	yes		$.15-$.25 per hour	yes	less than $50
Milwaukee County Jail (Wisconsin) (526)	226	60 days	no[1]	no[12]	no	none		yes	

1/ These facilities report that no other county or city jail gives gate money.

2/ These facilities provide clothing at release only when an inmate is in need.

3/ In cash, the amount would be less than $50.

4/ The Denver, Nalawa, Sedgwick, Middlesex and Bergen jails hold inmates serving sentences over one year. These inmates are included in the count shown on the table, and number 15, 10, 149, 104, and 1 respectively. The total number of inmates serving a sentence at the Bergen County Jail was unclear from the response received. Those serving over one year at Sedgwick County Jail are awaiting transfer to a state or federal institution.

5/ All jobs are on work release.

6/ Flor. Stat. Ann. § 951.04.

7/ Some inmates do earn money on a work release program.

8/ Clothing provided only in an emergency situation.

9/ Savings accounts are maintained for work releasees only.

10/ Approximately 60 inmates earn $200/day working inside the jail. Another 62 are on work release and average $2.50-$3.00 per hour.

11/ Work release participants have a higher net worth, approaching $250.

12/ On rare occassions clothing and/or transportation is provided.

TRANSITIONAL AID RESEARCH PROJECT FOR EX-OFFENDERS

1800 M Street, N.W. Washington, D.C. 20036 202/331-2252

"J"

MEMORANDUM

TO: Distribution List

FROM: Robert Horowitz

SUBJECT: Legality of Excluding Certain Persons as Gate Money Recipients

DATE: March 3, 1977

In light of Madansky's and my previous conclusions that the inclusion of all releasees from confinement in a permanent income maintenance program would be financially prohibitive, criteria must be devised that will distinguish among releasees for assistance purposes. In specifying these criteria and their application, draftsmen will have to take care to avoid such constitutional infirmities as denial of the equal protection of the laws and denial of due process. Confident that the latter evil can easily be avoided, this memorandum addresses the equal protection issue.

Before considering the prospects of a future program of economic assistance, a look at current practices will be instructive. Today, gate money is generally not dispersed to three groups:

-releasees excluded due to an official's discretion,

-releasees who participate in a work-release program, and/or who have a specified amount in their institutional savings account,

-jail releasees.

I shall discuss individually the legality of excluding each of the above groups in the order that they appear.

Our gate money survey revealed that approximately half of the states and the federal government grant corrections officials discretion in dispensing the stipends (Back on the Street, at 10). In general, both statutes and regulations provide that this discretion is to be exercised with a view towards the releasees' needs. When dealing with discretionary authority granted government officials

courts are reluctant to impose their own judgment. As long as the enabling legislation is unambiguous and does not foster impermissible discrimination, the officials' actions will be sanctioned, unless they act in an arbitrary or capricious manner. For example, in one case, a prisoner sued the government based upon the Federal Prison Industries Act. The case involved numerous contentions, but the court's ultimate holding was that the statute in question afforded the Attorney General and his representatives substantial leeway in deciding who should be engaged in the industries, and that absent a showing of arbitrariness or capriciousness, their actions were legal. In this case, no equal protection claim was raised. Mercer v. United States Med. Center for Fed. Pris., 312 F. Supp. 1077 (W.D.Mo 1970).1/

The second exclusion is based upon the assumption that work release participants, through wages earned, have managed to accumulate sufficient savings, thereby reducing their need for financial aid. (Or, in jurisdictions which supplement savings, a determination is made that the individual in fact has saved a specified amount.) A state supreme court has recently examined the legality of this policy. Thomale v. Schoen, 244 N.W. 2d 51 (S.C. Minn. 1976), a copy of which is attached. In this case, a former prisoner attacked the provision whereby an inmate's account is supplemented to $100 at release. The court adopted the traditional, more lenient test for determining whether there was a violation of equal protection. Under this test, a statutory classification will not be set aside if any set of facts may reasonably be conceived to justify it.2/

1/ A similar result was obtained in another case where equal protection was the issue. In Ham v. State of North Carolina, 471 F.2d 406 (4th Cir. 1973), the petitioner complained of the different gain time alloted for farm labor and kitchen work. The Court held this was a matter of prison administration which was to be disturbed by the courts only if effectuated in a clearly arbitrary or capricious manner.

2/ The Supreme Court has established a number of tests on which to judge equal protection arguments. The right which is at stake will determine which test is applicable. If it is a fundamental right (voting, travel, procreation), the courts will subject the challenged statute to a test of "strict scrutiny". The state must show a "compelling" reason for the classification; that the classification purports to protect legitimate state interests; and that the statute is drawn narrowly enough to meet the test of necessity. Shapiro v. Thompson, 394 U.S. 618 (1969). Where a fundamental right is not at stake, the appropriate test is less burdensome on the state. In such situations, the state need only demonstrate a "rational" connection between the peculiar legislative classification and the state interest it seeks to protect. McGowan v. Maryland, 366 U.S. 420 (1961). A third test does not look to the right at stake but the nature of the class. In a few instances, the Court has held that where a class is discriminated against on the basis of certain suspect criteria, the state must show a compelling state interest. Only a few classes fall under this category, i.e. sex, race, and it would only apply to releasees in very obvious situations, such as if only male releasees were entitled to gate money. See, e.g. McLaughlin v. Florida, 379 U.S. 184 (1964) (Discrimination on the basis of race.) Although jail inmates are primarily misdemeanant offenders, the Supreme Court has held that classification based on criminal record is not a suspect classification. See, e.g., Hunter v. Erickson, 393 U.S. 385, 392 (1969).

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In the instant case, the Court discerned a justifiable state interest--the conservation of funds so that larger individual payments could be made by withholding assistance to those already possessing some money at release.

The third exclusion concerns jail releasees. To date, there is no recorded court case which challenged this exclusion. Most "jail" cases have centered upon conditions, namely censorship of communications; inadequate heating, ventilation, bathing and toilet facilities; no medical care, etc. These cases typically are brought under the Civil Rights Act of 1871, 42 U.S.C. §1983, and allege deprivation of constitutional rights under color of state law. When equal protection issues are raised, they typically involve unequal treatment of inmates in the same facility. See, e.g., Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968) in which the court held it a deprivation of equal protection when Black inmates could not receive "Black" literature while white inmates received "white" publications.

One case does, however, offer insight into how the Supreme Court might react to a gate money challenge based upon equal protection arguments. In McGinnis v. Royster, 410 U.S. 263 (1973), the Court examined the New York statute [New York Correction Law §230(3)] which denied state prisoners "good time" credit for their presentence incarceration in county jails. The appellee inmates claimed that this deprived them of equal protection of the laws because such credit was extended to state prisoners who were released on bail prior to sentencing.

In assessing the statute's constitutionality, the Court, as in the Thomale case, recognized the state's right to make certain classifications if there is some rational basis to sustain them. The Court upheld the statutory scheme by citing the state's position that the differences between jail and prison facilities made this classification necessary. The jail is viewed merely as a detention center while prisons both detain and offer rehabilitation programs. Since good time credit under the New York scheme is dependent upon conduct and performance of duties assigned, jail inmates cannot receive credit because no evaluation is made of the individual inmate by a state official.

At stake in McGinnis was the individual's liberty, as good time credit could reduce the minimum sentence. The Court, however, did not view this liberty as a fundamental right, and therefore the stringent test which would have placed the disputed statute under the Court's strict scrutiny was not applied. Instead, the more lenient test, i.e. is there a rational basis for the distinction, was used. In an income maintenance challenge one may anticipate that the same standard would apply.3/ Thus, the gravamen

3/ Axilbund comment: One could stand McGinnis on its head and perhaps reach a different conclusion regarding a detainee's claim for financial assistance. If it can be accepted that the state owes something to every person removed from the free community to facilitate his return, the rehabilitative [sic] programs of state institutions may be seen as satisfying that obligation, and gate money is a supplemental benefit. The denial of programs and money to released detainees put them at a substantial, perhaps challengable, disadvantage.

of any challenge is whether the denial of assistance to a class is based upon a rational basis.

The test under McGinnis, "whether the challenged distinction rationally furthers some ligitimate, articulated state purpose", would apply to most equal protection suits involving prisoners. For example, in Amado v. Superintendent, Massachusetts Correctional Institution at Walpole, 314 N.E. 2d 432 (Mass. Sup. Jud. Ct. 1974), a statute that denied good time credit to offenders convicted of sex crimes was challenged. The state argued that this classification was based upon the legislatures interest in controlling the release date of the offenders, and was merely a permissible sanction. The petitioner argued that the classification was impermissible as good conduct credit was meant to induce good behavior by inmates, regardless of the nature of the offense. In siding with the state, the Court stated that a statute may serve more than one legislative purpose, and that a statutory classification will be upheld if it is rationally related to any such purpose, or if some legitimate state interest is advanced. Dandridge v. Williams, 397 U.S. 471, 386 (1970).4/

Based upon the above cases, two points must be considered in distinguishing among releasees for the purpose of income assistance. First, in excluding a class of releasees from this aid (e.g. jail releasees), the state must show a rational basis for this classification which serves a state purpose. Second, even within a class of releasees entitled to aid, an official may make distinctions as long as he does not act in an arbitrary or capricious manner. At this time, there are five potential criteria which may ultimately be used to determine income assistance eligibility:

1. need,
2. length of incarceration,
3. nature of correctional institution,
4. participation in work or rehabilitation programs while incarcerated,
5. offense classification (felon v. misdemeanant).

All of the above are related, since more prison inmates are felons, participate in some program, serve longer sentences and have a more substantial need (assuming more time away from community contributes to greater estrangement and therefore greater need) than jail inmates.

4/ Which equal protection test is selected by the court is the most critical decision in these cases, as courts very seldom strike down a statute based upon the rational purpose test.

Need, as a rational basis for distinguishing among gate money recipients, has already been upheld in the Thomale case.5/ Since we may correlate length of incarceration with need, i.e. the longer one is removed from the community, the greater are his needs on return, time should be a justifiable basis. Distinctions based on type of institution from which one is released should also be upheld along the lines stated in McGinnis. Prisons both detain and rehabilitate, while jails only detain. As part of the prison's rehabilitation function, economic aid may be given to inmates released from these institutions.

Actual participation in an institutional program may be justified on a reward basis. Post-release aid may be viewed as a payment for or incentive to participate in these programs. Incentive has been upheld as a rational criteria in one federal court. A New York statute afforded greater good time credit to felon than misdemeanant inmates. In upholding this statute, the Court cited both the difference in programs at prisons and jails, and the need for greater incentive in cases of felons serving longer prison sentences. Jeffrey v. Malcom, 353 F. Supp. 395 (S.D.N.Y. 1973).

The felon-misdemeanant criteria could be supported on the basis of any of the above grounds, need, length of incarceration, participation in programs and incentive.

In summary, we may utilize a number of criteria in order to reduce the releasee population to which we provide economic aid. The password for assuring the constitutionality of the program is "rational" basis. As long as the state has a rational basis for its classifications, equal protection challenges raised by an excluded releasee should be defeated

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5/ Subsequent to the drafting of this memorandum, the Supreme Court decided Goldfarb v. U.S. on March 2, 1977. In that case it held that the application of a dependency test, under the Social Security Act, to determine the eligibility of widowers for pensions, where no showing of dependency was required of widows, was a violation of the Equal Protection Clause. The applicibility of this holding to the question being examined here will be analyzed in a supplemental memorandum.

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TRANSITIONAL AID RESEARCH PROJECT FOR EX-OFFENDERS

1800 M Street, N.W. Washington, D.C. 20036 202/331-2252

MEMORANDUM

TO: Distribution List

FROM: Robert Horowitz

SUBJECT: Legality of Excluding Certain Persons as Gate Money Recipients-II

DATE: March 17, 1977

In the March 3 memorandum covering the same subject, footnote 5 referred to a Supreme Court case, decided on the prior day, which I suggested might have some bearing upon this matter. I have since obtained a copy of Califano v. Goldfarb, 45 Law Week 4237, March 2, 1977. Although this case does not alter the outcome of the initial memorandum, it does provide a new focus for a constitutional inquiry.

The March 3 memorandum examined the equal protection issue from the viewpoint of differential treatment towards prisoners (or ex-offenders). There is an additional perspective from which gate money classifications may be tested. Rather than laboring over the actual classification, a look at the nature of the program in question, i.e. financial assistance to releasees, will assist in predicting the approach a court might take when judging its legality. Gate money is essentially a social welfare program. The recipients receive funds from the public treasury from which they have neither a vested or accrued property interest. It is the government payment of cash and/or goods and services, for which no services or payments are made in return. The Supreme Court has considered numerous cases in which the constitutionality of a classification involving a social welfare program has been questioned. In these situations, the Court has adopted a more lenient approach than in areas where vested rights are at stake.

The judicial philosophy towards the assessment of social welfare programs was stated in Flemming v. Nestor, 363 U.S. 603, 611 (1960). In this case, the petitioner challenged the statute which denied old age benefits to an alien who, subsequent to achieving a sufficient work history, was deported. The Court stated that:

> Particularly when we deal with a withholding of a noncontractual benefit under a social welfare

> program [Social Security], we must recognize that the Due Process Clause1/ can be thought to impose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.

Expanding upon this, the Court accepted the government's position that Congress has wide latitude to create classifications that allocate noncontractual benefits under a social welfare program. Judicial deference is extended to Congress in social security classifications. Although still subject to 5th Amendment restrictions, a classification will be set aside only where it is clearly arbitrary and without a rational basis. Since this decision, the Court has often reiterated this standard for social welfare programs. See, e.g., Weinberger v. Salfi, 422 U.S. 749, 776-77 (1975); Richardson v. Belcher, 404 U.S. 78, 81, 84 (1971); Dandridge v. Williams, 397 U.S. 471, 485-86 (1970).

The Califano case represents the most common situation where, inspite of the above stated deference given to legislators, courts have found the classification scheme in question to be patently arbitrary and void of rational justification. This case involved a classification based upon gender. Under the Federal Old Age Survivors and Disability Laws [424 U.S.C. §§401-431], survivor benefits, based upon the earnings of the deceased husband, are automatically payable to the widow. Conversely, a widower, in order to receive benefits predicated upon his deceased wife's earnings, must demonstrate that his wife provided at least 1/2 of his support. The Court struck down this scheme, declaring that the gender based distinction violated the Due Process Clause of the 5th Amendment. The classification resulted in female workers paying social security taxes and receiving less protection for spouses than similar efforts by men produced. The government could not articulate support of this distinction, except for grounds which were "archaic and overboard", relying upon generalizations such as "assumptions as to dependency" which are more consistent with the "role-typing society has long imposed."

1/ The original memorandum concerned equal protection issues. "[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process'." Shneider v. Rusk, 377 U.S. 163, 168 (1964); Weinberger v. Wiesenfeld 420 U.S. 636 (1975). The Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment. Thus, whether we speak in terms of due process or equal protection, the outcome should be the same.

This case was one in a series which declared classification schemes, even where a noncontractual right was involved, unconstitutional because they were gender based. See, Weinberger v. Wisenfeld 420 U.S. 636 (1975); Frontiero v. Richardson 411 U.S. 677 (1973). The Court has declared that such distinctions are premised on overbroad generalizations that could not be tolerated under the Constitution.

In the case of gate money distribution, sex will not be a distinguishing trait. Most likely, eligibility will hinge upon either length of incarceration or nature of institution from which one is released. The rational grounds for these distinctions have been reviewed in the March 3 memorandum, and in light of the courts'expressed deference to legislative opinion in social welfare programs, such classification should withstand constitutional challenges.

The case of Weinberger v. Salfi 422 U.S. 749 (1975) is of particular interest to our program, as it concerns the withholding of social security benefits based upon a time demarcation. In this case, a wife and her child were denied benefits because, under law, they failed to meet the duration-of-relationship requirement. Under this test, "widow" and "child" are excluded if the surviving wife and stepchild had their respective relationships to a deceased wage earner for less than nine-months prior to his death. The Court held the nine-month duration-of-relationship requirements to be constitutional upon the following grounds:

a) it is a statutory classification in the area of social welfare which is rationally based and free from invidious discrimination;

b) it is a noncontractual claim to funds from the public treasury that enjoys no constitutionally protected status (except there may not be invidious discrimination among such claimants);

c) the duration-of-relationship test meets the constitutional standard that Congress, it concern having been reasonably aroused by the possibility of abuse (the use of sham marriages to secure social security benefits--which it legitimately desired to avoid),could rationally have concluded that a particular limitation or qualification would protect against its occurrence, that the expense and other difficulties of individual determinations justified the inherent imprecision of an objective, easily administered standard;

d) neither the fact that the rule excludes some wives who married with no anticipation of shortly becoming widows nor the fact that the requirement does not filter out every such claimant, if a wage earner lives longer than anticipated or has an illness that can be recognized as terminal more than nine months prior to death, necessarily renders the statutory scheme unconstitutional. While it is possible to debate the wisdom of excluding legitimate claimants in order to discourage sham relationships, and of relying on a rule that may not exclude some obviously

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sham arrangements, Congress could rationally chose to adopt such a course.

If gate money entitlement is based upon a time requirement (e.g. must have been an inmate for at least one year), the courts should uphold this standard on similar grounds. In this situation, points a and b enumerated above are equally applicable. At issue is a social welfare which does not involve an invidious discrimination. The rationale behind points c and d also apply. Congress, in establishing a duration-of-imprisonment test, protects many concerns, including the possibility of abuse. There are numerous petty offenses, such as tampering and disorderly conduct, that will frequently result in jail sentences of a few days. This relatively inconsequential sanction might encourage an individual to commit a petty offense in order to receive release benefits, i.e. a short cut to unemployment insurance. Although this may in fact exclude some jail releasees not so motivated, Congress could rationally choose to adopt such a course. Abuse, of course, is not the sole rationale upon which legislators may make this distinction. The needs of ex-offenders incarcerated for long periods of time are arguably greater than the needs of the short term inmate at release. The lesson to be learned from these social security cases is this--as long as their is not an invidious discrimination (usually based upon gender), any viable rationale for a classification scheme in a social welfare program will be affirmed by the courts.

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"K"

Estimated Release Stipend Amounts Based Upon
Unemployment Compensation Figures

The accompanying chart estimates what total release gratuity figures for 1974 would have been if the states had utilized gate money programs that parralleled their unemployment compensation systems.

The table identifies three release stipend totals. Each figure is based upon the weekly unemployment benefit amounts in its state using the minimum, maximum and average levels. In each instance, the totals are predicated upon an assumption that every state inmate released to the street in 1974 would have received these benefits for a 13 week period. The 13 week duration was arbitrarily selected. If another stipend period is chosen, the total expenditures may be ascertained by multiplying the weekly benefit level, by the number of weeks desired, by the number of releasees.

It should be stressed that these figures represent maximum sums for each total. In computing these figures every releasee was counted as entitled to the full state gratuity. In reality however, not all releasees would receive this aid. Some, with significant savings, family support or employment, will have no need of public assistance. Others, prior to the expiration of the 13 week period, will become gainfully employed and terminated from the stipend program without having exhausted their benefits. Finally, from a practical viewpoint, it is improbable that any state legislature would grant weekly release stipends to the ex-offender at a rate approaching the state's maximum weekly unemployment benefit level. The maximum totals therefore, are in the stratosphere, setting an unrealisticly high ceiling.

Just as the maximum totals are exaggerated, the minimum numbers understate the amount needed in release money for the population given. Any legislature initiating a releasee income maintenance program aimed at curbing recidivism, would not contemplate setting the weekly distribution amount at a paltry $10 - $20. This quantity would not deter an ex-offender from reverting to criminal activities out of financial desperation. Therefore, the average weekly unemployment benefit figure for each state would most closely approximate the weekly release stipend amount.

In order to put these release stipend totals in their proper perspective, they must be contrasted to other government expenses. The following chart compares the average stipend total for all 51 jurisdictions with the total estimated outlays in 1975 for various income security programs. These programs were selected because like the expanded gate money practice envisioned in this report, they are designed to protect a wage earner who is no longer in the work force for reasons beyond their control due to unemployment, retirement, disability, or death.

Average Release Stipend	Income Security Programs (1975 estimates in millions of dollars)		Percent
$78,134,935	$14,697	Unemployment Insurance*	.531
	63,511	Old Age, Survivors, & Disability Insurance	.123
	4,713	SSI	1.657
	3,672	Food Stamps	2.127
	2,153	Housing Assistance	3.629

* includes extended and supplemental benefits

Estimated State Release Stipend Amounts Based Upon Unemployment Compensation Figures

State	(Inmate release[1] population)	Minimum[2] stipend	(Minimum[3] weekly benefit UI payment)	Average[2] stipend	(Average[3] weekly benefit UI payment)	Maximum[2] stipend	(Maximum[3] weekly benefit UI payment)	Total state[4] UI payments
Alabama	(2,090)	$ 407,550	($15)	$ 1,657,370	($61)	$ 2,445,300	($90)	$ 147,142
Alaska	(200)	59,800	(23)	192,400	(74)	312,000	(120)	28,709
Arizona	(678)	132,210	(15)	608,166	(69)	749,190	(85)	109,226
Arkansas	(1,277)	249,015	(15)	979,459	(59)	1,660,100	(100)	90,741
California	(5,486)	2,139,540	(30)	4,849,624	(68)	7,417,072	(104)	1,310,136
Colorado	(1,218)	395,850	(25)	1,282,554	(81)	1,805,076	(114)	69,549
Connecticut	(1,409)	366,340	(20)	1,392,092	(76)	3,022,305	(165)	298,345
Delaware	(210)	54,600	(20)	199,290	(73)	341,250	(125)	47,681
Dist. of Columbia	(2,305)	419,510	(14)	2,786,745	(93)	4,165,135	(139)	56,444
Florida	(4,500)	585,000	(10)	3,627,000	(62)	4,797,000	(82)	307,726
Georgia	(3,661)	1,285,011	(27)	2,903,173	(61)	4,283,370	(90)	221,524
Hawaii	(128)	8,320	(5)	129,792	(78)	186,368	(112)	47,184
Idaho	(427)	94,367	(17)	360,815	(65)	549,549	(99)	25,792
Illinois	(3,266)	636,870	(15)	3,311,724	(78)	5,731,830	(135)	673,612
Indiana	(1,841)	837,655	(35)	1,531,712	(64)	2,752,295	(115)	244,825
Iowa	(678)	88,140	(10)	652,236	(74)	1,022,424	(116)	92,788
Kansas	(967)	314,275	(25)	817,115	(65)	1,269,671	(101)	58,074
Kentucky	(2,126)	331,656	(12)	1,768,832	(64)	2,404,506	(87)	137,816
Louisiana	(1,490)	193,700	(10)	1,200,540	(62)	1,743,300	(90)	106,540
Maine	(589)	130,169	(17)	436,449	(57)	911,183	(119)	53,029
Maryland	(3,955)	668,395	(13)	3,753,295	(73)	4,575,935	(89)	180,905
Massachusetts	(942)	244,920	(20)	893,958	(73)	1,861,392	(152)	476,884
Michigan	(4,014)	939,276	(18)	4,226,742	(81)	7,096,752	(136)	835,930
Minnesota	(975)	228,150	(18)	874,575	(69)	1,432,275	(113)	175,392
Mississippi	(922)	119,860	(10)	575,328	(48)	958,880	(80)	57,543
Missouri	(1,601)	312,195	(15)	1,373,658	(66)	1,769,105	(85)	225,707
Montana	(283)	44,148	(12)	213,382	(58)	345,526	(94)	24,234
Nebraska	(654)	102,024	(12)	552,630	(65)	680,160	(80)	46,781

State	(Inmate release[1] population)	Minimum[2] stipend	(Minimum[3] weekly benefit UI payment)	Average[2] stipend	(Average[3] weekly benefit UI payment)	Maximum[2] stipend	(Maximum[3] weekly benefit UI payment)	Total state[4] UI payments
Navada	(326)	$67,803	($16)	$300,898	($71)	$398,372	($94)	$47,354
New Hampshire	(238)	43,316	(14)	188,734	(61)	293,930	(95)	44,462
New Jersey	(3,670)	954,200	(20)	3,625,960	(76)	4,580,160	(96)	651,407
New Mexico	(390)	81,120	(16)	278,850	(55)	395,460	(78)	26,809
New York	(6,522)	1,695,720	(20)	6,189,378	(73)	8,054,670	(95)	1,254,189
North Carolina	(NA)	-	(15)	-	(59)	-	(105)	300,648
North Dakota	(165)	32,175	(15)	130,845	(61)	229,515	(107)	11,007
Ohio	(5,006)	1,041,248	(16)	5,141,162	(79)	9,761,700	(150)	634,241
Oklahoma	(2,100)	436,800	(16)	1,446,900	(53)	2,538,900	(93)	65,177
Oregon	(1,019)	370,916	(28)	874,302	(66)	1,351,194	(102)	138,851
Pennsylvania	(3,665)	857,610	(18)	3,859,245	(81)	6,336,785	(133)	970,603
Rhode Island	(140)	56,420	(31)	123,760	(68)	218,400	(120)	88,393
South Carolina	(2,526)	328,380	(10)	2,035,956	(62)	3,382,314	(103)	157,022
South Dakota	(255)	62,985	(19)	195,585	(59)	295,035	(89)	9,424
Tennessee	(1,643)	299,026	(14)	1,217,463	(57)	1,815,515	(85)	193,668
Texas	(8,332)	1,624,740	(15)	5,849,064	(54)	6,823,090	(63)	175,391
Utah	(234)	30,420	(10)	209,898	(69)	334,620	(110)	40,573
Vermont	(123)	23,985	(15)	107,133	(67)	153,504	(96)	28,446
Virginia	(1,964)	510,640	(20)	1,685,112	(66)	2,629,796	(103)	138,105
Washington	(1,318)	291,278	(17)	1,216,514	(71)	1,747,668	(102)	199,636
West Virginia	(880)	84,640	(14)	388,840	(80)	668,280	(128)	60,917
Wisconsin	(1,017)	30,483	(23)	1,057,680	(80)	1,612,962	(122)	259,864
Wyoming	(125)	16,250	(10)	104,000	(64)	154,375	(95)	6,405
TOTAL	(89,180)	$20,338,706		$78,134,935		$120,263,325		$11,754,685

1/ Inmate release population figures are for state prisoners who were sentenced as adult or youthful offenders to a maximum term of at least one year and one day and were released, conditionally or unconditionally, during calendar year 1974. These figures slightly overstate the actual release figures as they are derived from the numbers of prisoner movement transactions, with some inmates involved in more than one transaction.

2/ Minimum, average and maximum stipend figures represent the total amount of payments which would be paid in each state if every state releasee received, for 13 weeks, weekly payments equal to the minimum, average and maximum weekly benefit amounts under the state's unemployment insurance benefit scales based upon 1975 amounts.

3/ Minimum, average and maximum weekly unemployment insurance payments are based upon calendar year 1975.

4/ Total amount each state paid out in regular unemployment compensation benefits for calendar year 1975. These figures do not include extended or supplemental payments. Figures are in thousands of dollars.

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MEMORANDUM

MATHEMATICA POLICY RESEARCH, INC.

TO: Howard Rosen and Lafayette Grisby

DATE: April 27, 1978

FROM: Charlie Mallar and Craig Thornton

SUBJECT: Extension of Unemployment Insurance to Released Prisoners

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This memo summarizes current knowledge concerning the costs of extending Unemployment Insurance (UI) entitlements to persons released from state and federal prisons and outlines the research that would be needed in order to obtain more precise estimates.

It should be emphasized at the outset that the focus of this memo is on the impact of some UI extensions on Department of Labor expenditures. These costs may be misleading for at least three reasons. First, the longest component of the total DOL expenditures would be a transfer of income from one segment of society (taxpayers) to another (persons being released from prison). Since society as a whole has the same amount of resources available to it, both before and after the transfers, these expenditures are not considered as social costs (although there would be some social costs to the extent that resources were used up in making the transfers). Second, other departments will also be affected by the change in entitlements. Ex-offenders who were receiving UI benefits would be less likely to participate in such programs as AFDC, general assistance, food stamps, or Medicaid. Third, benefits will accrue to soeciety at large to the extent that the extension of UI entitlements brings about a reduction of recidivism among the released prisoners or an increase in their long-run employability.

The most precise information regarding DOL expenditures from a UI program for ex-prisoners concerns the increments to benefit entitlements. In the next section of this memo, estimates of the additional entitlements to UI benefits for three alternative types of extensions to released prisoners are presented. The three alternatives are: (1) a program using the time period immediately before incarceration as the UI base period, (2) making all released prisoners eligible for at least the minimum UI program in each state (minimum weekly benefit amount for the minimum duration), (3) counting work in prison (or some fraction of this work) toward UI entitlements as if it were a job at the minimum wage. The three sections following the discussion of increments to entitlements show the inadequacy of entitlement amounts in assessing even the impact of the programs on federal government expenditures. Additional research is needed in the following areas: (1) the expected level of participation in UI and degree to which released prisoners would exhaust their UI benefits (i.e., there are savings resulting from unused entitlements), (2) the costs of administering the various options, and (3) the benefits received by DOL and other federal agencies that at least partially offset the costs of any new initiative. In the final section the main points of the memo are summarized and some conclusions presented.

A. ENTITLEMENTS TO UNEMPLOYMENT INSURANCE UNDER VARIOUS OPTIONS

This section considers increments to entitlements for UI benefits to released prisoners under various options available to DOL. First, we consider programs using a time period prior

to incarceration as the basis for UI benefit calculations. Second, extending UI benefits to all released prisoners at the minimum levels for each time (regardless of work effort) are discussed. Finally, options using work during prison as the basis for UI entitlements are presented.

For each of the options considered calculations are made on a state by state basis and then aggregated to obtain nationwide estimates. Detail down to the state level is needed since both the number of released prisoners and the generosity of UI programs vary considerably from state to state. The number of prisoners released from state and federal prisons during 1975 ranged from a low of 180 in Alaska to 11,807 in California. Table 1 also shows that the state minimum benefit entitlements vary from a low of $25 in Wisconsin to a high of $520 in New York. Thus, estimates based on the average UI experience for the nation as a whole would be considerably less reliable. For example, if most prisoners are released in states with relatively generous UI systems, the national average UI experience would underestimate the increments to entitlements.[1/]

Only state and federal prisoners are included in the calculations below. People being held in local jails would not affect the costs of the options considered by very much if they were included. Persons in local jails serving long sentences are normally transferred to a state or federal institution. Ex-prisoners excluded from the calculations tend to be serving short sentences and also have more flexible arrangements for work release. Therefore, prisoners from local jails are less

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[1/] The data we use on released prisoners is for calendar year 1975 (see Table 1 or 2). The number of prisoners released from state and federal institutions has been quite stable in recent years, so the resulting estimates should be quite reliable for future years.

likely to have lost UI eligibility while incarcerated and will not affect the costs of the option of using the time period prior to incarceration as the base period. Similarly, work in local jails by prisoners is quite limited so excluding prisoners in local jails does not affect the cost estimates for the prison work options by much. Only the state UI minima option could be affected significantly. However, the amount for UI state minima is unknown (since at least some local prisoners are ligible for UI upon release) and the costs for this option are very modest in any case.

1. Options Based on Work History Prior to Incarceration

Prisoners cannot receive UI benefits since they are out of the labor force and unavailable for work. By the time prisoners from state and federal institutions are released, they are almost never eligible for UI even if they had a substantial work history prior to incarceration. The base year earnings of state and federal prisoners will have been depleted to little or nothing unless they have been able to obtain a work release position toward the end of their sentence.

This option would exclude time spent in prison from UI calculations and the base period would be computed from the time of incarceration. Therefore, the added entitlements for this option equal the amount lost by prisoners due to imprisonment. The entitlements to benefits under this option are based on the actual work histories of ex-prisoners prior to their incarcerations. It could be argued effectively that a change in the UI laws of at least this magnitude is justifiable on equity grounds. Released prisoners whose employers from jobs prior to incarceration made contributions to UI are being denied benefits because they were removed forceably from the labor force.

The best data available to estimate the additional entitlement to benefits for this option are from the work done by the Georgia and Texas officials as part of the TARP project. The Georgia and Texas groups collected UI data on samples of persons sentenced to state prisons. The main problem with this data is that social security numbers were missing for a large proportion of new prisoners, so the estimates of lost UI entitlements vary considerably depending on how the observations with missing data are treated. If the prisoners with missing social security numbers are assumed to have zero UI entitlements the estimates of lost entitlements are reduced by about 45 percent from estimates where missing observations are simply excluded (which presumes prisoners with missing social security numbers have the same UI entitlements on average as those who had valid numbers and could be matched to the UI wage files). We support using the higher numbers for national projection both because at least some portion of prisoners for whom a social security number was not available would certainly have been entitled to some UI benefits and because Georgia and Texas are relatively less generous than other states in terms of UI benefits,[1/] so the amount of UI benefits lost by prisoners would tend to be higher on a nationwide basis than in either Georgia or Texas. Using the higher estimates from Georgia and Texas, calculating UI benefits on the basis of pre-incarceration work histories would cost DOL in the range of $25-$30 million per year in terms of entitlements.

[1/] The average weeks of potential UI duration, average weeks of actual UI duration, and average weekly benefit amounts are substantially below the national average for both Georgia and Texas. See the Summary Tables of Unemployment Insurance Program Statistics, 1975-76, published by the U.S. Department of Labor.

2. Options Based on UI Minima for Each State

As shown in Table 1, the estimated additional entitlements based on minimal UI benefits in each state are approximately $31 million per year. This basic option would not cost much more than the amount of UI eligibility that is currently being lost by state and federal prisoners as a consequence of being imprisoned. As a percentage of current UI benefits, this would cost less than one quarter of one percent of the current budget (i.e., less than 0.0025 times current UI expenditures on benefits). However, for some of the less generous state UI systems the amount transfered to released prisoners would not be much more than the current "gate money" payments and certainly less than what has been advocated by many practitioners on equity and practicality grounds.

3. Options Based on Prison Work

Entitlement amounts for two options of crediting prisoners for work done while incarcerated are shown in Table 2. The working model for these options is the modification to UI recently enacted for the state of California, where work in prison is counted as employment at the minimum wage and contributions to the UI trust fund are made from general tax revenues. For the option shown in the first columns of Table 2 all hours of work in prison would be credited. The estimates are based on an average of 30 hours per week spent on work assignments in state and federal prisons as reported by prisoners.[1/]

[1/] The data on the number of hours that prisoners spend on work assignments was obtained from the Surveys of Inmates of State Correctional Facilities (U.S. Department of Justice).

TABLE 1

UNEMPLOYMENT INSURANCE ENTITLEMENTS

BASED ON STATE MINIMUMS[a/]

State Prisons	Number Released[b/]	Average WBA ($)[c/]	Average Benefit Duration (weeks)	Total Entitlements ($)
Alabama	2,326	$15	11	$ 383,790
Alaska	180	23	14	57,960
Arizona	876	15	12	157,680
Arkansas	1,780	15	10	267,000
California	11,807	30	12	4,250,520
Colorado	1,457	25	7	254,975
Connecticut	1,411	18	26	642,005
Delaware	251	20	17	85,340
D.C.	1,536	14	17	365,568
Florida	4,024	10	10	402,400
Georgia	4,505	27	9	1,094,715
Hawaii	141	5	26	18,330
Idaho	510	17	10	86,700
Illinois	4,033	15	26	1,572,800
Indiana	1,717	35	4	240,380
Iowa	660	20	10	132,000
Kansas	1,205	27	10	325,350
Kentucky	2,178	12	15	392,040
Louisiana	1,627	10	12	195,240
Maine	649	15	11	103,516
Maryland	4,224	12	26	1,262,976
Massachusetts	940	15	9	126,900
Michigan	3,623	17	11	677,501
Minnesota	758	18	13	177,372
Mississippi	1,121	10	12	134,520

TABLE 1 (continued)

State Prisons	Number Released[b]	Average WBA ($)[c]	Average Benefit Duration (weeks)	Total Entitlements ($)
Missouri	1,747	15	8	$ 209,640
Montana	301	12	13	46,956
Nebraska	681	12	17	138,924
Nevada	184	16	11	85,184
New Hampshire	208	14	26	75,712
New Jersey	3,295	20	15	988,500
New Mexico	575	17	18	175,950
New York	6,820	20	26	3,546,400
North Carolina	6,303	15	13	1,229,085
North Dakota	128	15	18	34,560
Ohio	5,679	13	20	1,476,540
Oklahoma	2,191	16	10	350,560
Oregon	1,048	30	9	282,960
Pennsylvania	4,652	16	30	2,163,180
Rhode Island	277	29	12	94,734
South Carolina	3,204	10	10	320,400
South Dakota	251	19	10	47,690
Tennessee	1,866	14	12	313,488
Texas	7,779	15	9	1,050,165
Utah	219	10	10	21,900
Vermont	122	18	26	57,096
Virginia	2,334	28	12	784,224
Washington	1,418	17	8	192,848
West Virginia	298	14	26	108,472
Wisconsin	1,187	25	1	29,675
Wyoming	136	24	11	35,904
Total for State Releasees	106,742			$27,268,325
Totals for Federal Releasees[a]	13,760			3,515,131
Overall Total	120,502			$30,783,456

Footnotes to Table 1

a/ For this option prisoners released in each state would be eligible to receive that state's minimum UI benefits (i.e., the minimum weekly benefit amount for the minimum number of weeks). The average UI minima for released prisoners in each state were computed from the January 1975 updated version of Comparison of State Unemployment Insurance Laws (U.S. Department of Labor) and from Significant Provisions of State Unemployment Insurance Laws, July 5, 1977 (U.S. Department of Labor). The estimates presented for this option are annual amounts and assume that the recipients would not be eligible for extended UI benefits.

b/ Data on the number and distribution of prisoners released annually from state and federal institutions were taken from Prisoners in State and Federal Institutions on December 31, 1975 (U.S. Department of Justice).

c/ Major variations in state UI benefits based on the demographic characteristics of recipients were accounted for in the computations. For example, in some states the weekly benefit amount is adjusted according to the number of dependents the recipient has. In these states the average WBA was based on an estimate that one half of the releasees would have a dependent.

d/ For the purposes of this table federal prisoners were assumed to have demographic characteristics similar to state prisoners and to be released to the states in the same proportion as state prisoners. Therefore, the total UI entitlements for persons released from federal prisons can be computed by multiplying the totals for state prisoners by the ratio of federal to state releasees (approximately 0.1289). Given current data limitations, this procedure yields as accurate an estimate as can be obtained.

TABLE 2

UNEMPLOYMENT INSURANCE ENTITLEMENTS BASED ON PRISON WORK

State Prisons	Number Released[c]	All Hours of Prison Work Counted[a]			One Half of Hours of Prison Work Counted[b]		
		Average WBA ($)[d]	Average Benefit Duration (weeks)	Total Entitlements ($)	Average WBA ($)[d]	Average Benefit Duration (weeks)	Total Entitlements ($)
Alabama	2,326	$40	26	$2,419,040	$20	26	$1,209,520
Alaska	180	75	18	243,000	40	17	122,400
Arizona	876	41	26	933,816	21	26	478,296
Arkansas	1,780	40	26	1,851,200	20	26	925,600
California	11,807	38	26	11,665,316	30	26	9,209,460
Colorado	1,457	48	26	1,818,336	25	26	947,050
Connecticut	1,411	42	26	1,540,812	23	26	843,778
Delaware	251	40	26	261,040	20	26	130,520
D.C.	1,536	45	34	2,350,080	23	34	1,201,152
Florida	4,024	40	26	4,184,960	20	26	2,092,480
Georgia	4,505	42	25	4,730,250	27	19	2,311,065
Hawaii	141	41	26	150,306	21	26	76,986
Idaho	510	40	26	530,400	20	26	265,200
Illinois	4,033	40	26	4,194,320	20	26	2,097,160
Indiana	1,717	44	23	1,737,604	35	15	901,425
Iowa	660	52	39	1,338,480	26	39	669,240
Kansas	1,205	41	26	1,284,530	27	26	845,910
Kentucky	2,178	45	26	2,548,260	22	26	1,245,816
Louisiana	1,627	46	28	2,095,576	23	28	1,047,788

TABLE 2 (continued)

State Prisons	Number Released[c]	All Hours of Prison Work Counted[a] Average WBA ($)[d]	Average Benefit Duration (weeks)	Total Entitlements ($)	One Half of Hours of Prison Work Counted[b] Average WBA ($)[d]	Average Benefit Duration (weeks)	Total Entitlements ($)
Maine	649	47	26	793,078	26	26	438,724
Maryland	4,224	45	26	4,942,080	23	26	2,525,952
Massachusetts	940	47	30	1,325,400	25	30	705,000
Michigan	3,623	48	26	4,521,504	24	26	2,260,752
Minnesota	758	53	26	1,044,524	27	26	532,116
Mississippi	1,121	40	26	1,165,840	20	26	582,920
Missouri	1,747	52	26	2,361,944	26	26	1,180,972
Montana	301	40	26	313,040	20	26	156,520
Nebraska	681	49	26	867,594	25	26	442,650
Nevada	484	41	26	515,944	21	26	264,264
New Hampshire	208	72	26	389,376	36	26	194,688
New Jersey	3,295	53	26	4,540,510	27	26	2,313,090
New Mexico	575	40	30	690,000	20	30	345,000
New York	6,820	47	26	8,334,040	23	26	4,078,360
North Carolina	6,303	40	26	6,555,120	20	26	3,277,560
North Dakota	128	40	26	133,120	20	26	66,560
Ohio	5,679	43	26	6,349,122	23	26	3,396,042
Oklahoma	2,191	40	26	2,278,640	20	26	1,139,320
Oregon	1,048	52	26	1,416,896	30	23	723,120
Pennsylvania	4,652	46	30	6,698,880	25	30	3,489,000
Rhode Island	277	46	26	331,292	29	26	208,858
South Carolina	3,204	40	26	3,332,160	20	26	1,666,080

TABLE 2 (continued)

State Prisons	Number Released[c]	All Hours of Prison Work Counted[a]: Average WBA ($)[d]	All Hours of Prison Work Counted[a]: Average Benefit Duration (weeks)	All Hours of Prison Work Counted[a]: Total Entitlements ($)	One Half of Hours of Prison Work Counted[b]: Average WBA ($)[d]	One Half of Hours of Prison Work Counted[b]: Average Benefit Duration (weeks)	One Half of Hours of Prison Work Counted[b]: Total Entitlements ($)
South Dakota	251	47	26	306,722	23	26	150,098
Tennessee	1,866	40	26	1,940,640	20	26	970,320
Texas	7,779	41	26	8,292,414	21	26	4,247,334
Utah	219	40	36	315,360	20	36	157,680
Vermont	122	40	26	126,800	20	26	63,440
Virginia	2,334	41	26	2,488,044	28	25	1,633,800
Washington	1,418	41	30	1,744,140	21	30	893,340
West Virginia	298	56	26	433,888	28	26	216,944
Wisconsin	1,187	40	34	1,614,320	25	34	1,008,950
Wyoming	136	41	26	144,976	24	26	84,864
Totals for State Releasees	106,742			$121,184,734			$66,035,164
Totals for Federal Releasees[e]	13,760			15,621,798			8,512,524
Overall Total	120,502			$136,806,532			$74,547,688

[a] Weekly benefit amounts (WBA), benefit durations, and total entitlements were calculated by crediting prisoners with one hour of employment at the minimum wage for each hour worked in prison. Using data from the Survey of Inmates of State Correctional Facilities 1974: Advance Report (U.S. Department of Justice), it was estimated that prisoners would work approximately 30 hours per week on average. The UI entitlements are therefore based on a 30 hour work week at a wage of $2.65 per hour. The data sources for UI computations in each state are listed in footnote a to Table 1. The estimates presented for this option are annual amounts and assume that the recipients would not be eligible for extended UI benefits.

TABLE 2 (continued)

[b/] Weekly benefit amounts (WBA), benefit durations, and total entitlements were calculated by crediting prisoners with one hour of employment at the minimum wage for each two hours worked in prison. Using data from the Survey of Inmates of State Correctional Facilities 1974: Advance Report (U.S. Department of Justice), it was estimated that prisoners would work approximately 30 hours perweek on average. The UI entitlements are therefore based on a 15 hour work week at a wage of $2.65 per hour. The data sources for UI computations in each state are listed in footnote a to Table 1. The estimates presented for this option are annual amounts and assume that the recipients would not be eligible for extended UI benefits.

[c/] Data on the number and distribution of prisoners released annually from state and federal institutions were taken from Prisoners in State and Federal Institutions on December 31, 1975 (U.S. Department of Justice).

[d/] Major variations in state UI benefits based on the demographic characteristics of recipients were accounted for in the computations. For example, in some states the weekly benefit amount is adjusted according to the number of dependents the recipient has. In these states the average WBA was based on an estimate that one half of the releasees would have a dependent.

[e/] For the purposes of this table federal prisoners were assumed to have demographic characteristics similar to state prisoners and to be released to the states in the same proportion as state prisoners. Therefore, the total UI entitlements for persons released from federal prisons can be computed by multiplying the totals for state prisoners by the ratio of federal to state releasees (approximately 0.1239). Given current data limitations this procedure yields as accurate an estimate as can be obtained.

Since the average of 30 hours per week was reported by prisoners, it is probably an over estimate. However, 30 hours is not an unreasonable amount for these computations, since prisoners would have incentives to obtain more work if the program were enacted, and there would probably be some pressure to include time spent in certified vocational training as in California.[1/]

The additional entitlements to UI benefits from counting all prison work at the minimum wage would total about $137 million (see Table 2). This would amount to just over one percent of the benefits being paid under UI. The second set of columns in Table 2 show cost estimates for entitlements based on a program where only half of the hours worked in prison would be counted. The eligibility criteria in the California program are based on this one for two type of crediting although it appears that all hours of work would be credited, once the eligibility criteria are met. The additional entitlements to UI benefits with this program would amount to about $75 million per year (see Table 2). The potential costs of this program would be much less than one percent of the expenditures on UI benefits during the last fiscal year.

B. EXPECTED LEVEL OF PARTICIPATION

As mentioned previously, it is important to have an estimate of the degree to which eligible released prisoners would actually utilize their UI entitlements. In order to determine the financial

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[1/] The entitlement amounts shown in Table 2 do not count hours spent by prisoners in training programs, even though the California law does allow credits for the time prisoners spend "in a vocational training program approved by the Department of Corrections." Guidelines for including hours in training programs have not been developed. In addition, there is no accurate estimate available on the number of hours that prisoners normally spend in training programs (data are available only on the number of prisoners enrolled in and completing such programs).

costs to DOL we need to know how much of the potential benefits would be used. It would be expected that some of the prisoners would have jobs lined up at release and so would not collect UI benefits. Others would become employed before exhausting their benefits. Still others would for a variety of reasons become unavailable for work and, therefore, lose their eligibility.[1/] Thus, actual benefits paid to released prisoners will probably be substantially less than the entitlements presented in the first section. Also, the actual impact of the eligibility extension on administrative costs will be less than the estimates given in the next section.

Estimates of the actual participation levels can be obtained by several methods. One would be to extrapolate from the participation levels observed in the financial aid components of TARP. These programs were structured to be operationally similar to the UI program. Thus, the degree to which eligible prisoners participated in these experimental programs would indicate the degree to which they would utilize UI eligibility. These estimates, based on the behavior of people released from state prisons in Georgia and Texas, could then be applied to the total population of prisoners in the United States who would become entitled on UI to estimate the actual change in UI caseloads.

Another method of estimating the level of participation would be to examine the behavior of regular UI recipients with similar socio-economic characteristics. The advantage of this method is that data on interstate differences in participation levels could

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[1/] For example, a person could become ill or disabled, voluntarily drop out of the labor force, enter school or a training program or become reincarcerated.

be integrated more readily. Also, the information would be based on actual national UI experience rather than on the experience of two experimental state programs. Information on these participation rates can be collected from state and Federal UI records. It can also be obtained from special studies of the UI system and more generally from studies of labor force participation.

A disadvantage with these general population studies arises since regular UI recipients (even those with socio-economic characteristics, similar to those of the prisoners) will not have to contend with prison records. In general, released prisoners will have more difficult time finding employment, other things equal. Therefore, estimates of participation rates that are based on the experience of a general population of UI recipients may underestimate the degree to which ex-prisoners would utilize their UI eligibility.

In any event, both the special studies and the TARP results should allow for better estimation of participation rates. Such estimates, in turn, can be used to obtain more accurate estimates of expected program costs.

Another aspect of the participation level question is whether or not the ex-prisoners who were entitled to UI benefits would also be eligible to participate in any extended benefit programs. For example, if the unemployment rates in an ex-prisoner's home state were well above the national average so that regular UI recipients in that state are eligible for federal extended benefits, would that ex-prisoner be entitled to the extended benefits? This is clearly a question that must be answered as part of the process of designing the proposed program. In a more complete analysis of the program estimates of the cost of such supplementary benefits could be made.

C. ADMINISTRATIVE COSTS

Benefit payments based on the entitlements discussed in the first section represent only part of the cost of extending UI eligibility to ex-offenders. Expenditures will also have to be increased for administration. There will be eligibility determinations, benefit level calculations, tests regarding availability for work, and the efforts associated with simply getting the right checks to the right people. Thus, part of the evaluation of proposed extensions of UI entitlemenst must involve an analysis of administrative costs.

One method for estimating the magnitude of these administrative costs is to assume that additional costs per case would equal current average costs. This estimate involves three steps. First, total annual administrative costs for the Unemployment Insurance system would be divided by the number of weeks claimed in a year. Second, an estimate would be made of the total additional number of weeks ex-prisoners would claim in a year. The product of these two figures would be an estimate of the total administrative cost per year of extending UI entitlements to ex-prisoners. This cost can be converted to a per participant basis by dividing by the expected number of ex-prisoners who will be entitled.

While the technique is relatively straightforward there are problems getting the data. For example, financing for the UI system comes through at least seven different appropriations. In addition to the direct Department of Labor appropriation (for about 84 percent of the total financing) funds come from the WIN program, Employment and Training Assistance programs (ETA), and disaster relief funds from the Department of Housing and Urban Development.

However, a preliminary estimate of the additional cost of extending UI eligibility to the released prisoners can be made. Total administrative costs for the UI system were $894,057,000 in fiscal year 1976.[1/] In this year there were 292,060,000 weeks claimed by UI beneficiaries.[2/] This implies an average administrative cost per case week of $3.06.

The calculations of entitlements referred in the previous section supply us with the maximum number of weeks that could be claimed by the eligible released prisoners. Under the "state minimums" option this maximum is 1,726,794 weeks while under the "prison work" option the maximum number of weeks would be 2,773,046.[3/] Thus, an estimate of the maximum extra annual UI administrative costs can be made. These costs would be $5,283,990 for the "state minimums" option and $8,485,521 for the "prison work" option (when one half of hours of prison work are counted). Of course, these figures ignore start-up costs and are based on fiscal 1976 data. Therefore, these estimates would have to be inflated somewhat to reflect the expected costs of a new program started in the future.

There is another adjustment that should be made to these cost estimates. The figures given do not include the increased employment service (ES) costs that would result from the proposed eligibility extension. Some of the released prisoners would probably register with the ES in any event. However, the available for work requirements for UI eligibility would mean that all eligible ex-prisoners would have to

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[1/] Employment and Training Report of the President, 1977, page 73.

[2/] The Budget of the United States Government, Fiscal 1973: Appendix pg. 506.

[3/] This is for the plan counting only one half of the hours worked.

register. Estimates obtained from the ES indicate that average costs per client were about $42 in fiscal year 1976.[1/] Thus, if all the eligible prisoners registered (and if none would have done so in the absence of the extension of eligibility) the ES would incur additional costs of $5,061,084.

The sum of the UI and ES costs provides an upper bound for the extra annual administrative costs. In an actual program some prisoners would get jobs before exhausting their UI benefits. Also the increase in ES costs will certainly be less than the figures given. A more detailed study would attempt to determine the actual participation levels and would, therefore, be able to provide more precise estimates of the actual costs rather than simply generating upper bounds.

One last point should be mentioned with regard to changes in UI administrative costs. There is some evidence that increases in the number of UI recipients do not lead to proportional changes in administrative costs. Instead, costs rise more slowly than case-loads. This tendency is further evidence that the cost estimates given here are over-estimates. In a more detailed analysis we would examine more closely the effect of caseloads on administrative costs and adjust our estimates accordingly.

D. BENEFITS RESULTING FROM THE EXTENSION OF UI ELIGIBILITY

As was pointed out in our report, "Benefit-Cost Evaluation of TARP: Design Phase Report" there are likely to be significant benefits resulting from the extension of UI benefits. These benefits from helping

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[1/] These figures exclude the national office overhead costs. However, these would probably not be greatly affected by the proposed extension of eligibility.

released prisoners to reestablish themselves in society at least partially offset the cost of the program. Benefits may result from: (1) a higher employment rate among released prisoners and higher average wage rates, (2) a lower rate of participation in welfare programs and other support programs, (3) a lower probability that ex-prisoners will return to crime and be rearrested, and (4) general societal benefits from enabling released prisoners to reestablish themselves. An understanding of these benefits will allow the costs to be put in perspective.

Estimates of these benefits can be obtained from the TARP experiments. The preliminary indications suggest that the employment and crime reduction benefits are small, but more refined analysis are currently underway. The research for TARP is now focussing on issues like whether there were subgroups that benefited, how the programs could be redesigned to increase benefits, and whether there is a positive correlation between the successfulness of transitional aid and the condition of the labor market. For example, when unemployment rates are low the aid may have a strong effect on recidivism and yet have no effect (or an adverse effect) when employment is high because the aid may be insufficient to enable the released prisoners to find employment. In any case, if released prisoners receive financial support from UI, they will be less likely to participate in other programs like welfare (AFDC, general assistance, foodstamps, medicaid, WIN, and CETA), thereby lowering public expenditures on those alternative programs.

E. SUMMARY AND CONCLUSIONS

To sum up the issues covered in the memo, a complete analysis of the costs of extending UI eligibility to released prisoners should

include estimates of:

- The basic entitlements, including their variation by state.
- The extension's impact on the administrative costs of UI.
- The expected participation rate including the duration of benefits used and the average weekly amount.
- The degree to which released prisoners would be eligible for and participate in supplemental benefit programs.
- The benefits generated by the program which can be viewed as offsetting the costs.

Thus far, we have concentrated on obtaining accurate estimates of the additional entitlements to UI and have indicated how progress could be made on the other aspects of evaluating the financial costs of the program to DOL.

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MEMORANDUM

TO: Dr. Howard Rosen

FROM: Robert Horowitz RH

RE: Federal-State Unemployment Compensation Relationship

DATE: December 13, 1977

The questions addressed in this memorandum are (1) do federal laws regulate a state's authority to include labor performed by inmates while in a correctional institution as covered employment under its unemployment compensation law, and (2) may Congress compell the states to incorporate inmate labor into their unemployment compensation laws.

The answers to these questions rest upon the relationship between the federal and state governments with respect to financing and administrating the individual unemployment compensation programs. This relationship is defined by federal enabling legislation -- Title III of the Social Security Act, 42 U.S.C. §501 et seq. and the Federal Unemployment Tax Act, 26 U.S.C. §3301 et seq. (FUTA).

These laws impose minimal federal guidelines to which the states must conform in order to receive certain federal benefits. States which comport to these guidelines may receive federal grants to assist in the administration of its law. These preconditions for grants concern the procedural or administrative aspects of state programs rather than their substantive parts. 42 U.S.C. §502. Other aspects, such as eligibility conditions and disqualifications for benefits, derive solely from state law. FUTA also provides a substantial financial incentive to the states to comply with federal requirements in the nature of a tax offset. This law places a 3.4 percent tax on employers subject to the act and permits them a credit of 2.7 percent if they are under an approved state unemployment insurance law. 26 U.S.C. §3301. These tax and administrative benefits have resulted in every state, the District of Columbia and Puerto Rico adhering to the federal guidelines.

Aside from the guidelines, the states are left free to fashion their own unemployment compensation system. Consequently, no two state laws are identical,

although coverage tends to be at least as broad as the tax coverage prescribed by FUTA. A state may always volunteer to expand on this basic coverage without jeopardizing the tax credits or administration funds. Thus, in answer to the first question posed, federal law will not regulate or intervene in a state's decision to expand its definition of covered employment to encompass inmate labor. A prime example of this leeway afforded the states involves government employees. Prior to the 1976 amendments to FUTA, the states were not required to extend coverage to its own employees, except in the case of state hospitals and institutions of higher education. About one-half of the states still elected to provide mandatory coverage for all state employees.

The second question, whether Congress may compell the states to include inmate labor as covered employment, has not yet been resolved. Due to the voluntary nature of the federal-state unemployment compensation system, the federal government may not compell the states to cover any specified class of employees. A state may always opt to disregard such federal orders. However, since this decision would result in the loss of federal tax credits, as a practical matter the state plan will always conform to the federal mandates. In fact, most states provide in their unemployment compensation laws that any service covered by FUTA or which FUTA requires to be covered even though such service is not covered under federal law, is automatically, without legislative action, covered under the state law.

Until 1970, federal law did not require the states to cover any specified class of employees. In the employment security amendments of 1970 (Public Law 91-566) and 1976 (Public Law 94-566), Congress amended section 3304(a) of FUTA to add new requirements for approved state unemployment compensation laws. These amendments now oblige the states to include as covered employment the following classes of employees and services:

1) employees of nonprofit organizations,
2) employees of state hospitals and state institutions of higher education, and
3) services performed for state and local entities.

Congress has thus established a precedent whereby it may "induce" states to cover specified employees.

It should be noted that although inmates working for correctional institutions may be classified as public employees, i.e. employed by corrections departments which are governmental agencies, the 1970 and 1976 amendments do not provide for their coverage. Congress has specifically excluded "services performed by an inmate of a custodial or penal institution" from the amended act. 26 U.S.C. §3309(b)(6). A similar provision was made under the 1970 amendments to exclude inmates working in correctional hospitals. These exceptions are not prohibitory, but merely allow the states the option of including or excluding inmates under public employee coverage. Should Congress elect to encourage this coverage, it need merely excise this exception so that the states, in order to maintain the tax credit, would have to make the appropriate amendments to their unemployment compensation laws.

Although Congress has already enacted a statute requiring the states, as a condition of continued participation in the federal-state unemployment compensation program, to cover employees of state and local entities, its constitutional power to do so remains moot. This issue is particularly timely in light of the Supreme Court's recent decision in National League of Cities v. Usery, 426 U.S. 833 (1976). The Court in Usery struck down the 1974 amendments to the Fair Labor Standards Act which would have mandated minimum wages and maximum hours to certain state and local government employees. This decision was premised upon the Court's belief that the amendments interfered with the state and local governments' ability to administer their own affairs.

When the 1976 amendments to FUTA were being considered, Congress requested an opinion letter from the Solicitor's Office of the Department of Labor as to the impact of Usery. In an opinion letter of June 28, 1976, William Kilberg, Solicitor of Labor, concluded that "National League of Cities is clearly distinguishable and that Congress has the power, under the taxing and general welfare clause of the Constitution, to condition continued participation in the federal-state unemployment compensation program on unemployment compensation coverage of state and local government employees." (Solicitor's Opinion, at 1). In reaching this determination the Solicitor cited the following differences between the Fair Labor Standards Act Amendments of 1974, and the then proposed provisions of unemployment compensation coverage of state and local government employees:

1) The basis of Congress' authority to enact the Fair Labor Standards Amendments of 1974 was the commerce clause of the Constitution, while the power to enact the unemployment compensation amendments springs from the taxation and general welfare clause of the Constitution; and

2) The 1974 amendments were regulatory in nature and were made mandatory requirements compelling the states and local governments to comply, while the 1970 and 1976 unemployment compensation amendments afford the states the option of participation.

Pertinent sections of the aforementioned opinion letter are attached as appendix A.

A less optimistic opinion letter was submitted by the Library of Congress, Congressional Reaearch Service (August 9, 1976). This letter is attached as appendix B. Rather than distinguishing Usery, this view restricts it to its facts, and leaves open the question of whether Congress can enact legislation affecting state and local employees pursuant to its authority under the taxing and general welfare clause.

This issue has not yet been litigated. The National Institute of Municipal Law Officers recently filed, in Federal District Court for the District of Columbia, an application for a preliminary injunction against implementation of the 1976 amendments based upon Usery and tax immunity considerations. A hearing on this matter will be held before Judge Richey on December 20.

"M"

Draft: UNEMPLOYMENT COMPENSATION REPORT

Following the Social Security Act of 1935, every state has enacted a comprehensive unemployment insurance program. Uniformly, these programs look to the protection of society[1] by providing for the maintenance of employees who, through no fault of their own, become unemployed. The keystone to each system is employment; no person may qualify unless they have, at some previous time, been attached to the labor force. Thus, in advancing arguments designed to provide inmates with unemployment compensation benefits immediately upon their release, the central theme, employment, must be utilized. To qualify an inmate for unemployment compensation upon any other criteria would be to stray from the intent, design, and scope of the unemployment compensation laws.

Three distinct employment periods must be examined with respect to a released prisoner's present day eligibility under state unemployment compensation laws; pre-commitment employment, institutional employment and work release. Part I of this report details the basic difficulties confronting the released inmate applying for unemployment insurance. Part II outlines strategies and arguments which may be used in urging legislators to amend the unemployment compensation laws to include these individuals.

I. UNEMPLOYMENT COMPENSATION AND THE RELEASED INMATE

Pre-Commitment Employment

Prisons are populated with thousands of inmates who were, prior to their incarceration, gainfully employed. A 1974 LEAA survey of inmates of state correctional facilities reports on the number of inmates who had held a job after December 1968, or who had been employed during most of the month prior to their arrest. Table 1 reproduces this information. According to it, the vast majority of state inmates at the time this census was taken, had a recent work history. Prior employment alone, however, does not guarantee entry into the unemployment compensation system. This employment must be of the kind, duration, compensation and recentness as prescribed by the various state acts. A better gauge of inmates who would have been eligible for unemployment compensation had they not been incarcerated (provided that they ultimately lost their jobs through no self-fault) comes from two Texas and Georgia studies. Each state specifically ascertained the numbers of inmates who would have been eligible for unemployment compensation payments had they lost their jobs for good cause rather than incarceration. The TDC inmate survey revealed that of 346 inmate records examined in January, 1976, only 105 (30%) prisoners exhibited sufficient work data to have qualified them for unemployment compensation benefits. Georgia's Labor Department study of 1663 inmates discovered that only 509 (28%) had earned money in at least two calendar quarters before incarceration. Thus, in all likelihood, probably only 30 percent of the current state prison population nationwide would have been entitled to unemployment compensation benefits had they not been incarcerated.[2]

1/ Society is protected by maintaining consumer purchasing power at the onset of an economic downturn in spite of heavy layoffs of workers.

2/ Based upon the January, 1976 state prison population estimated to be 225,404, roughly 67,000 inmates would have had significant pre-incarceration work histories.

Imprisonment tends to negate the right to receive unemployment compensation benefits based upon pre-commitment employment. As is true with other sections within the unemployment compensation acts to which the Federal Unemployment Tax (FUTA) does not address or place restrictions on, each state is free to establish its own grounds for eligibility and disqualification. Consequently, results may differ by state.

A few states have,by statute, specifically excluded those unemployed by reason of commitment to any penal institution.[3] Even in these states, imprisonment need not be an absolute disqualifier. Some states statutorily excuse short prison stays. For example, the Michigan unemployment compensation exclusion does not encompass those convicted for a traffic violation resulting in an absence of less than 10 consecutive work days. A two day absence in California is excused if the individual had been unlawfully detained or lawfully detained but the charges dismissed. For the majority of inmates, however, especially the long-termers who attachments to the community have degenerated most severly, unemployment compensation benefits are denied.

Even where the act itself does not specify this exclusion, the mechanism of the overall unemployment compensation scheme and court decisions combine to abrogate the releasee's right to the insurance. Throughout the country, in spite of policies favoring findings of eligibility in unclear cases, courts have repeatedly rejected claims for unemployment compensation where the original denial was predicated upon imprisonment. In reaching these decisions, courts frequently fall back upon the stated declaration of public policy prefacing most state unemployment compensation laws. According to this, benefits are to be extended to those unemployed "through no fault of their own". The courts view an act resulting in incarceration as "fault" ridden, thereupon basing the reason for denial. An extension of this doctrine expressed by some courts is that incarceration derives from the individual's volition and fault and is thus tantamount to a voluntary quitting without cause.[4]

A few courts have resisted these interpretations. Michigan Courts, in the late 1950's, refused to analogize incarceration with voluntary termination. In one case, the court concluded that the statutes contained specific and clear disqualifying sections which were not expanded by the preamble's language concerning personal fault. The court went on to state:

> The voluntary assumption of a risk which an employee knows may, but he trusts and assumes will not, keep him from work is not the voluntary leaving of his work. Doing an act, even though voluntarily, which results, contrary to the doer's hopes, wishes and intent, in his being kept forcibly from his work is not the same as voluntarily leaving his work. The statute mentions the latter, but not the former, as an act disqualifying for benefits.[5]

3/ See, e.g., Mich. Compiled Laws Ann. § 421.29 (f); Cal. Labor Code § 1253.1; Del. Code Ann. 19-3315(7); Indiana Stat. Ann. § 22-4-15-1 (if incarceration for work related offense).

4/ See, e.g., Sherman-Bertram Inc. v. California Dept. of Employment, 202 Cal. App. 2d 733,21 Cal. Rptr. 130 (1962); Department of Labor & Industry, etc. v. Unemployment Compensation Board of Review,148 Pa. Super 246, 24A.2d 667 (1942); Michalsky v. Unemployment Compensation Board of Review, 163 Pa. Super 436, 62 A.2d 113 (1948).

5/ Michigan Employment Security v. Appeal Board of the Michigan Employment Security Commission, 97 N.W. 2nd 784, 786 (1959).

Shortly thereafter, and in response to this case, the Michigan legislature amended the state unemployment compensation law, adding a specific disqualifer for those incarcerated.

Some courts have found incarceration equivalent to disqualification resulting from job misconduct. Such grounds are often tenuous as the revelant statutory provisions declare that the misconduct must be job related. The courts often stretch to interpret off duty incidents as relevant to the job. A Louisiana court has refused to go through such mental gymnastics. In Smith v. Brown, 147 So. 2d 452, (1962), the court held that the appellant who had been incarcerated for 21 days for nonsupport and as a result lost his job, was not guilty of misconduct connected with his employment disqualifying him from receiving unemployment compensation benefits. The court restated the litany concerning elements of job misconduct found elsewheres. Misconduct, the court said, must constitute an act evidencing a wanton or wilful disregard for employment interests. In the case before it, the court could find no connection between the act causing incarceration, and the employment.

When these unemployment compensation eligibility disputes wind up in the courts, the period of incarceration involved in each case is less than one year. If imprisonment exceeds this time span, other sections in the unemployment compensation act work to the releasees' disadvantage, depriving them of benefits. While incarcerated, an inmate fails to meet the eligibility requirements. All states demand that in order to receive benefits, a claimant must be both able and available for work. Usually, this necessitates registering at the local public employment office and subsequent periodic visits thereto. Many states also impose the condition that a claimant be actively seeking employment or making a reasonable effort to obtain work. The inmate,confined to the institution, may not satisfy these eligibility requirements.

Upon release, the now mobile ex-offender can announce his/her intentions to seek work. However, while searching, the releasee most often will still be unable to collect benefits due to the expiration of the eligibility period. Benefits are made available to workers who have recent attachment to the covered labor force. In every state, a worker's benefit rights, paid over a period referred to as the benefit year, are determined on the basis of his employment in covered work during a prior period called the base period. Most states (35) mimic the definition contained in the Federal Unemployment Tax Act (FUTA). Base period is limited to the first four of the last five calandar quarters immediately preceding the first day of an individual's benefit year. Four states describe it as the last four quarters. Thirteen other states have variations of the above, but in no state does any base period precede the benefit years inception by more than seven calendar quarters. During this period, the qualifying wage must be earned. Due to eligibility restrictions, an inmate cannot initiate his/her claims for unemployment compensation benefits until release. However, by that time, he has lost a viable base period, for the preceding period, in which he is imprisoned, produced no income under covered employment, and thus the necessary qualifying wage is not received.

Institutional Employment

Although not engaged in "covered employment" while imprisoned, most inmates do work during their stay at an institution.[6] The 1974 LEAA survey of state inmates collected data on institutional work assignments. It was discovered that 74% of the state inmates had some job duties. From this group, 16 percent were assigned to the kitchen or dining hall, 13 percent worked in prison industries, 11 percent had maintenance and repair chores, and the bulk of the remaining had janitorial, farm, administrative, laundry and hospital duties. In promoting unemployment compensation benefits for releasees, consideration must be given to basing these rights upon this institutional work. The prospects of succeeding on this claim largely depend upon whether prison employment is compatible with the following conditions:

a. There must not be a specific statutory prohibition;
b. Corrections Departments must be covered employers;
c. There must exist an employer-employee relationship;
d. Inmate must work for at least a certain amount of time;
e. The qualifying wage must be earned;
f. Employer must contribute to the unemployment compensation fund;
g. Inmates must be eligible and not suffer a disqualification.

Each of these conditions shall be individually discussed below.

a. There must not be a specific statutory prohibition

The unemployment compensation laws, designed to foster security within the general populace, cover a broad range of employees. There are, however, certain types of services the acts specifically delete from coverage. For the most part, each state is free to designate which occupations merit unemployment compensation protection. The only restrictions placed upon this right comes from the 1970 amendments to FUTA. In order for employers to receive a federal credit on their state contributions, states must extend coverage to state hospitals, state institutions of high education, and certain non-profit organizations. For other occupations, most states follow the federal policies expressed in FUTA with respect to covered employment, although they are not obligated to do so.

In accord with exclusions enumerated under FUTA [26.U.S.C.§ 3306(c)], most states routinely exclude from their unemployment compensation acts the following services:

1. for relatives
2. by students
3. by hospital patients for hospital
4. domestic
5. agricultural
6. of state and local employees
7. for certain non profit organizations.

6/ Many states by statute dictate that inmates must work. See, e.g., Cal. Penal Code § 2700 (West 1970); Ohio Rev. Code Ann. § 5147.03 (Page 1970), as amended (Page Supp. 1972); Pa. Stat. Ann. tit. 71, § 305 (1962); Tex. Rev. Civ. Stat. Ann. art. 6166x-1(1970).

The last three exclusions enumerated are of crucial importance to the working inmate and merit special consideration.

Remuneration for an inmate's labor comes from the state's corrections department. The inmate thus is an "employee" of the state. Fifteen states absolutely prohibit unemployment compensation coverage to its state employees. In these states, therefore, the working inmate cannot qualify for compensation. Nine states cover their own employees only upon election. The employing organization would have to voluntarily elect to contribute towards the unemployment compensation fund, thereby incorporating their employees into the system. In 28 states, the law provides for mandatory coverage for state employees. In these states, if the other requirements are met, the inmate could be entitled to receive benefits. Table 2 identifies the practice concerning state employees for each state.

Every jurisdiction except the District of Columbia, Hawaii, Minnesota and Puerto Rico exclude agricultural labor from coverage. By the terms of most unemployment acts, agricultural services excluded from coverage are those which must be performed in the employ of the operator of a farm, with respect to a commodity in its unmanufactured state and the operator must have produced more than one-half of a commodity with respect to which the service is performed. Labor on prison farms meets this definition and as such, this employment would be excluded from unemployment compensation protection. According to the 1974 LEAA survey, this exclusion would cover 12,600 inmates working on prison farms, or roughly 9 percent of the state prison population engaged in institutional work in January, 1974.[7]

The FUTA declares that in order for an employer to receive a federal credit for state unemployment tax, employees of state hospitals and certain non-profit organizations must be provided for under the state laws. (26 USCA § 3309). This provision of the federal law provides the only insight into congress' philosophy towards extending benefits to inmates. Congress specified six exceptions under which, to receive a federal credit, the states have no obligation to include coverage for non-profit organizations or state hospitals. The following exception adresses inmate labor:

> This section shall not apply to service performed _____(6) for a hosptial in a state prison or other correctional institution by an inmate of the prison or correctional institution.

This exception, removing the tax-credit incentive vis-a-vis inmate coverage, manifests an attitude on the behalf of congress opposed to the inclusion of inmates in an unemployment compensation system. As a result, most states in their unemployment compensation acts have denied benefit rights to these hospital employees, affecting the 3,300 inmates reportedly so employed in 1974.[8] This is the only provision shared by most states directly addressing the inmate question. Benefit entitlement for other inmate laborers must be determined on the basis of collateral requirements, eligibility, employment status, qualifying wages,etc.

7/ LEAA, Survey of Inmates of State Correctional Facilities: Advance Report (Wash. D.C.: U.S. Dept. of Justice, 1976) Table 9, p. 33.

8/ Id.

b. Covered Employer

If an employer is engaged in an enterprise covered by the unemployment compensation act, whether or not he/she is obligated to pay unemployment compensation taxes depends upon the number of days or weeks a worker is employed, or the amount of the employer's quarterly or yearly payroll. Thirty-one states have adopted the FUTA definition of covered employer; i.e. a quarterly payroll or $1500 in the calendar year or preceding calendar year; or on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, he employed at least one individual for some portion of the day. [26 U.S.C.A. § 3306 (a)]. Clearly, prisons which engage inmate labor, fulfill this requirement and merit "employer" status for purposes of the act. No condition imposed by states which chose not to follow the federal definition achieve contrary results. In fact, other definitions have liberalized this requirement, encompassing an even greater number of employers within the acts' scope.

c. Employer-Employee Relationship

Before an employer need pay an unemployment tax on a worker, an employer-employee relationship, as defined by the unemployment compensation acts, must exist. Unlike traditional employer-employee relationships often defined in master-servant terms, most states statutes contain an expansive definition for this association. The common law master-servant relationship plays a dominant role in only five jurisdictions, Alabama, District of Columbia, Kentucky, Minnesota and Mississippi. A few jurisdictions express this relationship in terms of "contract of hire, written or oral, express or implied."[9] By far, most states employ a broader concept in construing an employer-employee relationship. Thirty-four states declare that service for renumeration is considered employment unless it meets each of these three tests:

1. The individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact and,

2. such services is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed and,

3. such individual is engaged in an independently established trade, occupation, profession or business.

The above three tests strive to exclude those workers who manifest independence (i.e., independent contractors) from the control of another. The working inmate is the antithesis of the independent contractor, stringently subject to the direction of corrections officials. In interpreting "employee" definition clauses, courts have held that in doubtful cases, interpretions should be made in favor of the employment relationship due to the remedial

9/ California, New York

nature of the act. Hearst Publications v. U.S., 70 F. Supp. 666, aff'd 168 F.2d 751 (D.C. Cal. 1946).

It would seem, therefore, that the working inmate falls within the employer-employee test for most jurisdictions. This interpretation suffers serious set backs from many states' interpretations of the inmate's identity as an employee. Numerous states, compelled by doctrines holding that lawful incarceration brings about necessary limitations of many rights and privleges, chose to look upon incarceration as a forced condition, not voluntarily entered into, depriving the inmate of the free will requisite in the formation of an employer-employee relationship.[10] In an opinion letter by the Minnesota Attorney General in response to a corrections' department inquiry concerning the attempts to unionize inmate laborers, the following statements were made:

> The "economic realities" of the situation at hand indicate that inmates are neigher "employed" nor "employees". For example, although there does not appear to be any expresses statutory requirement that inmates at the Minnesota State Prison work, there must be an implicit obligation to do so since an inmate's sentence may only be diminished by laboring with diligence and fidelity. . . Moreover, inmates may constitutionally be forced to work. . . these factors certainly are not typical in an employment situation. . . Furthermore, inmates are incarcerated not for the purpose of becoming public employees, but for conduct that the judicial system has deemed sufficient to warrant separation from the remainder of society. The fact that a number of inmates do perform services of an employment nature is incidental to the fact of such separation and incarceration.[11]

Likewise, when addressing the issue of prisoner unions, the N.Y. Department of Correctional Services claimed that "the relationship of the inmates to the Department of Correctional Services is not that of an employer-employee".[12]

Such policies in some instances have been written into state laws, most often in the form of the state legislatively disavowing the inmate's employee status. For example, Arizona Revised Statute § 31-345 (E) states that:

10/ This view, depriving inmates of ordinary rights and privileges, was expressed by the Supreme Court in Price v. Johnston, 334 U.S. 266, 285 (1948). Another view currently in favor is found in the dictum of Coffin v. Reichard, 143 F. 2d 443,445 (6th Cir. 1944), in which it is stated "A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken away from him by law".

11/ From Attorney General Warren Spannaus to Kenneth Schoen, Minnesota Commissioner of Corrections, August 22, 1975.

12/ Letter of Oct. 8, 1971 to Lawrence Ross, Esq., Legal Aid Society, New York City, N.Y.

> Nothing in this section is intended to restore, in whole or in part, the civil rights of any prisoner. No prisoner compensated under this section shall be considered as an employee or to be employed by the state or the department of corrections, nor shall any such prisoner come within any of the provisions of the workmen's compensation or occupational disease compensation. . .

Absent a specific statutory expression, the foregoing opinions and corrections departments'attitudes denying employee rights to an inmate are subject to judicial review. This particular subject, i.e. whether an inmate is an employee for purposes of the unemployment compensation laws, has yet to be litigated. However, the inmate's employee status with respect to other labor laws has gone before the courts. The most frequently contested cases concerns the rights to collect workmen's compensation. In all, eleven states have considered and denied prisoners' claims to collect workmen's compensation for prison incurred injuries.[13] For the most part, the courts exhibit a reluctance to extend to prisoners the general protective labor legislation benefits without specific statutory authorization. One line of opinions concurs with the aforementioned Minnesota Attorney General's opinion, holding that the compulsory prison labor requirement negates any contractual employee/employer relationship for the purpose of workmen's compensation.[14] Other reasons for denial centered upon the non-employee status of inmates include the rehabilitative work goal of prison labor,[15] the statutory fixing of recompense, the inability to bargin or strike for higher wages, the inability of the prisoner to refuse work, the fact that no workmen's compensation insurance premiums were paid, and that compensation is a "matter of grace".[16]

In only two situations have prisoners' workmen's compensation claims succeeded. First, claims have been awarded where a statute creates the right. [for example, 18.U.S.C.4126; Md. Ann. Code art. 101, § 35 (1972); N.C. Gen. Stat § 97-13 (c) (1972); Ore. Rev. Stat. § 655.505 (1968); and Wis. Stat. §§ 102-95 (West Supp. (1972)]. Second, insurance has been granted to inmates engaged in employment outside the jail premises, for some consideration, on loan to a private or public corporation and not under the direct control of jail guards.[17]

13/ See, e.g., Miller v. City of Boise, 70 Idaho 137, 212 P.2d 654 (1949); Turner v. Peerless Insurance Co., 110 110 So.2d 807 (La. App. 1959); Greene's Case, 280 Mass. 506, 182 N.E. 857(1932); Scott v. City of Hobbs, 69 N.M. 330, P.2d 854(1961).

14/ See, e.g., Shain v. Idaho State Penitentiary, 77 Idaho 292, 291 P.2d 870 (1955).

15/ See Sprouse v. Federal Prison Indus. Inc., 480 F.2d 1 (5th Cir. 1973); Cadeau v. Boys Vocational School, 359 Mich. 598, 103 N.W.2d 443.

16/ Shain v. Idaho State Penitentiary, infra.

17/ Johnson v. Industrial Commission, 88 Ariz. 354, 356 P.2d 1021 (1960); State Compensation Insurance Fund v. Workmen's Compensation Appeals Board, 8 Cal. App.3d 978, 87 Cal. Reptr. 770 (1970).

Although at present the case law overwhelmingly rejects compensation rights, inroads have,over the past five years,been made with state legislatures creating the right. The Council of State Governments, comprised of state representatives, has also recommended the incorporation of prison laborers into the workmen's compensation system. In addition, many courts, while denying the claims, express a sense of injustice and strongly urge the legislatures to provide a remedy. The court in Frederick v. Men's Reformatory, 203 N.W.2d 797 (Iowa 1973) stated that:

> Although prisoners are not covered by workmen's compensation while working in prison industries, their injuries are no less real than those suffered by other workers. Uncompensated disabilities which endure beyond termination of incarceration are a cruel and uncontemplated form of enhanced punishment. They are an obsticle to rehabilitative and foreshadow incalculable social cost. The unique problem of prisoners calls for careful legislative amendment of compensation acts, adapting their coverage to appropriate kinds of prison employment and disability.

In spite of any trends towards inmate inclusion into workmen's compensation, optimism that this movement may be accompanied by a blanket endorsement for the extension of the general protective labor laws to inmates must be kept in check. In bemoaning the injustice of depriving work related injury awards to inmates, the courts were moved by the vision of mangled bodies, robbed of its income earning capacity, forced to endure economic hardships not imposed upon the general public. There have never been such expressions alluded to with respect to unemployment rights, minimum wages or the full panoply of labor protections which has been bestowed upon the American labor force in this century.

d. Time Requirements

Unemployment compensation benefits go only to those workers with a substantial and recent attachment to the labor force. To implement this condition, qualifying requirements demand a sufficient number of weeks of employment and/or the receipt of minimum amount of wages during the base period. Table 3 lists those states which condition payments upon having worked a minimum length of time. These requirements vary in length among states, but all fall within the 14-20 week range. In addition, many states which adjust the benefit levels according to wages received during the highest quarter insist upon wage distribution over at least two calendar quarters. Many other states require the earning of the multiple of the weekly benefit amount. If this amount is truly one-half of the claimant's normal weekly wage, then a requirement of, say 30 times his weekly benefit (e.g., Colorado, Hawaii, Kansas, Louisiana) indirectly requires 15 weeks of work with normal earnings.

Whether or not a working inmate fulfills this criteria must be determined on an individual basis. In deciding whether an inmate has worked a sufficient time span, only the year preceding his/her release may be taken into account, as this year coincides with the running of the base period. There is no concrete data identifying the average length of time inmates employed in prison remain on a work assignment. Because many states by statute require inmates to work, it may be speculated that a substantial number are employed during most of the incarceration period. A questionnarie was sent to correctional industries administrators requesting information on the average length of time an inmate is employed. The responses received varied from three months in Oregon to 37 months in Kentucky, with a few states replying that the jobs frequently lasted during the entire period of incarceration. By far, most states indicated that the average inmate served at least six months on the industry's assignment.

This, however, does not mean the typical inmate, employed in a prison industry shop, works only for six months. These statistics do not take into account mobility within the prison industries or other assignments within the institution an inmate may have been fulfilling before or after his industries hitch. Unemployment compensation laws do not require that the minimum wage and time specifications be met on one job. Accumulation of wages and time from various places of employment is permissible, provided that all qualifying employment takes place during the base period.

It is difficult to ascertain whether or not the bulk of working inmates are engaged in prison employment during the critical last year of incarceration. However, certain facts would indicate that a substantial majority are employed at this time. First, the mandatory work requirements are not lifted for this period. Second, most inmates depart state correctional institutions under parole. Parole boards, in making their determinations, examine the inmates prison work history, favoring the working inmate over an idle one. Accordingly, prisonwise inmates, as their parole hearing date approaches, have an additional incentive to partake in prison labor during their last year of incarceration.

e. Qualifying Wage

Benefit levels are not commensurated with or determined by need. They reflect the amount of wages received during the base year. Because unemployment compensation attempts to substitute for a loss of wages, the greater the past wage, the higher the benefits. Generally, these benefits represent about one-half of the past weekly wages, limited by a maximum weekly benefit amount. The maximum amount is determined by one of two methods. Some states utilize a flexible maximum weekly benefit amount program, expressing the maximum as a percentage of the statewide average weekly covered wage, permitting automatic adjustments in the maximum amount to reflect changes in earning levels. The second method finds state legislatures periodically fixing the maximum amount.

Before meriting any benefits a minimum or qualifying wage must have been earned during the base period. Table 4 indicates what the minimum wage requirement is in each state in order to qualify for the lowest

benefits. The table also identifies those states which, as part of their qualifying wage criteria, demand a set minimum amount be earned in at least one quarter.

Most of these minimum qualifying levels are small, usually requiring the earning of less than one thousand dollars over a half year period. For the average wage earner, such amounts are easily attained. Inmates though, are not average wage earners. Their pay levels may be measured in pennies per hour. Protection under minimum wage laws has never reached this group. Courts have refused to extend this right under the theory that a prisoner is not a true employee of the state and is not entitled to the fruits of his labor.[18] A breakdown of institutional labor pay rates was compiled by the 1974 LEAA survey. This census revealed that for those inmates engaged in prison labor, 45,600 (33%) earned less than six cents per hour, 34,200 (25%) make between 6-20 cents per hour, 7,300 (5%) receive over 21 cents per hour and 40,500 (29%) collect no compensation. Table 4 contrasts the average and maximum quarterly prison industries wages earned per inmate with the qualifying wage required to collect minimum benefits. Although such figures only effect roughly 16% of the total prison population employed by prison industries, the wages paid in those programs tend to parallel non-industries institutional wages. Thus, in most instances, whether or not qualifying wage requirements are met with prison industry wages, runs true for the working inmate population in general. In tabulating this table, the hourly wage rate was multiplied by 40 to ascertain the weekly pay scale. However, in most cases, the "normal" 40 hour work week within the prison does not exist. The inmates work substantially fewer hours. Thus, the maximum quarterly wages reported in the table will tend to run high. The full work week is difficult to achieve in the institution. Limitations imposed by "state use" systems, restricting the market for prison made goods to government agencies, confine employment to prison maintenance and the production of limited goods. As a result, "prisons often have trouble keeping all inmates occupied".[19] Consequently, even those inmates who work seldom achieve a 40 hour week. Further, the working day is also reduced by security matters, visitation interruptions, therapy programs, long meal breaks (due to dining hall crowded conditions) and daytime counts. These administrative matters tend to "reduce the prison industries work day to as little as four and seldom more than six hours" per day.[20] According to table 4, qualifying wages are rarely achieved. Even where qualifying wage requirements are satisfied, low prison wages would tend to produce only the minimum benefits, which in most states fall under 20 dollars per week. Table 5 enumerates minimum benefit levels in each state effective on December 31, 1975. For that year, the median minimum benefit amount was $14 a week, or $56 for a four week period. At the same time, the average monthly payment per unemployment compensation recipient was $278.

18/E.g., McLaughlin v. Royster No. 13,881 at 1-2 (4th Cir., mem., Sept. 8, 1969). "There is no constitutional requirement that prisoners be paid at all for work required to be performed during the terms of imprisonment."

19/ Glaser, The Effectiveness of a Prison and Parole System,(Indianapolis: Bobbs-Merrill Co. Inc., 1964) pp. 224-225.

20/ Miller, McArthur, & Montilla, The Role of Prison Industries Now and in the Future: A Planning Study (Wash. D.C.: Institute of Criminal Law and Procedure, 1975) pp. 28-29.

f. Employer Must Contribute to the Unemployment Compensation Fund

The primary source for financing state unemployment benefits comes from taxes paid by subject employers based on the wages earned by their covered workers. Only three states, Alabama, Alaska and New Jersey collect from employees contributions on wages earned. In most states, (42) the standard tax rate levied on each employer until they establish a rate based on their experience rests at 2.7 percent (the maximum allowable credit against the federal tax) for the first $4200 in wages paid to a worker within a calendar year. Wages, by state law, include the cash value of remuneration paid in any medimum other than cash, including, in accord with the federal pattern, employers payment of employees' tax for Federal old-age Survivors Insurance and payments from or to certain special benefit funds for employees.

Every state adjusts the individual tax level according to each employer's unemployment history. The greater the number of ex-employees receiving these benefits, the higher the tax imposed on the employer. Experience rating provisions vary among the states. Most states (32) utilize a reserve-ratio formula. By this method, records are maintained evidencing the employer payroll, contributions and benefits paid to his/her workers. The benefits are substracted from the contributions, with the difference divided by the payroll to determine the size of the balance in terms of the potential liability for benefits inherent in wage payments.

Forty-two states and the federal government's prison industries administrators responded to an inquiry concerning unemployment compensation rights of their inmate employees. No state reported contributing towards the unemployment compensation fund based upon inmate wages. When reasons were supplied they generally fell under three categories; a) state law excludes inmates from unemployment compensation protection; b) state law excludes state employees from unemployment compensation; or c) the inmates fail to earn qualifying wages.

Fear also has been expressed by corrections officials that the unemployment compensation tax on inmate labor would be burdensomely high in light of the experience ratios. Ex-offenders, newly released, suffer a disproportionately high unemployment rate when compared to the general population. Studies into ex-offender employment problems are replete with examples of chronic unemployment. The 1967 Task Force Report on Corrections of the President's Commission on Law Enforcement and Administration of Justice reported that three months after release, only about four out of ten federal releasees had worked at least 80 percent of the time, and nearly two out of ten had still been unable to find work of any kind. Given this high unemployment rate, the experience ratio formulas would drive the unemployment compensation tax for inmate labor to the maximum allowable amounts.

g. Inmates Must be Eligible and not Suffer a Disqualification

Finally, the employed inmate, like any other worker, must meet the general eligibility requirements. As previously mentioned, aside from the attainment of a qualifying wage in a covered industry, eligibility normally depends upon the availability to work, evidenced by signing up at a local employment office and maintaining a visable work willingness by subsequent visits. This may be achieved by an inmate at release who, during his/her last year of incarceration (base period), is employed. For those inmates ceasing work prior to the final year, a viable base period may be lost and the potential benefit year expire prior to release.

The inmate who terminates employment before the release date may also lose his/her right to collect benefits through statutory disqualification. Disqualification most frequently arises from voluntary job separation without good cause, discharge for job related misconduct or refusal to accept suitable employment. In a penal institution, the first factor would most frequently come into play. Chronic absentism, failure to appear at the assigned work detail, may result in lose of that assignment. Such loses are interpreted as discharges for cause, constituting a voluntary job lose.

The period of unemployment compensation disqualification varies by grounds and state. In some states, benefits are merely postponed for a prescribed period. In others, a reduction of benefits otherwise payable, or a total cancellation of benefit rights may occur. Unlike problems arising from inability to work, which terminates immediately upon a change in condition, disqualification results in benefit deprivation for a definite period specified by law or set by the administrative agency within the limits contained in the law, or for the duration of the unemployment period. Typically, the disqualification period encompasses the week in which the disqualifying act occurred, and a specific number of consecutive calendar weeks following. These "penalty" weeks vary, ranging from four weeks in Puerto Rico to one through twenty-six weeks in Texas. Some states disqualify for the entire unemployment period, requiring a specified amount of new work or wages to requalify. Additionally, some states not only postpone benefits, but reduce them as well.

Work Release

The last facet of inmate labor to be examined consists of employment within the community under a work release or work furlough program. The first work release plan dates back to 1913 in Wisconsin. A hiatus existed until 1956 when Virginia instituted a program. Since then, 45 other states, the District of Columbia, and the federal government have authorized work release. The essential characteristic under all these programs is the emphasis placed upon reducing the institutionalization of the inmate by giving "further transitional preparation for community life."[21] In so striving, nearly one-half of those states in which a work release program operates insist that the working conditions simulate those existing for the general labor force, including hours worked and receipt of the prevailing

21/ Administrative Directive, State of Connecticut Dept. of Corrections Chapter 8.1 (4)(a)(1).

wages.[22] Consequently, the jobs held under these programs are high paying and more "regular" than prison jobs, producing fewer impediments towards the collection of unemployment compensation. Another potential barrier is lifted by the statutes. According to them, work releasees are not considered employees of the corrections department but of the individual private employer. The District of Columbia statute exemplifies this rule.

> Except where employed and paid by the District of Columbia for the performance of work for the District of Columbia government, no prisoner employed in the free community under the provisions of the subchapter shall, while working in such employment in the free community or going to or from such employment be deemed to be an agent, employee or servant of the District of Columbia government (D.C. Code Annotated § 24-470).

Thus, state employe restrictions do not come into play.

In spite of the greater ease in which benefits may be obtained under these programs, the low utilization of work release in most states, usually less than 10 percent of a state's prison population, results in few inmates releasees receiving this protection. Table 6 enumerates work release sizes by states for those jurisdictions which responded to our questionnaire eliciting this information. Also, reproduced here in Table 7, is the work release sizes and utilization rates as recorded by Richard Swanson in his work release survey.[23]

Certain obstacles exist which hinder the receipt of unemployment insurance by work releasees. First, a few jurisdictions, by statute, exclude this group from covered employment. For example, one unemployment compensation eligibility condition within the District of Columbia specifically depends upon not having been

> a prisoner in a District of Columbia correctional or penal institution who was employed in the free community under authority of the District of Columbia Work Release Act, or that he has not made a claim for benefits with respect to a week during which he was a prisoner in a District of Columbia correctional or penal institution. [DC. Code Annotated § 46-309(f)]

Some states which presently extend unemployment compensation coverage to work releasees are debating a change in policy. One such state is Michigan which has under consideration a bill [Senate Bill 1051 (1975)]

22/ As of 1973, 44.2 percent of those states with a work release program legislatively require that rates of pay and hours must be at least equal to prevailing rate in community. Swanson, Work Release: Toward an Understanding of the Law, Policy and Operation of Community-Based State Corrections, volume 1, [Carbondale, Illinois: Center for Study of Crime, Delinquency and Corrections, 1973] at Appendix A, p. 11. See, e.g. Administrative Directives, state of Connecticut Dept. of Corrections Chapter No. 8.1,2(b); Ga. Code Ann. 125-3-4-.04(4)(a). Federal law has a similar provision 18 U.S.C. § 4082 (c)(iii) 1970.

23/ Id., Appendix A, Table 5.

which would amend the Michigan Employment Security Act by adding to the list of uncovered employment "Services performed by an inmate of a jail or penal institution under a work-pass program". The bill's supporters contend that this exclusion will foster work release growth. They argue that upon release, work release participants lose their eligibility in the program and most often the jobs they held thereunder. Many of these individuals, handicapped with "ex-con" stigmas, encounter difficulty in securing employment. Consequently, under the experience-ratio method of determining the unemployment compensation tax paid by employers, whereby benefits are charged back to the employer, the employer participant in the work-pass program must pay a high tax rate. This would discourage their future participation and compound the difficulty in recruiting new employers for the program.

Second, because of restrictions placed upon individual work release duration, many participants are unable to accumulate a sufficient period of employment in order to qualify for benefits. Work release acts as a transitional device. It assists in the reintroduction of the incarcerated offender into the free community. As such, participation in it is limited to the months immediately preceding the anticipated release date. Table 8 identifies the maximum duration for those states which responded to our work release questionnarie. In addition, it reveals the average duration for the program for the eight states which had this information available. Only one state reported an average duration in excess of five months, or well less than two calendar quarters.

Third, many work releasees lose their work release jobs on grounds constituting a disqualification under the various state unemployment compensation laws. Although most inmates leave work release jobs as a result of parole or discharge, the states do report a substantial number of terminations resulting from rule infractions, alcoholism, drugs, escape and poor adjustments. An insight into the extent of these "unfavorable" terminations is found in reports by state corrections departments from Michigan, Connecticut, and Nebraska. Connecticut reports that for 1974-1975, 14.3 percent of all participants were removed for cause, primarily due to drugs, alcohol or escape. Michigan disclosed that in 1974, 12 percent of all participants were fired, 16 percent suffered disciplinary terminations, 4 percent escaped, and 2 percent quit. Finally, since the inception of the Nebraska work release program, 20 percent have left the program due to rule violations, 2 percent after an inmate's request and 4 percent because of escape.

Fourth, in light of most inmates' meager work histories, lack of job skills and under-education, work release employment most often consists of unskilled labor. Accordingly, wages received by the participants tend to fall at the lower end of the pay scale, usually the minimum wage. Low pay coupled with short job stays may prevent the work releasee from accumulating a sufficient gross wage which would entitle him to unemployment compensation benefits. Or, alternatively, a qualifying wage may be achieved, but the benefits derived from this wage would typically be the minimum or close to it.

II. Arguments Supporting Released Offenders Rights to Unemployment Compensation

The above analysis details the difficulties encountered by released offenders when applying for unemployment compensation. Each state has been given free reign by the federal government to design and operate their unemployment compensation system (with only a few conforming requirements specified in FUTA in order to receive a federal credit). Thus, two released inmates from different states, under identical circumstances vis-a-vis work history, salary, etc., may, when applying for unemployment benefits, receive contrary results. A generalization however may be made. The majority of released offenders will lose in their efforts to receive unemployment compensation based upon pre-prison and prison employment. The new releasee will be trapped in a paradox. To qualify for unemployment, he will first have to secure a new job in the community and fulfill the prerequisite work requirements. Yet the new releasee, at the point of release, frequently in the most desperate need for money in which to start his life anew, suffers severe employment handicaps and as a group, exhibits high unemployment rates.

To bypass the hit or miss individual application procedure in which a handful of releasees may qualify for benefits, legislative action is needed to assure a larger percentage of inmates financial assistance at release. In spite of the numerous difficulties previously mentioned, a compelling arguement for such legislative reform can be made.

The need for increased government financial assistance, over and above the traditional gate money, is well documented elsewhere and shall not be further discussed in this paper.[5] In approaching a legislative body, proponets for expanding unemployment compensation coverage to released inmates, in addition to the arguments concerning the desperate financial need shared by most of these individuals and the paucity of government economic assistance presently at their disposal, may make the following arguments which directly touch and concern the unemployment compensation system:

TABLE 4

PRISON INDUSTRY WAGES AND UNEMPLOYMENT COMPENSATION RIGHTS

State	Average Quarterly Prison Industry Wages Per Inmate[1]	Maximum Quarterly Prison Industry Wages Per Inmate[2]	Wages Required For Minimum Benefit[3] Base Period	High Quarter	Qualifying Wages Average Quarterly	Maximum Quarterly
Alabama	none	none	$525	$350	no	no
Alaska	no industries program		750		no	no
Arizona	$104	$182	562.50	375	no	no
Arkansas	none	none	450		no	no
California	81.77	182	750		no	no
Colorado		48.75[4]	750		no	no
Connecticut		48.10[4]	600		no	no
Delaware		74.10[4]	360		no	no
Dist. of Columbia		235.95[4]	450	300	no	no
Florida	none	none	400		no	no
Georgia	none	none	432	175	no	no
Hawaii	78	156	150		yes	yes
Idaho	121.81	208	520	416.01	no	no
Illinois	162.50	300	800		no	no
Indiana	52	65	500	400	no	no
Iowa		65[4]	300	200	no	no
Kansas			570			
Kentucky	45.50	130	343.75	250	no	no
Louisiana		24.70[4]	300		no	no

State	Average Quarterly Prison Industry Wages Per Inmate	Maximum Quarterly Prison Industry Wages Per Inmate	Wages Required For Minimum Benefit Base Period / High Quarter		Qualifying Wages Average Quarterly	Qualifying Wages Maximum Quarterly
Maine	none	none	600		no	no
Maryland		130[4]	360	192.01	no	no
Massachusetts	65	97.50	1,200		no	no
Michigan			350.14			
Minnesota	22.50	162.50	540		no	yes
Mississippi	none	none	360	160	no	no
Missouri		65[4]	480	300	no	no
Montana		32.50[4]	455	299	no	no
Nebraska	54.35	65	600	200	no	no
Nevada		44.20[4]	528	375	no	no
New Hampshire	91		600		no	
New Jersey		32.50[4]	600		no	no
New Mexico		122.85[4]	455	364.01	no	no
New York	78	150.80	600		no	yes
North Carolina	40.69	65	565	150	no	no
North Dakota		32.50[4]	600		no	no
Ohio	60		400			
Oklahoma		44.20[4]	500		no	no
Oregon	90	195	700		no	yes
Pennsylvania	127.40	156	440	120	yes	yes

State	Average Quarterly Prison Industry Wages Per Inmate	Maximum Quarterly Prison Industry Wages Per Inmate	Wages Required For Minimum Benefit Base Period / High Quarter		Qualifying Wages Average Quarterly	Qualifying Wages Maximum Quarterly
Rhode Island	130	130	400		yes	yes
South Carolina		84	300	180	no	no
South Dakota	72.80	97.50	590	400	no	no
Tennessee	104	254.80	504	338	no	no
Texas	none	none	500	125		
Utah	65	104	700		no	no
Vermont	171.60	171.60	600		yes	yes
Virginia	65	130	720		no	no
Washington		122.20[4]	1300		no	no
West Virginia		44.20[4]	700		no	no
Wisconsin						
Wyoming		16.25[4]	800		no	no

1/ Unless otherwise indicated, average quarterly wage is based upon 1975 information supplied by states' corrections department.

2/ Unless otherwise indicated, based upon the 1975 maximum hourly rate as supplied by states' corrections department. For purpose of this table, a quarter consists of 13, 40 hour weeks.

3/ As of January 1, 1976.

4/ These figures are based upon maximum daily pay for inmates (including non-industries employment) for 1971.

TABLE 6

STATE WORK RELEASE PROGRAMS
BY NUMBER OF INMATE PARTICIPANTS
March 1, 1976

State	Number of Inmates	Number of Work Release Residents
Connecticut	3,060*	170
Delaware	935	70
Florida	16,568	1,419
Georgia	11,180	300
Idaho	593*	9
Illinois	8,110*	192
Indiana	4,392*	115
Iowa	1,725	95
Maryland	6,606	300
Michigan	10,612	111
Missouri	4,000	50
Nebraska	1,259	120
New Hampshire	302	13
New York	16,056	500
Ohio	9,538	135
Pennsylvania	7,000	82
Rhode Island	594*	35
South Carolina	6,100	375
Tennessee	4,569*	373
Texas	18,934	50
Virginia	6,092*	96

* Inmate populations as of January 1, 1976.

TABLE 8

WORK RELEASE PAY AND DURATION
March 1, 1976

State	Average Weekly Gross Salary	Average Duration	Maximum Duration[1]
Connecticut	$117.52[2]		6 months
Delaware	85.00	3-4 months	
Florida	91.96	4 months	12 months
Georgia	126.40[3]	6-12 months	24 months
Idaho	100.00		3 months
Illinois	90-150.00		12 months
Iowa	125.00	4.5 months	6 months
Maryland	100.00		
Michigan		2-3 months[4]	10 months
Missouri	131.60	4.5 months	
New Hampshire	95.00		
New Jersey			9 months
New York	100.00	4 months	
North Carolina	100.00		
Oklahoma	110.00[2]	3 months	6 months
South Carolina	132.00		
Tennessee	100.00		12 months
Texas	171.51		

1. Maximum Duration is found in the statutes and regulations authorizing work release. Selection of inmates to participate in work release programs is limited to those prisoners who are within a specified time until their probable release.

2. Fiscal year 1974 - 1975.

3. Based on 40 hour week at average wage of $3.16/hour for Fiscal Year 1974 - 1975.

1974 statistics.

TABLE 10

COMPARISON OF INITIAL UNEMPLOYMENT COMPENSATION CLAIMS WEEKLY FILED AND NUMBER OF INDIVIDUALS WEEKLY RELEASED FROM STATE INSTITUTIONS

State[1]	Prison Population	Average Weekly Released[2]	Initial Unemployment Insurance Claims Filed[3]
California	20,007	136	60,120
Florida	15,709	114	11,796
Georgia	11,067	86	17,207
Michigan	10,882	100	30.834
New York	16,056	172	42,951
North Carolina	12,486	90	32,012
Ohio	11,451	104	22,794
Texas	18,934	143	11,741
Total	116,664	945[4]	229,455

1. The eight states used in this comparison were chosen because they each had, as of January 1, 1976, inmate populations in excess of 10,000.

2. These weekly released figures are based on 1970 figures, proportionately increased by the difference in the total inmate population for each state in 1970 and 1976.

3. These figures are for the week ending January 17, 1976.

4. The average weekly release is .4118 percent of the initial unemployment insurance claims filed for the week ending January 17, 1976. This figure is subject to significant weekly changes, as the average weekly release numbers are only estimates, and the number of claims weekly initiated may drastically change. However, inspite of any alterations, it is unlikely that this figure will ever surpass one percent.

Unemployment Insurance: Changes for Releasee Participation

Introduction

As presently written, state laws exclude releasees from the unemployment insurance rolls because they either fail to qualify for benefits or are specifically disqualified. The unemployment compensation report prepared for our second advisory committee meeting outlined the obstacles confronting a release inmate applying for unemployment insurance benefits. In spite of these challenges, relatively few changes need be made in the state unemployment insurance laws in order to bring releasees into compliance with their requirements. This report describes prototype amendments necessary to open up the unemployment insurance system to a releasee. When reading this report, the following caveats should be remembered:

1. Unemployment insurance laws are not uniform. However, because the Federal Unemployment Tax Act (FUTA) imposes certain requirements upon the states if they wish to receive a Federal credit on the employer tax, most state laws follow a similar pattern. Thus, the suggested amendments should, with minor changes, be amenable to most state laws.

2. These amendments cover only those inmates who, while in prison, worked. The unemployment insurance laws, short of a drastic overhaul, cannot be made to accommodate an idle, non-working individual. As for the inmate with a pre-incarceration work history sufficient to qualify for unemployment insurance, special provisions would have to be made whereby his benefits could be stayed during incarceration and distributed after release.

Amendments

Each state's unemployment insurance law contains a section devoted to definitions. Most states, following the FUTA example, use similar definitions. Within this section, many of the amendments necessary to incorporate releasees into the unemployment insurance system may be introduced. The most important change falls under the category "Employment". Employment defines which employers and workers are subject to the unemployment insurance laws. Traditionally, employment was comprehensive and only excluded those services which, by law, were specifically deleted. These excluded services typically included agricultural labor, employment for the state, student labor, and domestic services. The exclusions alone would eliminate the releasee who had worked while in prison for the Department of Corrections, i.e. state employment, from receiving unemployment insurance. However, the 1976 amendments to FUTA (P.L. 94-566, §115) demand that, if the state wishes to receive a tax credit, they must cover their own employees.[1/] In order to clarify the state inmates' posture vis-a-vis this change, a suggested amandment might read as follows:

"Employment" means

"Services performed after _____ 19____, by an individual for the state of _____ or any instrumentalities of this state or in the employ of this state and one or more other states or their instrumentalities, including services performed by a former inmate of a _____ state prison or other state correctional facility while the applicant was an inmate at that prison or other correctional institution."[2/]

Along with this expanded definition, certain language to state laws must be repealed. In 1970, amendments to FUTA required states to cover state employees of certain institutions, including hospitals. At that time, exceptions to this inclusion were enumerated, among them services performed "for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution". Similarly, the 1976 amendments to FUTA specify that although state employment must be covered, such coverage need not extend to services performed "by an inmate of a custodial or penal institution" (P.L. 94-566, §115(b)). It should be noted that FUTA does not demand these exclusions, but only permits them without jeopardizing the Federal tax credit. Following the 1970 Amendments all states seized upon the opportunity to exclude inmate hospital services. Therefore, all state laws would have to be amended by repealing sections pertaining to specified inmate exclusions.

1/ Prior to these amendments the states were permitted, at their own discretion, to include or exclude services performed for the state.

2/ This language substantially comes from Minnesota Bill H.F. No. 1072 (1975) which attempted to include releasees into the state unemployment insurance structure.

Another definitional change concerns "wages". Unemployment insurance laws state that in order to receive benefits, the ex-worker must have earned a specified amount during a prescribed period of time. Due to meager inmate wages, few releasees have earned the minimum qualifying gross wages. The following alteration would overcome this problem by creating, for the purposes of this act, certain fictions with respect to inmate remuneration:

> "Wages paid to inmates of state correctional facilities, notwithstanding any other provision in this act, means an amount computed at the prevailing state minimum hourly wage, regardless of any compensation received by inmates."3/

or, alternatively, an amendment might state

> "Wages paid to inmates of state correctional facilities means an amount computed at the hourly wage received by the lowest grade civil service employee in the state."4/

The concept of benefit year poses another difficulty for released inmates. By limiting the collection period to the 1 year following a period of employment, many releasees will be unable to collect insurance because they are incarcerated during the eligibility period. To surmount this hurdle the following definition may be added:

> "Benefit year" with respect to an inmate released from a state correctional facility means the one year period beginning with the first day of the first week following the inmates release from a correctional institution".5/

By making the above definitional amendments, other provisions within state unemployment insurance laws should cover the releasee without need for further alterations. For example, eligibility problems are removed because the releasee will have a viable benefit year in which to fulfill the necessary conditions, such as reporting to an employment office. Amount and duration of benefits, which are computed according to gross wages during the base period, may be ascertained by adhering to the wage fiction. Employer tax may be paid by the state as they would for any other employee, again based upon the fictitious wage scheme. The one other area to which special attention must be directed concerns disqualifications.

3/ Language comes from Cal. S.B. 626 (1975). Senator Behr has indicated that he will reintroduce this bill in the 1977 session.

4/ See Minnesota Bill Fn. 1. Under the Minnesota unemployment insurance rate schedule, this would result in a benefit of about $60 per week.

5/ In those states with "individual" base periods, the termination coincides with the inception of the benefit year. In these jurisdictions an amendment to the base period definition may be necessary.

Disqualification

Disqualification universally includes voluntary job terminations without good cause. Even where the statutes are silent as to the effects of imprisonment, courts have held that an illegal act resulting in incarceration is tantamount to a job leave without good cause, thereby denying releasees' appeals for benefits. So as to clarify this issue, the disqualification sections should specifically state that an arrest and imprisonment will not jeopardize the inmate's right to collect benefits in the future. Under the scheme proposed above, this language may be superfluous, since we are predicating benefits upon a right earned after arrest, i.e. prison labor. However, if efforts are made to extend benefits based upon pre-arrest labor, then two additional changes must be made.

First, any existing language specifically disqualifying an individual based upon an arrest and incarceration must be repealed. (Unless arrest is for a job misconduct incident which would disqualify the individual on grounds other than voluntary quit.) Second, a delay clause must be created whereby benefits otherwise due are held in abeyance until the individual is freed and competent to collect the insurance. Such a clause has some precedent in state laws. For example, the Georgia Employment Security Act preserves wage credits and benefit rights for those entering the armed services during a national emergency. These rights are kept alive for the period of actual service and six months thereafter.6/

If wage credits from preincarceration labor are preserved, than a potential conflict would arise in those situations where an individual could qualify for unemployment insurance based upon both inmate and civilian employment. In those situations, the law should specify which employment controls, i.e. the amount of wages paid, benefits to be distributed, employer to be charged. Equity considerations would favor basing the unemployment insurance upon inmate labor. If benefits derived from the civilian employment, an employer's unemployment insurance account would be debited for these payments and his experience-ratio affected. This would result in an increase tax upon the employer due to his employees criminal behavior.7/

Some concern over this scheme may center upon inmate labor disincentives. An inmate who had a civilian job with wages greater than those paid in prison (or greater than the fictitious minimum wage distributed under the proposed amendment above) may elect not to work while incarcerated, so that his eventual unemployment compensation would be greater. This concern may be countered in two ways. First, many state laws require that every able inmate work when jobs are available. Second, due to prison overcrowding, it is a simple fact that many inmates, regardless of their desire will be unable to work or will perform meaningless tasks devoid of rehabilitation purposes.

6/ See Ga. Code Ann. §54-608.

7/ It is interesting to note that the Georgia statute referred to in footnote 6 provides that benefits paid to persons who had entered the military during a national emergency are not debited to the employer's employment experience.

Extended Benefits

In recent years, Congress has provided for extended unemployment insurance benefits, to be used once the regular state benefits expire (usually after 26 weeks).[8/] In order to qualify for extended benefits, an individual need only have been on the regular state unemployment insurance rolls and maintained his eligibility. These extensions may run for 39 weeks, over and above the normal state duration. As a practical matter, when approaching legislative bodies, it may be wise to specify that insurance, based upon inmate labor, would not include the supplemental and extended benefits. Limiting the releasee to the regular 26 week program (or benefit year) is consistent with the distribution period of LIFE and TARP, and should have no adverse affect on our ultimate goal of ameliorating reintegration. The consensus among corrections officials and penologists is that the initial six month period is the crucial time in which the releasees' success or failure is most commonly determined. Extended benefits to releasees would be at a considerable expense to the government and raise the specter of a substantial work disincentive. California State Senator Peter Behr has indicated that his new bill aimed at extending benefits to releasees will differ from its predecessor in that it will limit benefits to six months.

Miscellaneous

When extending unemployment insurance benefits to releasees, state law, other than the Employment Security statutes, may have to be amended. For example, in Arizona, there is a statutory provision which states that no prisoner who receives compensation for his labor shall be considered an employee of the state or Department of Corrections nor shall he be covered by workmen's compensation or other benefits.[9/]

8/ Federal-state extended benefits cover the 27 to 39th week of unemployment and are funded 50 percent from state and 50 percent from Federal unemployment accounts. Emergency unemployment benefits cover the 40th to 65th week and are fully funded by the Federal unemployment accounts. This program is temporary, due to expire March 31, 1977.

9/ Ariz. Rev. Stat. Ann. §31-254(E). See also California Penal Code §2700.

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A STUDY TO DETERMINE THE NUMBER OF INMATES IN THE TEXAS DEPARTMENT OF CORRECTIONS WHO WERE ELIGIBLE FOR UNEMPLOYMENT INSURANCE PAYMENTS PRIOR TO INCARCERATION

JANUARY 1976

TEXAS DEPARTMENT OF CORRECTIONS
TREATMENT DIRECTORATE
RESEARCH & DEVELOPMENT DIVISION
P. O. BOX 99
HUNTSVILLE, TEXAS

A STUDY TO DETERMINE THE NUMBER OF INMATES IN THE TEXAS DEPARTMENT OF CORRECTIONS WHO WERE ELIGIBLE FOR UNEMPLOYMENT INSURANCE PAYMENTS PRIOR TO INCARCERATION

PURPOSE OF THE STUDY

The purpose of this study was to determine the number of inmates in the Texas Department of Corrections who were eligible for unemployment insurance payments prior to incarceration.

METHODOLOGY

The procedure for this study was to collect the name, TDC number and Social Security Number, from a sample of inmates in the Texas Department of Corrections. The Social Security Number was collected since it is the identifier the Texas Employment Commission uses to access their records.

The names and Social Security Numbers were sent to the Texas Employment Commission for processing. The Texas Employment Commission maintains computerized Master Wage Files. The inmates in the sample were compared to the Master Wage File as if they had requested Unemployment Insurance assistance. This process generated data which indicated the inmates eligible, the maximum benefit (money) per week each individual would be eligible to receive and the total amount of money the individual was entitled to draw. An analysis of this data is presented in the results section of this report.

Sample

The sample (n=461) for this study consisted of all transient inmates confined in the Texas Department of Correction's Diagnostic Unit on December 4, 1975. The Diagnostic Unit is the receiving location for all offenders committed to the Texas Department of Corrections. Transient inmates are those who have recently been received and have not yet been assigned to one of the fifteen units.

This sample was selected for the following reasons. First, these inmates had been confined in TDC for a maximum of three weeks. Therefore, they constituted a group which would have been most recently in the work force. Second, the inmates at the Diagnostic Unit came from all areas in the State. Third, if the inmate had a Social Security Card, it would be in the personal property folder on the Unit and thereby readily available.

RESULTS

Of the 461 inmates sampled, 346 either had a Social Security Card or knew their Social Security Number. The remaining 115 inmates either never had a Social Security Card, had a card but lost it or did not remember their Social Security Number. Therefore, it was possible for the Texas Employment Commission to provide Unemployment Insurance eligibility data on 346 individuals or 75 percent of the sample.

The calculation of the percent of inmates who would have been eligible to receive unemployment insurance payment prior to incarceration can be made in two ways. The first method would be to use the sample n=461 and assume that the 115 inmates without Social Security Cards or who did not know their Social Security Numbers, were not regular participants in the work force and therefore would not be eligible for Unemployment Insurance. This assumption would cause the data to be interpreted conservatively. Using this assumption, 22.78 percent of the sample (n=461) were eligible for Unemployment Insurance payments.

The second method would use the sample size n=346 and assume the 115 individuals for whom no Social Security Numbers were available would be proportionately distributed between the groups eligible to receive unemployment insurance payments and those uneligible. Using this method, 30.35 percent of the sample (n=346) would be eligible to receive payments.

Regardless of the method used to calculate the percentage of inmates eligible to receive unemployment insurance benefits prior to incarceration, 105 inmates were eligible. The number of weeks these individuals were eligible to receive payments ranged from one to twenty-six weeks.

The average number of weeks the sample members were eligible to receive payments was 15. Table 1 presents the number of weeks the sample members were eligible to receive payments.

TABLE 1

NUMBER OF WEEKS OF UNEMPLOYMENT INSURANCE
SAMPLE WOULD HAVE BEEN ELIGIBLE
TO RECEIVE PRIOR TO INCARCERATION

Number of Weeks	Number of Inmates	Percent of Inmates
0	356	77.22
1	1	.22
2	--	--
3	1	.22
4	--	--
5	1	.22
6	1	.22
7	1	.22
8	1	.22
9	--	--
10	7	1.52
11	12	2.60
12	15	3.25
13	9	1.95
14	8	1.74
15	5	1.08
16	7	1.52
17	8	1.74
18	2	.43
19	2	.43
20	2	.43
21	4	.87

TABLE 1 (con't)

Number of Weeks	Number of Inmates	Percent of Inmates
22	3	.65
23	3	.65
24	1	.22
25	--	--
26	11	2.39
TOTAL	461	100.00

The weekly amount of Unemployment Insurance the sample members would have been eligible to receive prior to incarceration is shown on Table 2. The weekly amounts ranged from $15 to $63. Sixty-three dollars being the maximum amount of Unemployment Insurance paid in Texas. The amount of money available to the 105 inmates who would have been eligible to receive benefits totaled $74,981.

TABLE 2

WEEKLY AMOUNT OF UNEMPLOYMENT INSURANCE
SAMPLE WOULD HAVE BEEN ELIGIBLE
TO RECEIVE PRIOR TO INCARCERATION

Amount (Dollars)	Number of Inmates	Percent of Inmates	Amount (Dollars)	Number of Inmates	Percent of Inmates
0	356	77.22	35	--	--
15	10	2.17	36	1	.22
16	2	.43	37	1	.22
17	3	.65	38	--	--
18	1	.22	39	1	.22
19	1	.22	40	--	--
20	1	.22	41	3	.65
21	--	--	42	2	.43
22	3	.65	43	2	.43
23	3	.65	44	2	.43
24	2	.43	45	1	.22
25	1	.22	46	--	--
26	1	.22	47	2	.43
27	--	--	48	2	.43
28	1	.22	49	1	.22
29	2	.43	50	3	.65
30	--	--	51	--	--
31	4	.87	52	1	.22
32	--	--	53	1	.22
33	3	.65	54	2	.43
34	--	--	55	--	--

TABLE 2 (con't)

Amount (Dollars)	Number of Inmates	Percent of Inmates	Amount (Dollars)	Number of Inmates	Percent of Inmates
56	2	.43	60	1	.22
57	--	--	61	1	.22
58	3	.65	62	4	.87
59	--	--	63	31	6.72
			TOTAL	461	100.00

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UNEMPLOYMENT INSURANCE

ELIGIBILITY STATUS OF INMATES INCARCERATED

in the

GEORGIA CORRECTIONAL SYSTEM

between

June 1, 1976 and March 31, 1977

Transitional Aid Research Project
Correctional Services Programs
Training Division

GEORGIA DEPARTMENT OF LABOR
Sam Caldwell, Commissioner

January 10, 1978

INTRODUCTION

This survey was produced at the direction of the U. S. Department of Labor to determine the number of persons who would have been eligible to receive Unemployment Insurance benefits had they become unemployed and not incarcerated.

U. I. wage file reports (Claim Record Card, ESA-405) obtained from the Unemployment Insurance Division of the Georgia Department of Labor were the source for this survey.

Included in this survey are State offenders who would have been eligible for U. I. benefits at the time the Court remanded them to the State Department of Offender Rehabilitation for incarceration. Between June 1, 1976 and March 31, 1977, 4,842 offenders were reported sentenced to incarceration in the State Correctional System. Of the 4,842 727 (15.0%) were eligible to receive U. I. benefits had they not been incarcerated; 2,885 (59.6%) were ineligible for benefits as a result of insufficient or absent wages; 1,230 (25.4%) were unacceptable because of questionable, unverified or nonexistent Social Security Numbers.

Due to the initiation of this survey in November 1976, U. I. wage file reports prior to the Third Calendar Quarter of 1975 were not retrievable. For this reason, offenders sentenced to incarceration before June 1, 1976 could not be included. Consequently, in order to include 1,000 sample inmates eligible for U. I. benefits if not incarcerated, a subsequent survey, inclusive of data in this report, will be finalized in February 1978.

TABLE A-1

Total Number and Unemployment Insurance Eligibility Status of Inmates ALL AGES Sentenced to Incarceration between JUNE 1, 1976 and MARCH 31, 1977.

INMATE STATUS	NUMBER OF INMATES	PERCENT OF TOTAL NUMBER INMATES
1. Eligible for U. I. Benefits	727	15.0%
2. Ineligible for U. I. Benefits	2885	59.6
3. Unacceptable Social Security Number*	223	4.6
4. No Social Security Number**	1007	20.8
TOTAL	4842	100.0%
Sample Inmates (Item 1 Above)	727	15.0%

*Unverified or Questionable
**Wage File Reports Unobtainable

TABLE B-1

Number of Weeks of Unemployment Insurance Benefits Sample Inmates ALL AGES would have been eligible to receive if not incarcerated.

NUMBER OF WEEKS	NUMBER OF INMATES	% OF INMATES
4	6	.8%
5	17	2.3
6	26	3.6
7	14	1.9
8	17	2.3
9	29	4.0
10	89	12.2
11	84	11.4
12	99	13.8
13	47	6.5
14	53	7.3
15	46	6.3
16	28	3.9
17	37	5.1
18	18	2.5
19	18	2.5
20	16	2.0
21	21	3.0
22	12	1.7

TABLE B-1

(Cont'd)

NUMBER OF WEEKS	NUMBER OF INMATES	% OF INMATES
23	13	1.8%
24	5	.7
25	5	.7
26	27	3.7
TOTAL	727	100.0%

TABLE C-1

Weekly amount of Unemployment Insurance Benefits sample Inmates ALL AGES would have been eligible to receive if not incarcerated.

WEEKLY BENEFIT AMOUNT	NUMBER OF INMATES	PERCENTAGE OF TOTAL INMATES	TOTAL NUMBER WEEKS BENEFIT AMOUNT DUE	MAXIMUM AMOUNT DUE	PERCENTAGE OF TOTAL AMOUNT DUE
27	152	21.0%	1290	$34,830	6.1%
28	7	.9	82	2,296	.4
29	8	1.1	101	2,929	.5
30	10	1.4	123	3,690	.7
31	11	1.5	120	3,720	.7
32	7	.9	81	2,592	.5
33	5	.7	53	1,749	.3
34	9	1.2	115	3,910	.7
35	13	1.8	187	6,545	1.2
36	3	.4	36	1,296	.2
37	11	1.5	163	6,031	1.1
38	10	1.4	116	4,408	.8
39	12	1.7	153	5,967	1.1
40	8	1.1	104	4,160	.7
41	14	1.9	191	7,831	1.4
42	21	3.0	260	10,920	1.9
43	3	.4	43	1,849	.3
44	10	1.4	123	5,412	.9

TABLE C-1
(cont'd)

WEEKLY BENEFIT AMOUNT	NUMBER OF INMATES	PERCENTAGE OF TOTAL INMATES	TOTAL NUMBER WEEKS BENEFIT AMOUNT DUE	MAXIMUM AMOUNT DUE	PERCENTAGE OF TOTAL AMOUNT DUE
45	9	1.2%	128	$ 5,760	1.0%
46	11	1.5	149	6,854	1.2
47	12	1.7	146	6,862	1.2
48	12	1.7	182	8,736	1.5
49	12	1.7	154	7,546	1.3
50	7	.9	101	5,050	.9
51	12	1.7	165	8,415	1.5
52	6	.8	89	4,628	.8
53	14	1.9	212	11,236	2.0
54	11	1.5	148	7,992	1.4
55	9	1.2	124	6,820	1.2
56	10	1.4	157	8,792	1.5
57	8	1.1	113	6,441	1.1
58	4	.6	71	4,118	.7
59	9	1.2	118	6,962	1.2
60	5	.7	65	3,900	.7
61	8	1.1	89	6,409	1.0
62	10	1.4	157	9,734	1.7

TABLE C-1
(cont'd)

WEEKLY BENEFIT AMOUNT	NUMBER OF INMATES	PERCENTAGE OF TOTAL INMATES	TOTAL NUMBER WEEKS BENEFIT AMOUNT DUE	MAXIMUM AMOUNT DUE	PERCENTAGE OF TOTAL AMOUNT DUE
63	8	1.1%	119	$7,497	1.3%
64	3	.4	52	3,328	.6
65	9	1.2	111	7,215	1.3
66	8	1.1	116	7,656	1.3
67	13	1.8	195	13,065	2.3
68	9	1.2	150	10,200	1.8
69	7	.9	101	6,969	1.2
70	3	.4	33	2,310	.4
71	5	.7	75	5,325	.9
72	9	1.2	131	9,432	1.7
73	3	.4	43	3,139	.6
74	4	.6	66	4,884	.9
75	9	1.2	122	9,150	1.6
76	4	.6	65	4,940	.9
77	4	.6	69	5,313	.9
78	5	.7	70	5,460	.9
79	6	.8	103	8,137	1.4
80	4	.6	58	4,640	.8

TABLE C-1
(cont'd)

WEEKLY BENEFIT AMOUNT	NUMBER OF INMATES	PERCENTAGE OF TOTAL INMATES	TOTAL NUMBER WEEKS BENEFIT AMOUNT DUE	MAXIMUM AMOUNT DUE	PERCENTAGE OF TOTAL AMOUNT DUE
81	6	.8%	77	$ 6,237	1.1%
82	6	.8	89	7,298	1.3
83	6	.8	98	8,134	1.4
84	4	.6	50	4,200	.7
85	3	.4	42	3,570	.6
86	6	.8	82	7,052	1.2
87	3	.4	56	4,872	.9
88	2	.3	29	2,552	.4
89	1	.1	9	801	.1
90	94	12.9	1,911	171,990	30.1
TOTAL	727	100.0%		$570,776	100.0%

TRANSITIONAL AID RESEARCH PROJECT FOR EX-OFFENDERS

1800 M Street, N.W. Washington, D.C. 20036 202/331-2252

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MEMORANDUM

TO: Doris Gardner "O"

FROM: Robert Horowitz, Assistant Project Director

SUBJECT: Transitional Aid Research Project -- H.R. 10210

DATE: July 22, 1976

The following memorandum and attached materials details the history, methodology and philosophy behind the Transitional Aid Research Project, (hereinafter TARP). Specifically, it focuses upon TARP's relationship to H.R. 10210, §115(b)(2).

TRANSITIONAL AID RESEARCH PROJECT

Components

TARP is a joint endeavor of the Department of Labor's Employment and Training Administration, LEAA, American Bar Association's Commission on Correctional Facilities and Services, Georgia Department of Labor and the Texas Department of Corrections. Attached is a copy of the current grant (with discriptive proposal) issued by the Department of Labor to the American Bar Association. (Attachment A) Separate grants have been awarded to the two states.

History

TARP is a large scale replication of a previous project, LIFE (Life Insurance for Ex-Offenders), undertaken by the Department of Labor (ETA). Basically, the LIFE project concerned the awarding of stipends to selected individuals departing Baltimore's correctional facilities. The gratuities amounted to $60 a week for 13 weeks. Within this project were a series of experimental and control groups. One group received only financial aid. Another group was given this money coupled with job placement assistance while a third group received only the latter aid. The project's aim was to test whether either of these services could ease the adjustment from prison to the labor market--and at the same time reduce the rate of recidivism. A preliminary report entitled When Money Counts: An Experimental Study of Providing Financial Aid and Job Placement Services outlines the methodology and results of this project. Relevant portions from this report are attached. (Attachment B) Basically, the two experimental groups which received financial aid had a lower rearrest rate than the two groups which received no aid. For theft related crimes, including robbery (on the theory that income maintenance should only have a bearing on these crimes), the difference in the crime rates between the money and non-money groups was 22 percent.

Based upon these positive findings, the Department of Labor decided to repeat this experiment, using larger populations and altering some of the procedures. Every state was asked to submit a proposal. From the seven proposals received by the Department of Labor, Georgia and Texas were selected. A brief project description is contained in the accompanying TARP pamphlet. The project in each state is broken down into six experimental and control groups. Inmates departing state correctional facilities as of January 1, 1976 have been randomly assigned to one of these cells. The first three groups are receiving financial assistance, $70 per week in Georgia and $65 per week in Texas. The difference among these groups lie in the duration of benefits, penalties for outside income and whether job placement assistance (Group III)is provided. Group IV receives only job placement assistance. Groups V and VI receive no aid and act as the controls. Presently, the states are just finishing the filling of each experimental group. No follow up statistics on employment and/or recidivism have yet been compiled.

H.R. 10210, §115(b)(2)

The pertinent section within H.R. 10210 which concerns TARP deals with the exclusion of inmate labor. Specifically §115(b)(2) of the proposed act would amend 26 U.S.C. §3309(b)(6). The latter section states that services by inmates for hospitals within state correctional institutions shall not be considered covered employment under the unemployment compensation laws. Section 115 of the proposed bill, while calling for the inclusion of all state and local government employees into the unemployment insurance system, would simultaneously expand on the inmate exclusion so that all services performed by inmates in correctional institutions would not be considered covered employment.

Reasons prompting the original 1970 inmate deletion from the unemployment insurance system and its enlarged 1975 version are unclear. Neither the legislative history (hearings and committee reports) for either the 1970 law or current proposed amendments contain testimony or statements pertaining to this issue. One may hypothesize numerous grounds on which congress based this exception--

1. In line with corresponding attitudes towards inmates and general protective labor laws i.e. prison work is primarily rehabilitative and does not center upon traditional employer-employee relationships.

2. Sporadic newspaper accounts which generate bad publicity of inmates, under bizarre circumstances, collecting unemployment insurance. See e.g. New York Times, April 5, 1976, p. 35, in which a N.Y. state congressman objected to an ex-work-releasee, while still incarcerated, collecting benefits based upon the work-release labor.

3. Belief that inmates, while incarcerated, are provided for by the state and thus are in no need of income maintenance assistance traditionally aimed at maintaining a pruchasing power level.

Opposition to H.R. 10210, §115(b)(2)

Should the Department of Labor elect to oppose the provision of H.R. 10210 which would endorse a blanket exclusion with respect to services performed by individuals within a penal institution, the following arguments may be advanced in support of this opposition:

1. This section directly contravenes recommendations set forth by the President's National Advisory Commission on Criminal Justice Standards and Goals. In its black-letter standards, the Commission recommended that

> State funds should be available to offenders, so that some mechanism similar to unemployment benefits may be available to inmates at the time of their release in order to tide them over until they find a good job. (National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 12.6, p. 430)

A copy of this standard and commentary is attached hereto. (Attachment D)

Whereas many states by statute require that inmates work while incarcerated, in either prison industries or maintenance and service jobs, the typical inmate would be working up to the time of release. Thus, most frequently, unemployment insurance for inmates will not be considered until release. The inmates' rights to collect benefits are effectively negated elsewheres in the unemployment insurance laws. Every state hinges eligibility upon a persons readiness and availability for work. This usually requires periodic visits to an employment office. The confined inmate is unable to satisfy these conditions and thus is disqualified. The proposed section, by deleting inmate services from the unemployment insurance system, effectively abrogates the releasee's ability to predicate the receipt of benefits based upon an earned right, i.e. prison labor. For the purposes of amending H.R. 10210, short of total deletion of the section in question, a distinction may be made between an inmate's right and a releasee's right to collect benefits. The former has no need to receive government assistance while provided for by the state, nor is he able to satisfy the rudimentary eligibility requirements. The latter, often unemployed, has a pressing and urgent need for this assistance, as recognized by the President's Commission quoted above.

For a detailed report on the economic plight of the released inmates, see the attached copy of From Prison to Poverty (manuscript copy of a report prepared by the ABA TARP staff, Attachment E). Contained within this report are the identification of other sources which, after confirming the abysmal financial condition of released prisoners, have advocated for the extension of unemployment insurance to released prisoners. This group includes

-Daniel Glaser (p. 33 of report),
-Elliot Studt (p. 18),
-Norman Colter (p. 19).

2. The costs saved by excluding this group from the unemployment insurance rolls may be outweighed by the possible benefits derived from providing them income maintenance. Daniel Glaser, in his classical examination into the federal prison and parole system, succinctly summed up the common sense argument supporting post-release assistance. He stated that

> After having spent from $1500 to $3000 per year for several years to keep a man confined in prison, it appears to be extremely poor economics to deny him a few hundred dollars in post-release aid if this could be a major factor in preventing his return to prison. (The Effectiveness of Prison and Parole System, abridged ed., p. 265)

This cost-benefit trade-off has been translated into dollars and cents elsewheres. According to one report by the ABA's Correctional Economics Center, a post-release stipend of $1000 would, from the viewpoint of society, be desireable if it reduced the probability of parole revocation by eight percent (Cost Analysis of Correctional Standards: Institutional-Based Programs and Parole, pp. 131-133, see Attachment F). Currently, cost-benefit analyses for both the LIFE and TARP programs are being conducted.

3. An independent survey tested the publics reaction to post-release assistance. Conducted by the Roper Organization in March, 1976, 2002 men and women nationwide were asked the following question:

> At the present time, most men when released from prison throughout the country receive between $20 and $50 to start life over. Would you be in favor of or opposed to providing released prisoners with some form of financial support, for example, like unemployment insurance, until they found a job?

Overall, 63 percent of this sample group answered in favor of assistance. Every subgroup identified within this test population (education, occupation, religion, political affiliation, and political philosophy) responded in the affirmative. A second question was asked those who answered negatively or indicated they didn't know. This question asked their opinion if it were shown such support reduced crime among men coming out of prison. Of the 37 percent opposed or unsure in question 1, well over half favored support under the circumstance postulated in the follow up question.

4. The immediate effect of including inmate services within the unemployment compensation system will not result in further drains upon the state unemployment insurance funds. In reality, due to the minute inmate wage scales, measured in pennies per hour, prisoners will be unable to earn the qualifying wages

requisite for the receipt of even minimum benefits. Attached is a comprehensive report, prepared by TARP ABA staff for intra project dissemination and information, which details the released inmates' problems in receiving unemployment compensation. (Attachment G). In addition, the unemployment insurance tax on the state, as the inmates' employer, would be relatively small. Few inmates receive annual wages in excess of one or two hundred dollars on which this tax would be based. Should TARP, like its predecessor LIFE, manifest a reduced recidivism rate credited to financial aid, future efforts may be undertaken to institute permanent income maintenance programs for released prisoners. At that time, proposals for its operation and funding will be made. If done through the unemployment compensation scheme, two possible funding sources exist--general revenues (similar to the Special Unemployment Assistance program) or tax upon wages earned while engaged in prison labor. A potential method of circumventing the qualifying wage barrier would be to state, that for the purpose of this act, inmate wages will be presumed to be the minimum wage. In 1975, the California legislation considered (and defeated) such a proposal. Attached is a copy of this bill. (Attachment H)

5. In light of the existence of the TARP project, which is specifically examining the effects unemployment insurance has upon the reintegration of released prisoners, congressional action which would cut off unemployment compensation rights based on prison labor would be untimely and counter-productive to a federally financed study. The attached letter to Morton Schwartz, legislative aid to Senator Proxmire (prepared by Dr. Howard Rosen) not only outlines the TARP program, but also identifies the statutory authority behind the initiation of this research project--CETA. (Attachment I)

6. To assuage the natural resistance of those opposed to programs which, on the surface, appear to coddle criminals, it may be pointed out that many inmates, prior to incarceration, were gainfully employed and would have been potential unemployment insurance recipients had they lost their jobs for reasons other than imprisonment. Recent reports prepared for TARP by the Texas Department of Corrections and Georgia Department of Labor disclose that roughly 30 percent of the inmates examined would have been eligible to receive benefits. Attached are copies of these reports. (Attachments J & K)

7. Upgrading the releasees' financial condition through unemployment compensation is in tune with other proposed federal and state legislation. For instance, S.1 (the bill introduced to revise the federal criminal code) would have augmented Federal post-release assistance by raising the federal gate money amount from $100 to $500. Several bills have also been introduced designed to extend federal minimum wage protection to federal prisoners (H.R. 2583, 93 Cong., 1st Sess. (1973)) and even to state and local inmates (H.R. 6745, 93rd Cong., 1st Sess. (1973)). Old age, survivors, and disability benefits under the Social Security Act have also been proposed for these inmates (H.R. 6747, 93d Cong., 1st Sess. (1973)).

Many states and the federal government already provide workmen's compensation protection to those inmates within their jurisdictions engaged in prison employment. See, e.g. 18 U.S.C.§4126(1970); Md. Ann. Code Art. 101, §35 (Supp. 1972); N.C.Gen. Stat. §97-13(c)(1972); Ore. Rev. Stat. §655.505 (1968); Wis. Stat. §102-95 (West Supp. 1972).

8. As previously noted, the legislative history affords no insight into the reasons behind inmate exceptions contained in either the 1970 amendments to FUTA or the amendments presently under consideration. Arguments may be advanced that these exceptions were afterthoughts or supported without serious consideration or deliberation.

9. These amendments would tend to retard the evolving 20th Century view towards prisoner's rights. The current trend is to preserve those rights previously enjoyed while non-institutionalized, unless it jeopardizes prison security or has an adverse effect on rehabilitation. Unemployment insurance protection would have a positive rehabilitative effect, providing an added work incentive while incarcerated. Laws which specifically strip the inmates of these rights once released, where there is no overriding rehabilitative or security purpose, are archaic and out of line with progressive prison reform movements.

10. In addition to trends toward extending protective labor laws to working inmates, a host of writers have advocated for the overall improvement of prison industries. Improvement is deemed vital to those who believe that these industries, as presently structured and operated (no work incentives, outdated equipment, production forlimited markets, poor management and low skilled jobs), perform no rehabilitation function. The establishment of a national commission on prison industry standards, administration and marketing has been recommended by the Institute of Criminal Law and Procedure at Georgetown University Law Center. This recommendation resulted from a study conducted by request of the Department of Labor's Employment and Training Administration . The proposed commission would be created as an independent agency or within this department. Among its responsibilities would be to consider compensation issues. Therefore, congressional action disposing the unemployment compensation issue, at this time, would be premature. Congress would be well advised leave this issue open until recommendations by the proposed commission and other interested bodies may be considered.

A copy of the Georgetown report is attached. (Attachment L)

Are You Eligible?

Are you a veteran? Did you receive an honorable or a general discharge? If you answered yes to both of these questions, you may be entitled to certain Veterans Administration (VA) benefits, even while in prison.

If you served in the active (full-time) military, naval or air service, you are a veteran. Not all veterans, however, are entitled to benefits. A dishonorable discharge will prevent you from participating in all VA programs. Undesirable or bad conduct discharges require a special determination by the administering agency, on a case-by-case basis, as to whether the veteran will be eligible. Any veteran who received an honorable or general discharge is entitled to VA benefits, although each individual program has additional eligibility requirements. Even if you are not a veteran, you may qualify for limited federal benefits if you are a dependent or survivor of a veteran.

Educational Assistance

Probably the benefit you are most inclined to be eligible for is education or training assistance. To qualify you must have a proper discharge, have served for more than 180 continuous days prior to January 1, 1977, and apply within 10 years of your discharge. If you satisfy these conditions, you are eligible for educational financial assistance for up to 45 months, depending upon your length of service. Assistance is granted for elementary, high school (GED), college and post-graduate level courses. To receive this monthly, you must be registered at VA approved educational institutions. These institutions include community and junior colleges,

technical schools and other institutions which frequently participate in inmate work study or education programs. In some instances, courses conducted inside the correctional institution may merit VA approval. You may also be able to receive money for correspondence programs. The amount of aid you may receive varies, depending upon the type of program you are in and your course level.

For those who entered active duty after December 31, 1976, you may be able to participate in the voluntary contributory educational program. As in the other education programs, you must have served for at least 180 days and received an acceptable discharge. Eligibility will further depend upon whether or not you satisfactorily contributed to the program through monthly pay deductions while a member of the armed forces. If you contributed, the government will match your contribution at a rate of $2 for every $1 pay withheld.* Your course of education or training must be approved by the VA. No educational assistance will be afforded an otherwise eligible veteran beyond 10 years after the date of his last discharge or release from active duty.

Disability Assistance

A number of VA benefit programs are designed to assist the veteran who received a service-connected disability. These disabilities are ones which were incurred or aggravated in the line of duty during wartime or peacetime service. Again, it is necessary to have received a discharge under other than dishonorable conditions.

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* If you elect to "disenroll" from this program, you may do so for any reason. Upon withdrawal, you are entitled to a refund of your unused contributions previously made.

Compensation for Service Connected Disability

This compensation is paid to the disabled veteran in proportion to their injury. For total disability, you may be entitled to over $700 in monthly payments. In addition, your monthly payments may be increased if you suffer at least 50% disability and have dependants, including spouse, children or parent.

Other VA programs supplement the needs of disabled veterans. An annual clothing allowance is offered veterans receiving service-connected disability compensation where prosthetic or othopedic appliances causes wear of clothing. Vocational rehabilitation assistance may be received by a veteran who is eligible for service-connected disability compensation if the VA determines it is necessary to overcome the handicap of your disabilities. A nine-year time limit is placed on the period of eligibility beginning at time of discharge.

Pension

Pension benefits are offered to wartime veterans* with at least 90 service days, veterans who are 65 years of age or older or veterans who are permanently and totally disabled from reasons not traceable to service nor due to wilfull misconduct or vicious habits. Eligible prisoners serving time following a conviction will not receive this pension after the 61st day of their incarceration. Following release the ex-inmate may resume receiving his pension. While incarcerated, the VA may pay to the spouse or children a portion of the withheld pension.

Post Release Veterans Benefits

Following your lawful release from the correctional institution, you may be entitled to additional benefits. Your criminal record

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* For purpose of this pension, the Vietnam Wartime era is August 5, 1964 to May 7, 1975.

will not act as a bar to any benefit. However, certain benefit entitlement, educational, dental treatment, GI insurance, unemployment compensation and reemployment rights may have expired due to the amount of time which has lapsed since your separation from service.

Benefits for Spouse and Other Dependents

While incarcerated, your spouse and/or dependents may be entitled to certain VA benefits. As previously noted, they may receive a portion of your pension. In addition, spouses and children of veterans totally disabled due to service-connected disabilities are eligible for some education assistance.

The First Step

The preceeding has only outlined some of the benefits you may be entitled to as a veteran. To learn more about your potential rights and how to go about applying for them, consult with a VA representative. By government policy, a representative is required to visit every federal and state prison at least twice a year. Check with the officials at your institution to find out the date of the next visit. At some institutions there may be no scheduled visits. You should then call or write the Veterans Administration Regional Office located in your state. Request that a representative schedule a visit to your institution. You may also discuss your case with a benefits counselor at the regional office. The addresses for each office (and toll-free telephone numbers) may be found at the end of this pamphlet.

If you already attend a college, institution or other school in the community, check with school officials to find out if 1) they are VA accredited and 2) is there a veterans representative on campus. This representative can assist eligible veterans obtain their educational assistance. If you participate in an apprentice or training program consult with your employer on the possibility of receiving VA aid.

VA Regional Offices

The following is a listing of regional offices for the veterans administration. If you have access to a telephone and wish to speak directly with a veterans Benefits Counselor, consult the white pages of your local telephone directory under U.S. Government, Veterans Administration, for the benefits information number. Even if you are not located near a large city all states have toll-free telephone services to VA regional offices. The 800 telephone number listed after each regional office below is the toll-free number in your state. Remember, if you are near a major city this 800 number may not work, in which case check your local directory.

Montgomery, Alabama 36104
474 S. Court St.
800-392-8054

Juneau, Alaska 99802
Federal Bldg., U.S. Post
Office & Courthouse
709 W. 9th St.

Phoenix, Arizona 85012
3225 N. Central Ave.
800-352-0451

Little Rock, Arkansas 72201
1200 W. 3rd St.
800-482-8990

Los Angeles, California 90024
Federal Building
11000 Wilshire Blvd.
West Los Angeles

San Diego, California 92108
2022 Camino Del Rio North
800-532-3811

San Francisco, California 94105
211 Main Street
800-652-1240

Denver, Colorad- 80225
Building 20
Denver Federal Center
800-332-6742

Hartfore, Connecticut 06103
450 Main St.
800-842-4315

Wilmington, Delaware 19805
1601 Kirkwood Highway
800-292-7855

Washington, D.C. 20421
941 N. Capitol St., N.E.

St. Peterburg, Florida 33731
144 1st Ave. S.
800-282-8821

Atlanta, Georgia 30308
730 Peachtree St., N.E.
800-282-0232

Honolulu, Hawaii 96850
PJKK Federal Bldg.
300 Ala Moana Blvd.
800-546-2176

Boise, Idaho 83724
Federal Bldg. &
US Courthouse
550 W. Fort St.
800-342-2681

Chicago, Illinois 60611
536 S. Cairk St.
800-666-6500

Indianapolis, Indiana 46204
575 N. Pennsylvania St.
800-382-4540

Des Moines, Iowa 50309
210 Walnut St.
800-362-2222

Wichita, Kansas 67218
5500 E. Kellogg
800-362-3353

New Orleans, Louisiana 70113
701 Loyola Ave.
800-462-9510

Togus, Maine 04330
800-452-1935

Montgomery & Prince Georges Counties, Md.
Washington, D.C. 20421
941 N. Capitol St., N.E.

Baltimore, Maryland 21201 (all other Md. counties)
31 Hopkins Plaza
Gederal Bldg.
800-492-9503

Towns of Fall River & New Bedford
Counties of Barnstable, Dukes, Nantucket,
part of Plymoutn, & Bristol are served by
Providence, R.I. 02903
321 S. Main St.
800-556-3893

Boston, Massachusetts 02203
John Fitzgerald Kenedy Fed. Bldg.
Govt. Center
800-392-6015

Detroit, Michigan 48226
Patrick V. McNamara Fed. Bldg.
477 M shigan Ave.
800-482-0740

Jackson, Mississippi 39204
Southport Off. Bldg.
2350 Highway 80 West
800-682-5270

St. Louis, Missouri 63103
Rm. 4600, Fed. Bldg.
1520 Market St.
800-392-3761

Fort Harrison, Montana 59636
800-332-6125

Reno, Nevada 89520
1201 Terminal Way
800-992-5740

Manchester, New Hampshire 03103
Norris Cotton Fed. Bldg.
275 Chestnut St.
800-562-5260

Newark, New Jersey 07102
20 Washington Place
800-242-5867

Albuquerque, New Mexico 87102
Dennis Chavez Fed. Bldg.
U.S. Courthouse
500 Gold Ave., S.W.
800-432-6853

Buffalo, New York 14202
Fed. Bldg.
111 W. Huron
800-462-1130

New York City, New York 10001
252 Seventh Ave.
800-442-5882

Wiston-Salem, North Carolina 27102
Federal Bldg.
251 N. Main St.
800-642-0841

Fargo, North Dakota 58102
21st Ave. & Elm St.
800-342-4790

Pittsburgh, Pennsylvania 15222
1000 Liberty Ave.
800-242-0233

San Juan, Puerto Rico 00918
US Courthouse & Fed. Bldg.
Carlos E. Chardon St.
Hato Rey

Providence, Rhose Island 02903
321 S. Main St.

Columbia, South Carolina 29201
1801 Assembly St.
800-922-1000

Sioux Falls, South Dakota 57101
Courthouse Plaza Bldg.
300 North Dakota Ave.
800-925-3550

Houston, Texas 77054
2515 Murworth Dr.
800-392-2200

Waco, Texas 76710
1400 N. Valley Mills Dr.
800-792-1110

Salt Lake City, Utah 84138
Fed. Bldg.
125 S. State St.
800-662-9163

White River Junction, Vermont 05001
800-622-4134

Virginia
Washington, D.C. 20421
941 N. Capitol St., N.E.

Roanoke, Virginia 24011
210 Franklin Rd. SW
800-542-5826

Seattle, Washington 98174
Federal Office Bldg.
915 2nd Ave.
800-552-7480

W. Virginia
Brooke, Hancock, Marshall & Ohio Counties
Pittsburgh, Pa. 15222
800-642-3520

Remaining Counties in W. Va.:
Huntington, W. Virginia 25701
502 Eighth Street
800-642-3520

Milwaukee, Wisconsin 53202
342 N. Water St.
800-242-9025

Cheyenne, Wyoming 82001
2360 E. Pershing Blvd.
800-442-2761

TRANSITIONAL AID RESEARCH
PROJECT FOR EX-OFFENDERS

1800 M Street, N.W. Washington, D.C. 20036 202/331-2252

184 May 30, 1978 "Q"

TO: Melvin T. Axilbund

FROM: Robert M. Horowitz

RE: Inmate's Rights to Minimum Wages Under the Fair Labor Standards Act

Question: Do the 1974 Amendments of the Fair Labor Standards Act apply to inmates who work while in state correctional institutions?

The 1974 Amendments to the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 et seq., expanded the Act's scope to include previously exempted employees. Coverage was mandated for employees of states and their political subdivisions, 29 U.S.C. §203 (d)(e). While the Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1977) narrowed the Amendment's reach, it did not tamper with employees, engaged by public agencies, who perform non-traditional government jobs. As an illustration, the Court stated that employees of a state-run railroad will still qualify for coverage under the new Amendments. The incorporation of public agency-employees into the FLSA gives rise to the above-stated question.

Pre-1974

Prior to these Amendments, few courts entertained the issue of inmate's entitlement to minimum wages. When inmates did raise this right, the courts uniformly sided against them, citing as grounds the Eleventh Amendment, the Thirteenth Amendment, and/or the FLSA. Sprouse v. Federal Prison Industries, Inc., 480 F.2d 1 (5th Cir. 1973); McLaughlin v. Royster, No. 13,881 (4th Cir. Sept. 8, 1969); State Board of Charities and Corrections v. Hayes, 227 S.W2d 282 (Ky. 1920); Worsley v. Lash, 421 F. Supp. 556 (N.D. Ind. 1976);1/ Sigler v. Lowrie, 404 F.2d 659 (8th Cir. 1969).

1/ Although this case was decided in 1976, the facts presented predated the 1974 Amendments.

In the absence of congressional authorization (or state waiver)[2] the Eleventh Amendment's grant of sovereign immunity barred inmate suits alleging FLSA violations. In this respect, inmates were not singled out. All government employees seeking relief under the Act received like treatment. Employees v. Missouri Public Health Department, 411 U.S. 279 (1973). Where inmates merited unique consideration was under the Thirteenth Amendment, which bans involuntary servitude "except as punishment whereof the party shall have been duly convicted." U.S. Const. Amend. XIII, §1. The courts construed this section to permit compulsory inmate labor at slave wages.[3] Finally, the FLSA, at this time, did not afford the inmate a substantive right to minimum wages as, with limited exceptions, state employees were not covered by the Act.

Post-1974

Following the 1974 Amendments to FLSA, a reevaluation of the inmate's status vis-a-vis the Act might result in a different outcome. The Eleventh Amendment jurisdictional bar is no longer viable and the Act itself now addresses government workers.

Within the 1974 Amendments, Congress has exercised its authority to withdraw sovereign immunity for FLSA cases by providing that "an action to recover the liability... may be maintained against any employer (including a public agency) in any Federal or State Court..." 29 U.S.C. §216 (b)(1974). According to the Third Circuit, the "legislative history of the 1974 Amendments to the FLSA makes clear the fact that the Amendment to this section was expressly designed to overcome the ruling in Employees..."[4] Dunlop v. State of New Jersey Employees, 522 F.2d 504, 515 (3rd Cir. 1975). Thus, the corrections department, as the public agency charged with administering the prisons, may now be exposed to FLSA complaints. Such suits now have a substantive basis as the Amendments cover state employees. The key factor here is whether, under the FLSA, working inmates are classified "employees."

2/ It is a well-established principle that Congress may negate this immunity, as might the states. Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959).

3/ A distinction must be drawn between compulsory inmate labor and wages. While many states have legislation compelling its inmates to work, the question of wage entitlement for their efforts is a separate issue. The exception found in the Thirteenth Amendment, while permitting forced labor in this instance, does not by itself necessarily affirm the right of government to ignore compensation obligations. This point is discussed more fully in the succeeding section.

4/ Employees v. Missouri Public Health Dept., supra.

Traditionally, corrections departments and, in turn, the courts have maintained that laboring inmates are not employees. Consequently, inmates have been frustrated when claiming various rights associated with protective labor laws. These include requests for workmen's compensation, Reid v. New York State Department of Correctional Services, 387 N.Y.S.2d 589 (A.D. 1967); Frederick v. Men's Reformatory, 203 N.W.2d 797 (Iowa 1973); Watson v. Industrial Commission, 414 F.2d 144 (Ariz. 1966); and unionization rights, Sala v. P.L.R.B., Ct. Comm. Pls, Delaware Co., Penn. (1977),5/as well as efforts to obtain minimum wage. Reasons behind this non-employee stance are numerous and diverse, ranging from work as a rehabilitation tool primarily for the inmate's benefit, to lack of traditional employment symbols, such as free will, contracts, and, ironically, fair wages.

If prior wage practices are allowed to defeat contemporary claims for fairer wages, the FLSA would be impotent. Fortunately, the Act removes from the employer the right to set minimum wage scales and coverage. Common law classifications of employer-employee are also put aside. Walling v. Portland Terminal Co., 330 U.S. 148 (1947). Instead, the FLSA, aided by court-created tests, determines employment, which take precedence to any prior and contrary custom. Leone v. Mobil Oil Corp., 173 U.S. App. D.C. 204, 523 F.2d 1157 (1975).

The courts, in weighing employment status under the Act, are guided by two general precepts. Due to the Act's remedial nature, it is to be liberally construed, with doubts resolved in favor of coverage, and, inversely, its enumerated exceptions, 29 U.S.C. §213, are to be narrowly construed against the employer asserting them, again with the net outcome favoring coverage. Powell v. United States Cartridge Co., 339 U.S. 497 (1950). Actual employment determinations rest upon an economic reality test which looks to the whole of the work activity, digging beneath the veneer of formal contracts or isolated factors. Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947); Goldberg v. Whitaker House Cooperative, Inc., 366 U.S. 28 (1961). Several components go into this analysis, such as degree of skill, control, opportunity for profit or loss, and capital investment. In many respects, the working inmate, under this inspection, represents the model employee.

To refute this conclusion, corrections administrators cling to the position that inmate labor is rehabilitative and, therefore, for the worker's sole benefit. This interpretation, however, ignores

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5/ In the recent Supreme Court case which denied inmates their First Amendment right to associate to form unions, the decision was not based upon employment status but upon the Court's acceptance that this activity potentially endangered the institutions security. Jones v. North Carolina Prisoners' Labor Union, Inc., 430 U.S. 927 (1977).

the reality of inmate labor. Most inmate jobs concern institutional maintenance and upkeep. According to a LEAA survey, over 65% of all inmate work assignments in 1974 involved kitchen duty, maintenance and repair, janitorial, administrative, laundry, and grounds upkeep. National Prisoner Statistics, Survey of Inmates of State Correctional Facilities, 1974, 33 (1976). These jobs fail to teach marketable skills and accomplish little more for the inmate than reduce boredom and idleness. Every study of prison labor confirms the near total lack of rehabilitative benefit for these occupations. G. Levy, R. Abram, D. LaDow, Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey (1975). Any benefit derived from inmate work primarily accrues to the state in the form of cheap labor.

At times an inmate may prosper from his prison job by learning new skills. This too infrequent occurrence need not abrogate the right for equitable wages. Most jobs in the free labor market contain elements of mutual benefit for the employer and employee. Learning skills while working is hardly unique to the prison setting. Even in an apprenticeship or training program, the court may pierce the formal relationship and, under the economic reality test, conclude that the "trainees" tasks substantially promote the employer's interests, thereby imposing FLSA obligations. Bailey v. Pilot's Ass'n for Bay & River Delaware, 406 F. Supp. 1302 (E.D. Penn. 1972).

Prior to the 1974 Amendments, the status of institutional labor under the Act had been settled by the courts in the case of work performed by mental patients in private institutions. In Souder v. Brennan, 367 F. Supp. 808 (D.D.C. 1973), the court ordered the Secretary of Labor to enforce the FLSA on behalf of patient-workers at non-federal institutions for the mentally ill. In determining the patient-workers employment status under the economic reality concept, the court concluded:

> ...The reality is that many of the patient workers perform work which they are in no way handicapped and from which the institution derives full economic benefit. So long as the institution derives any consequential economic benefit, the economic reality test would indicate an employment relationship rather than mere therapeutic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen help, messengers, and the like.

See also Weidenfeller v. Kudulis, 380 F. Supp. 445 (E.D. Wis. 1974).

Shortly after these cases and the passage of the 1974 Amendments, the courts faced the same issue but with respect to government run institutions. Having already determined that institutional labor

was employment for purposes of the Act, they next had to decide whether the Eleventh Amendment still shielded the states from litigation. In King v. Carey, 405 F. Supp. (W.D. N.Y. 1975), the plaintiffs, juveniles civilly committed to detention centers under "need of supervision" statutes, brought suit under the hours provision of the FLSA. The state moved to dismiss upon the grounds commonly used to deny inmates wage and hour protection, the Eleventh and Thirteenth Amendments and the FLSA itself. The court dismissed the Eleventh Amendment claim, citing a recent Supreme Court decision which upheld prospective relief in §1983 actions against state officials. Edleman v. Jordan, 415 U.S. 651 (1974). In a footnote the court observed that the new Amendments to the FLSA also appear to eliminate "the barrier that had prevented recovery of back wages." King v. Carey, supra at 42. The Thirteenth Amendment claim failed due to the nature of the commitment, which was civil, and therefore beyond the Amendment's purview. With the 1974 Amendments, the claim that the FLSA did not encompass employees of public agencies could no longer stand.

Another FLSA case within an institutional setting was Carey v. White, 407 F. Supp. 121 (Del. 1976). In this case the court rejected the public agency-employers motion to dismiss which was founded upon the Eleventh Amendment, thereby permitting the patient-employees of a mental institution to pursue their course of action.

The policy of narrowly construing FLSA exemptions also played a role in these decisions. In Souder, supra, at 813, the court took note that the Act's exemptions are specific, numerous and detailed. None of them concern or address the patient-worker and, therefore, the penchant was to favor employment. Similarly, the exemptions are silent on inmate labor. The legislative history does not suggest that failure to exclude this employment was a mere oversight by Congress. Congress was aware that inmates work while in prison, and that this work may be subject to the various labor laws. In 1970 and again in 1976, when Congress amended the Federal Unemployment Tax Act (FUTA) to assure coverage of state government employees, they specifically included in the exemption provisions the inmate laborer. 26 U.S.C. §3309 (b)(6). The absence of a similar exemption in the wage and hour law not only supports the contention that inmates are to be covered but also implies that Congress, in light of the exemption in FUTA, considers the inmate an employee entitled to labor law benefits unless otherwise excluded.6/

The primary impediment to inmate coverage under the FLSA is the Thirteenth Amendment. Due to the Supremacy Clause, the Amendment

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6/ At this time one can only speculate as to the motive of Congress for disparate treatment for offenders under the two labor laws. One explanation is that while inmates are entitled to their just wages for work performed, forced and inevitable unemployment (or change of jobs) due to their eventual release should not give rise to unemployment insurance rights.

takes precedence over any conflicting legislation. There is, however, no contradiction between the Thirteenth Amendment and the FLSA. Congress and/or state legislatures may enact inmate legislation that is harmonious with the Amendment. In fact, Minnesota has already extended "prevailing" wages to inmates employed by private industries operating shops on corrections property, Minn. Stat. Ann. §243.88 , and all state work release laws demand that inmate participants receive the going wage. There are also sporadic instances of inmates receiving other labor protections such as workmen's compensation. 18 U.S.C. §4126 (1969); Md. Ann. Code Art. 101 §35 (1972); Ore. Rev. Stat. §655.505 (1968). Any construction that the FLSA covers inmate workers, in light of its liberal coverage, absence of a specific exemption, and inclusion of state employees, is constitutionally permissible. Furthermore, there exists growing grounds to believe that this interpretation might find favor with the courts.

Historically, the courts had adopted a "hands off" attitude with respect to corrections issues. As a result, basic constitutional rights did not thrive in prisons. Today, the courts are reversing this stance and assuming an active role. Instead of suppressing inmate rights, courts have become solicitous of the inmate's welfare. Repeatedly, decisions are rendered under a standard first promulgated by the Sixth Circuit, that "[A] prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication, taken away from him by law." Coffin v. Reichard, 143 F.2d 433, 445 (6th Cir. 1944), cert. denied, 325 U.S. 887 (1945).

This emerging attitude is manifested by rights recently assured to inmates, including religious freedom under the First and Fourteenth Amendments, Cruz v. Beto, 405 U.S. 319 (1972); access to courts, Younger v. Gilmore, 404 U.S. 15 (1971), aff'd, Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970); protection from invidious discrimination based on race under the Equal Protection Clause of the Fourteenth Amendment, Lee v. Washington, 390 U.S. 333 (1968); freedom of speech under the First Amendment, Procunier v. Martinez, 416 U.S. 396 (1974); and Fourteenth Amendment due process rights, Wolff v. McDonnel, 418 U.S. 539 (1974). While this judicial activity has been most intense in inmate claims of constitutional dimensions, the trend evidences a move to include certain rights statutorily founded, especially if they impact upon rehabilitation efforts.

When rehabilitation is an officially stated objective of a corrections system, the courts feel more compelled to police those policies and practices which contribute (or fail to contribute) toward this end. Such scrutiny and subsequent remedial orders may not always be rooted in constitutional concepts. One federal court recently ordered the New Hampshire corrections department to take affirmative steps toward rehabilitation, including the utilization of inmates on prison jobs which will teach marketable skills. While the Thir-

teenth Amendment exception to involuntary servitude on its face permits "meaningless" jobs, the court concluded that once the state avows its intent to rehabilitate, it cannot shirk from this duty. Laaman v. Helgone, 437 F. Supp. 269 (D.N.H. 1977).

Minimum wage protection falls within the rehabilitation gamut. Numerous studies have concluded that without a fair wage base, any work experience within prison will have a negative or neutral impact upon the worker. This was one of the conclusions drawn by the commission convened to ascertain the causes for the infamous prison riot at Attica. As part of their report, they recommended that inmates be afforded the same rights as ordinary citizens, except the liberty of person, and more specifically to include "adequate compensation for work performed." 7/

7/ New York State Special Commission on Attica, Attica 49-51 (1972).

Prison Industries, January 1976

State	Wage Scale	Percent Inmate Population Employed	Average Weekly Salary	Forced Savings Requirement	Use of Prison Profits
Alabama	none				
Alaska	no industries program				
Arizona	$.02 - .35/hr.	22	$.20/hr.	50%	operation of industries program
Arkansas	none	4		0	expansion
California	.06 - .35/hr.	10	6.29	0	equipment, construction, new industrial programs, State General Fund
Colorado	.15-.75/day*				
Connecticut	.38-.74/day*				
Delaware	.23-1.14/day*	90		0	returned to State Treasurers General Account
District of Columbia	3.18-3.63/day*				
Florida	none	7		0	expansion and improvement
Georgia	none	4		0	operational and capital outlay, state Treasury
Hawaii	.12 - .30/hr.	5	6.00	yes	expansion, salaries, materials and equipment
Idaho	.15 - .40/hr.	10	9.37	50%	no profits yet, earmarked for vocational training
Illinois	.15 - .50/hr or 10.00-100.00/mo.	8	12.50	0	placed in revolving trust fund for future use by industries

Prison Industries, January 1976

State	Wage Scale	Percent Inmate Population Employed	Average Weekly Salary	Forced Savings Requirement	Use of Prison Profits
Indiana	.20 - 1.00/day	25	4.00	0	returned to State General Fund
Iowa	.50-1.00/day*				
Kansas	.10-.20/day*				
Kentucky	.08 - .25/hr.	11	3.50	0	invested in industries, new programs, equipment
Louisiana	.15-.38/day*				
Maine	none	33		0	staff salaries, equipment, utilities
Maryland	.60 - 1.20/day	5	30.00-40.00/mo.	until saved 20.00	returned to industries revolving fund
Massachusetts	.25-1.50/day	10	5.00	50%	credited Industries Compensation Fund (since '70 end up in Commonwealth General Fund)
Michigan	.20-2.00/day*				
Minnesota State Prison	.30-2.50/day	41	7.50	50%until 100.00 saved	into prison industries and non-industrial expenses of the institution
State Reformatory	.85-1.80/day	35	21.73/mo.		
Mississippi	none	60	0	0	General Fund
Missouri	20.00-50.00/mo.	33		0	industries salaries, expansion, equipment
Montana	up to 1.00/day			25%	pay wages supplies and equipment for production

Prison Industries, January 1976

State	Wage Scale	Percent Inmate Population Employed	Average Weekly Salary	Forced Savings Requirement	Use of Prison Profits
Nebraska	.50-1.00/day	9	4.18	0	equipment
Nevada	.27-.68/day*				
New Hampshire	.75-1.25/day	25	7.00	0	State General Fund
New Jersey	.80-1.15/day	12		0	operation costs, salaries, equipment
New Mexico	1.89/day*				
New York	.09-.29/hr.	14	6.00	0	returned to the State
North Carolina	.40-1.00/day	10	3.13	0	expand industries, supplement depreciation reserves
North Dakota	.50/day*				
Ohio	.10/hr.	14	20.00/mo	.04/hr.	updating manufacturing equipment & shops
Oklahoma	.09-.68/day*				
Oregon	.50-3.00/day	25	30.00/mo.	25%	Inmate Injury Fund, Work Release Loan Fund
Pennsylvania	.15-.30/hr.	20	9.80	0	equipment, improve production methods vocational instruction, new industries
Rhode Island	2.00/day	10-15	10.00	25%	
South Carolina	6.00-28.00/mo.	10	1.50-7.00	5.00/wk. until 100.00	toward improvements throughout department
South Dakota	.75-1.50/day	25	5.60	25%	renovation, new equipment, training, State General Fund
Tennessee	.05-.49/hr	25	8.00	0	upgrade industries equipment & facilities

Prison Industries, January 1976

State	Wage Scale	Percent Inmate Population Employed	Average Weekly Salary	Forced Savings Requirement	Use of Prison Profits
Texas	none	10			update equipment, purchase buildings machinery for industries, staff salaries
Utah	.70-1.60/day	30	5.00	0	prison budget
Vermont	.33/hr.	10	13.20	0	return to capital or increase inmate wages
Virginia	.40-.45/day*				
Washington State	.75-1.88/day*				
West Virginia	.27-.68/day*				
Wisconsin	.50/day*				
Wyoming	.25/day*	75	1.00	0	General Fund
United States	.26-.65/hr.	20	9.75-24.37	0	run industries, vocational training program

* 1971 Prison Industries wage rate

TRANSITIONAL AID RESEARCH PROJECT FOR EX-OFFENDERS

1800 M Street, N.W. Washington, D.C. 20036 202/331-2252

MEMORANDUM

"S"

TO: Rosen, Grisby, Lenihan, Rossi, Axilbund

FROM: Robert Horowitz

RE: Post-Release Assistance in England, Sweden, Denmark and the Netherlands

DATE: January 30, 1978

In November, 1977, I requested information from the corrections departments of the above named countries concerning post-release assistance policies and related topics. These countries were selected because 1) they are considered to have enlightened correctional policies and 2) the ABA Corrections BASIC's project had already established contacts in these countries which I was able to use. Below I have summarized the replies I received:

I. Post Release Assistance

A. England

Most inmates receive a "discharge grant" at release. The rates are reviewed annually with each review of the state welfare benefit payments. Currently they are set at 27.70 pounds* for a homeless person and 12.80 pounds for one who is returning to an established home. Inmates not receiving this grant and who remain in the United Kingdom at release are paid a subsistence allowance to cover the period until they reach a State Welfare office. These rates range from .35 pounds (for a journey of 2-5 hours) to 2.25 pounds when overnight lodging is called for.

In addition, every discharged inmate receives a travel warrant to his home or destination within the British Isles, and clothing dependent on the length of sentence.

* The exchange rates as of Jan. 30, 1978 according to Deak & Co. Exchange are as follows:

	Buy	Sell
English pound	$1.910	$1.9950
Danish Kronin (d.Kr.)	.1660	.1800
Netherlands hfl	.4320	.4525
Swedish Crown	.2080	.2215

Discharged prisoners who have no jobs are entitled to state assistance, subject to the same rules as any other needy and/or unemployed persons.

B. Sweden

There is no special post-release assistance provided released prisoners. The aim is that every releasee shall have a job and an apartment or other accomodation arranged before release. If a job cannot be arranged he receives financial aid from the social welfare authorities as any other Swedish citizens without employment.

C. Denmark

Inmate receives on release 4,16 d.Kr. for each day incarcerated.

D. Netherlands

Detainees who are unable to find work after release can claim an unemployment benefit of 80 percent of the pay they earned before their detention, with a minimum of hfl. 1673,10 gross per month (actual minimum monthly pay). This claim is only valid when they were entitled to such a benefit prior to their detention. Those not entitled to receive this benefit can claim an allocation under the provisions of the Social Security Act. Single persons receive hfl. 851,50 net/month, and they do not have to pay the insurance premium for medical costs. Payment increases with family size, e.g. 2 would receive hfl. 1216,40/month.

II. Relevant Labor Practices

My second major inquiry concerned prison labor. In particular, I was interested in ascertaining whether the inmate wage scales afford the possibility of amassing savings for post-release use. With few exceptions, European practices in this area are similar to those adopted in the U.S. While they generally espouse meaningful work experiences as a major rehabilitative tool, and support in principal recommendations for meaningful wages, the actual wages tend to be small and intended for internal prison purchases like tobacco etc.

A. England

Various wage schemes are used, depending upon the job. These include flat rates, piece rates, and incentive wages. Periodic adjustments are also made to account for cost-of-living increases. Regardless of the pay scheme, wages mirror American practices and are very low. Maximum weekly wages range from 66 p in detention centers to 293 p under a work study higher incentive earnings scheme. These wages are too insignificant to permit savings. Most of it is spent at the prison canteen. For example, a study revealed that almost 70 percent of the pay for those receiving

flat wages was spent on sweets and tobacco products.

Although various groups have pressed for inmates' to receive prevailing wages (around 60 pounds/wk), the Home Office has resisted, stating that the total cost (120 million pounds/year) cannot be afforded. In addition, the Office views increased wages as a transfer action, changing the cost of maintaining inmates' families from the social services to the prison service (after deductions for maintenances, National insurance, tax etc. are taken from inmates wages).

B. Sweden

Sweden has been in the vanguard of promoting equitable wages for its inmates. Begining in 1973, an experimental program was initiated at Tillberga Institution to pay inmates competitive wages (1975 expanded to Skogome). Attached is a more detailed discription of this program. Aside from trying to emulate free labor conditions, a stated objective of this program is to help the inmate save money for future use. Money management advice is also given to assist the inmate in paying back loans, helping the family, etc. It is hoped that by release, each inmate will have saved 600-800 Crowns. [Even prisoners not engaged in one of these experimental programs, receive decent wages compared to practices in the U.S., ranging from $.60 to $1/hour. In addition, inmates who attend academic and vocational school are paid $.60/hour]

C. Denmark

Like England, prison wages are minimal. In 1975 the rate was 65 d.kr. per week, subject to reduction if sufficient work is not demonstrated. Most of the earnings go toward purchases within the institution, although some may be saved and returned to the inmate with interest at release. Inmates participating in vocational and educational programs are entitled to the same wage.

D. Netherlands

Wages here also tend to be marginal. A recent project has started for long term offenders (sentences of over 6 months) where an inmate, dependent on the quality of his work and his general work attitude, can earn in addition to the general daily wage of hfl. 3,85, allowances between hfl. 0.40 and hfl. 4,80 (at a maximum of hfl. 45. per week).

In light of the above, it would appear that the major advantage released inmates have in these European countries stems from their farther reaching social welfare programs. Whereas we found that ex-inmates tend to be ineligible for major income transfer programs in the United States, it seems as though releasees from the four European countries queried are not so disqualified. On a comparative law basis therefore, a special exception for releasees in one of our assistance programs would bring us up to parity with these major Western nations.

Inmates Work For Free Market Wages At Tillberga Prison

To prison reformers in Sweden and most other western countries, one of the most repugnant aspects of institutional life is that inmates are forced to work for little or no pay. This fact makes a mockery, the reformers say, of any prison system's claim that it attempts to uphold the human dignity of its inmates.

During the agitation for prison reform in Sweden during the late sixties and early seventies, the prisoners' obligation to work, their working conditions and their pay were a repeated source of conflict. The reformers, both within and outside the Swedish National Correctional Administration, succeeded in getting Swedish inmates' pay increased until today it is probably the highest prison wage in the world; all Swedish inmates now earn between $.60 and $1 an hour, tax free, for both working and attending school. In contrast, most American inmates are either not paid at all for their work or earn a maximum of $1 a day.

In 1972, the Correctional Administration, in part out of a natural zeal for experimentation and in part to hush its critics, went all the way. It converted the State institution at Tillberga into what may be the first prison in the world to pay its inmates regular wages for their work.

Tillberga, located about 120 miles west of Stockholm, was built in 1903 as an open, national "factory-prison" of the kind typical in Sweden.

Its principal industry is a factory for the construction of prefabricated houses. The houses are sold by a state-owned firm called The Key House, Inc., with sales offices in 20 Swedish cities. Recently, about 40 of Tillberga's 80 inmates were working in the house factory. Twenty others worked in a machine shop producing metal products for the state. The rest worked in the prison kitchen or in institutional maintenance jobs.

Though the house factory is the only job that produces products for the private market, all inmates at Tillberga are paid free market wages. Those who work in the factory are members in good standing of the construction trades union. Every year all Swedish trade unions together negotiate pay increases with the government; the inmates get the same pay raises as everyone else.

The wages at Tillberga, however, are *not* exactly the same as those in private industry. They range from 6.9 to 15 Swedish kronor ($1.65 to $3.60) per hour, about 30 per cent less than the wages of ordinary factory workers. The reason the prison wages are lower is that the inmates do not pay any national income tax, which amounts to about 30 per cent of income for a factory worker's tax bracket.

The inmates do not pay taxes because of stringent Swedish laws protecting their privacy. If they paid taxes, they would have to file income tax returns. In Sweden, income tax returns are considered public documents, and all public documents are open to public, and media, inspection. So the newspapers would be able to look up the inmates' tax returns and find out their names. (Except in the cases of well-known people, Swedish newspapers never publish the names of those accused or convicted of crimes. When inmates are released from prison, they are not required to tell potential employers that they have been in prison, and the employers are forbidden to ask.)

When "market adapted wages," as they are called, were introduced, the first thing that had to be done was to retool the factory so that the machinery was up to date. The physical plant of the factory was expanded from 5,000 square meters to 8,000. Production for the first year was slow, but within two years the productivity of the inmates surpassed that of private firms. One reason for this was that the prison factory did not have as serious a problem with absenteeism as private companies. The Correctional Administration earns 16 million kronor ($4 million) a year from the sale of the houses. Oddly enough, the Administration has not yet done a fiscal analysis to see if the sale of the houses offsets the cost of running the institution.

Today, the prison factory is capable of producing 427 houses a year — slightly more than one a day. The prisoners used to build the entire house, including the interior, but now they make only the shell. The parts of the house made by the inmates sell for about 40,000 kronor ($10,000). A completed house, depending on the price of the land and the quality of the interior, will sell for between $50,000 and $100,000.

The construction of the houses does not require great skill, which is why the wages of the inmates, and their counterparts in private firms, are so low. Putting one of the houses together is a bit like doing a puzzle, one factory foreman said, and most of the skills involved can be learned in a few days.

The factory work is the only program at Tillberga now. There is no academic or vocational education; there are no counseling or therapy programs. The inmates spend all their time working. Because of the tedium of their workers' existence, they are given special furlough privileges. All Tillberga inmates are permitted furloughs every two weeks, as opposed to every two months in other prisons. The escape rate on furlough is much lower — about 2 per cent — at Tillberga than at other prisons.

The experiment at Tillberga was implemented in 1972 with surprisingly little difficulty. The powerful trade unions, whose leaders could easily have vetoed the idea, raised no major objections. As in other countries, the Swedish labor unions have generally blocked the sale of inmate-made products on the private market on the grounds that cheap inmate labor would give the prison-made goods an unfair price advantage and cost civilian workers their jobs. But as long as the inmates

were paid the same wages as other workers, and as long as the houses the inmates produced were not sold at prices below those of private companies, and as long as there was a good market for the houses — which there was — then the union had no objections.

But there have been other problems. The principal one is that most Swedish inmates intensely dislike Tillberga and are not interested in going there. The number of applications is so small that Tillberga's officials are able to accept 60 per cent of them.

The reason for this, prison officials say, is, first, that most Swedish inmates are not interested in doing hard work and, second, that there is no immediate financial advantage to Tillberga inmates because prison officials take away most of the money they earn.

Tillberga's inmates are permitted to keep as spending money only 25 per cent of their wages. Since they earn, on the average, about $100 a week, this comes out to about $25 a week. The rest is used to help support their families, to pay their debts, and to pay for their food in prison, which costs about $20 a week. If any money is left over, it must go into a savings account for use when they are released. On the other hand, inmates making the maximum wage in regular prisons earn about $40 a week, and they are given this money in cash to do with as they wish.

Tillberga has never been seen by prison officials as a first step in giving inmates their "right" to free market wages. Rather, it has been viewed primarily as an experiment in the rehabilitation and resocialization of offenders. The idea behind it, officials explained, is to improve the offender's chance of success on parole by forcing him to accumulate some savings and giving him a head start in paying off his debts.

The debts might include a fine that accompanied the prison sentence, loans that he took out while he was free, and, most important, restitution. In Sweden, almost all offenders are routinely ordered to make restitution to their victims, even in the case of personal injury or large thefts like bank robberies. Some of them are saddled with restitution debts of as much as $250,000, though in most cases they amount to no more than a few hundred dollars. In addition, the ever-vigilant Swedish tax authorities will force offenders to pay taxes on the value of stolen money and merchandise if the amount is significant. Offenders' obligation to pay tax and restitution debts has been cited by reformers as a major cause of recidivism, since offenders who find it impossible to meet their payments have a tendency to try to do so by committing new crimes. It has often been recommended that a prisoner's debts be wiped out after he is released, but restitution is such an integral part of the Swedish corrections system that this is not likely to happen soon.

The Correctional Administration has been studying the Tillberga experiment from its inception to see if it reduces recidivism. The answer is yes and no. The study took a sample of inmates released from Tillberga and compared their success in the community with a matched sample of inmates released from regular prisons. The Tillberga inmates did significantly better during the first year after their release. Six months after release from prison, 20 per cent of the Tillberga inmates had been rearrested, compared with 36 per cent of the control group.

After 12 months, the proportion of Tillberga inmates rearrested was 38 per cent, compared with 51 per cent for the control group.

But after two years on the street, the recidivism rate for the Tillberga group was found to be almost the same — about 60 per cent — as for the control group.

Nonetheless, the Correctional Administration is pleased enough with the Tillberga experiment that it has expanded it to a second prison — the closed institution at Skogome near Goteborg. The Administration has also proposed to further expand the experiment to three other institutions, but the government has so far refused to provide the necessary funds. □

— Michael S. Serr

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MILL CREEK CREDIT UNION

Informational Statement

The Mill Creek Credit Union is proposed as a service by and to felonious offenders and ex-offenders of the criminal justice system, and members of their immediate families who reside within the State of Oregon.

For your information the following facts are set forth:

1. Credit unions must be legally chartered and incorporated by either the Federal government or State government, are required to be insured, and are subject to governmental monitoring and auditing.

2. State law defines a credit union as a cooperative, non-profit association, incorporated under the laws of this state, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

3. Members of a credit union must have a common bond such as employment of a similar nature, employment by a single company, membership in an organization established for other purposes of mutual interest, or recipients of a service by a single agency or organization of a nature which provides a common bond.

4. Presently, it is the understanding of those planning this credit union, there is no credit union in the United States with an exclusive membership of offenders and/or ex-offenders. Massachusetts Half-Way Houses Incorporated does have a credit union, the majority of whose members are ex-offenders. The State of Washington attempted to establish a credit union for ex-offenders, and Delancy Street in San Francisco, a program for ex-offenders, has a limited credit union.

5. A planning committee for the Mill Creek Credit Union comprised of seven ex-offenders established from a larger body of ex-offenders, has been meeting with State officials and interested advisors and have been encouraged that a State charter application will be given serious consideration on the basis that the status of offender or ex-offender of the criminal justice system is a common bond for membership in a credit union.

Considering the above facts, the Mill Creek Credit Union Organizing Committee proposes the following procedure in the establishment of a credit union.

A. Conduct a poll among offenders incarcerated at the Oregon State Penitentiary, the Oregon State Correctional Institute, the Oregon State Women's Correctional Center, other programs of the State Corrections Division, and through other contract with ex-offenders to determine the interest in a credit union for offenders and ex-offenders, and to receive the identification of prospective members should MCCU be created.

B. Based upon the poll should it be overwhelmingly opposed, abandon planning.

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C. Based upon the poll should it be favorable, call a meeting of a substantial number of prospective members and determine a minimum of five persons to be incorporators for the charter application, and determine a minimum of three persons for a supervisory committee.

D. The incorporators shall prepare and adopt by-laws for the general government of the credit union consistent with State law, and shall forward articles of incorporation and the by-laws to the Superintendent of the State Banking Division together with a required filing fee of $150.00 plus evidence that each incorporator has subscribed to a minimum of one (1) share in the credit union (by law share values may be not less than $5.00 per share) and a membership fee in the credit union; and plus evidence that the credit union has been properly insured and that each incorporator and other officer of the credit union has been properly bonded.

E. Upon issuance of a certificate of approval by the State Superintendent of Banking, assuming such certificate will be issued, the incorporators acting as the Board of Directors until the first annual membership meeting shall notify those who previously expressed membership interest so that membership in the credit union may develop and otherwise exercise such incidental powers as are necessary or requisite to enable the credit union to carry on effectively the business for which it is incorporated, and exercise those powers which are inherent in the credit union as a legal entity.

F. Within six months of the issuance of a certificate of approval, the incorporators (Board of Directors) will call the first annual meeting of the membership, make appropriate reports to the membership and conduct an election of the Board of Directors for the first full term of officers.

STEPS IN THE MILL CREEK CREDIT UNION

1. The Oregon Corrections Division applied for a $25,000 grant, to provide resources for ex-felons.

2. Dale Dodds, Corrections Division staff member, met with ex-felons in the Salem area - to determine if enough ex-felons were interested and willing to start a credit union. (August, 1975)

3. The ex-felons formed a group, chose an organizing committee, elected temporary officers, and began their work. (August, 1975, forward)

4. Representatives from the State Banking Division and the Oregon Credit Union League met with the organizing committee to provide information. (September, 1975, forward)

5. The organizing committee, with Corrections Division staff assistance, sampled the correctional institutions and field office caseloads for amount and type of interest among ex-felons still being supervised by the Division. (December, 1975 and January, 1976)

6. Having been assured that share insurance and bonding could be obtained, the organizing committee applied for a charter. (February, 1976)

7. Weekly meetings continued, as the advisors and the organizing committee processed requirements and dealt with issues they would run into after the credit union started. (August, 1975 through July, 1976)

8. The Charter was issued, upon receipt of certificates of share insurance and bonding, and the governor presented it (June, 1976) to organizing committee members.

9. A grant revision was filed, to allow the $25,000 to be used to pay credit union expenses (rent, telephone, forms, etc.) the first eighteen months. (June, 1976)

10. Forms were ordered, and the membership drive began. (June, 1976, forward)

11. Dates were set up with institution superintendents to offer inmates a chance to deposit any of their eligible monies with the credit union. (June, July, 1976)

12. A "Charter Member Kick-Off" was held, with anyone joining in the first month to receive a certificate of Charter Membership. This actually extended from the day the Charter was received, through July, 1976 - approximately six weeks.

AN ACT

To amend the Prison-Made Goods Act (U.S.C.A. 85: 1761(a)) to exempt goods produced by prisoners to whom all federal and state labor laws apply and who are paid prevailing wages, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

That Section (a) of the Prison-Made Goods Act (85 U.S.C.A. 1761) as amended, is amended by inserting "where prisoners are protected by state and federal labor laws and paid prevailing industry wages" after "or in any penal or reformatory institution" so that Section (a) reads:

"Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoner on parole or probation, or in any penal or reformatory institution where prisoners are protected by state and federal labor laws and paid prevailing industry wages, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

A PETITION

To amend Executive Order #11755, Section 1(a) by inserting the words, "or in the prison or reformatory where prisoners are protected by state and federal labor laws and paid prevailing industry wages," so that Section 1(a) reads:

"Section 1. (a) All contracts involving the use of appropriated funds which shall hereafter be entered into by any department or agency of the executive branch for performance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands shall, unless otherwise provided by law, contain a stipulation forbidding in the performance of such contracts, the employment of persons undergoing sentences of imprisonment which have been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by a contractor in the performance of such contracts of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by a contractor in the performance of such contracts of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community or in the prison or reformatory where prisoners are protected by state and federal labor laws and paid prevailing industry wages, under the laws of such jurisdiction, if...."

A BILL TO BE ENTITLED

AN ACT

To amend an Act known as the "Georgia Correctional Industries Act," approved March 17, 1960 (Ga. Laws 1960, p. 880), as amended, so as to change the composition of the Georgia Correctional Industries Administration; to provide for the method of appointment; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. An Act known as the "Georgia Correctional Industries Act", approved March 17, 1960 (Ga. Laws 1960, p. 880), as amended, is hereby amended by striking Section 3(a) and (b) which read as follows:

"Section 3.(a) The Administration shall be composed of the Commissioner of Offender Rehabilitation and six members to be appointed as follows: two members from industry to be appointed by the Governor; one member from labor to be appointed by the Commissioner of Labor; one member from agriculture to be appointed by the Commissioner of Agriculture; one member to be appointed by the President of the Senate; and one member to be appointed by the Speaker of the House of Representatives.

"(b) The first appointive members shall be appointed as provided in subsection (a) to take office on July 1, 1975. Of the members first appointed, the terms of the two members representing industry shall expire on June 30, 1979. Thereafter, their successors shall hold office for terms of four years and until the appointment and qualification of their successors. The terms of the remaining members first appointed shall expire June 30, 1977. Thereafter, their successors shall hold office for terms of two years and until the appointment and qualification of their successors. Vacancies occurring in the membership shall be filled in the same manner that original members are appointed for the remainder of the unexpired term.",
in their entirety and substituting in lieu thereof a new Section 3(a) and (b) to read as follows:

"Section 3.(a) The Administration shall be composed of the Commissioner of Offender Rehabilitation and nine members to be appointed by the Governor as follows:

#1 -- one member from industry selected from a list of three nominees to be submitted by the State Chamber of Commerce;

#2 -- one member from business to be selected from a list of three nominees submitted by the Georgia Business and Industry Association;

#3 -- one member from minority businesses selected from a list of three nominees to be submitted by the Urban League;

#4 -- one member from agriculture selected from a list of three nominees to be submitted by (a broadly representative state-wide agricultural organization);

#5 -- one member from labor selected from a list of three nominees to be submitted by the state organization of the A.F.L.-C.I.O.;

#6 -- one member selected from a list of three certified accountants submitted by the Georgia Society of Certified Public Accountants;

#7 -- one member selected from a list of three lawyers to be submitted by the State Bar of Georgia;

#8 -- one member selected from a list of three prisoners submitted by vote of inmates working in correctional industries.

(b) Members number 3, 6, 7, and 8 in Section (a) shall be appointed for a three-year term to begin July 1, 1976; members numbered 4 and 5 shall be appointed for a three-year term to begin July 1, 1977; members numbered 1 and 2 shall be appointed for a three-year term to begin July 1, 1978. Their successors shall also hold terms of three years and until the appointment and qualification of their successors. Vacancies occurring in the membership shall be filled in the same manner that original members are appointed for the remainder of the unexpired term.

In the event any organization authorized to submit nominees fails to do so after reasonable notice from the Governor, the Governor is authorized to appoint a person from that same sector of the public as the defaulting organization."

APPENDIX A

A BILL TO BE ENTITLED

AN ACT

To amend an Act approved March _____, 1956 (Ga. Laws 1956, pp. 161, 171) as amended, so as to lift restrictions on the earning ability of state prisoners; to provide for deductions from prisoner earnings; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

An Act approved March _____, 1956 (Ga. Laws 1956, pp. 161, 171) as amended, is hereby amended by striking (b), (c), and (f) which read as follows:

"(b) No goods, wares or merchandise, manufactured, produced, or mined wholly or in part, by the inmates of any prison or county correctional institution operated under the jurisdiction of the State Board of Corrections, shall be sold in this State to any private person, firm, association or corporation, except that nothing herein shall be construed to forbid the sale of such goods or merchandise to other political subdivisions, public authorities, municipalities or agencies of the State or local governments, to be consumed by them, or to agencies of the State to be in turn sold by such agency to the public in the performance of such agency's duties as required by law. This does not prohibit the sale of unprocessed agricultural products produced on State property.

"(c) Funds arising from the sale of goods or other products manufactured or produced by any prison operated by the State Board of Corrections shall be deposited with the treasury of the State Board of Corrections. Such funds arising from the sale of goods and products produced in a county correctional institutional institution or from the hiring of prisoners shall be placed in the treasury or depository of such county, as the case may be. The State Board of Corrections is authorized, pursuant to rules and regulations adopted by said board, to pay compensation of not more than $25 per month from funds available to said board to each prisoner employed in any industry.

"(f) Any provision of the Chapter to the contrary notwithstanding, any inmate of any prison or county correctional institution operated under the jurisdiction of the State Board of Corrections may sell goods, wares, and merchandise created by such inmate through the pursuit of a hobby or recreational

activity. The proceeds from such sales shall be distributed to the particular inmate who created such goods, wares, or merchandise. The State Board of Corrections is hereby authorized to promulgate rules and regulations governing the sale of such goods, wares, and merchandise and the distribution of the proceeds from such sales. All goods, wares and merchandise created by such inmate must be sold within the prison or on the prison grounds during visiting hours, or when on off-duty assignments.",

in their entirety and substituting in lieu thereof a new section (b), (c), and (f) to read as follows:

"(b) No goods, wares or merchandise, manufactured, produced, or mined wholly or in part, by the inmates of any prison or county correctional institution operated under the jurisdiction of the State Board of Corrections, shall be sold in this State to any private person, firm, association or corporation, except that nothing herein shall be construed to forbid the sale of such goods or merchandise to other political subdivisions, public authorities, municipalities, or agencies of the State or local Governments, to be consumed by them, or to agencies of the State to be in turn sold by such agency to the public in the performance of such agency's duties as required by law. This does not prohibit the sale of unprocessed agricultural products produced on State property, nor does it prohibit the sale of goods, wares, or merchandise, manufactured, produced, or mined wholly or in part, by the inmates of any prison or county correctional institution operated under the jurisdiction of the State Board of Corrections where such inmates are protected by all state and federal labor laws and are paid prevailing wages from which amounts stipulated by the Board of Corrections are deducted as provided under Ga. Code Ann. 709(b)(2)."

"(c) Funds arising from the sale of goods or other products manufactured or produced by any prison operated by the State Board of Corrections shall be deposited with the treasury of the State Board of Corrections. Such funds arising from the sale of goods and products produced in a county correctional institution or from the hiring of prisoners shall be placed in the treasury or depository of such county, as the case may be."

"(f) Any provision of this Chapter to the contrary notwithstanding, any inmate of any prison or county correctional institution operated under the jurisdiction of the State Board of Corrections may sell goods, wares, and merchandise created by such inmate through the pursuit of a hobby or recreational activity. The proceeds from such

sales shall be distributed to the particular inmate who created such goods, wares, or merchandise. The State Board of Corrections is hereby authorized to promulgate rules and regulations governing the sale of such goods, wares, and merchandise and the distribution of the proceeds from such sales including such deductions as are provided for in Ga. Code Ann. 709(b)(2)."

END

DATE

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10-3-79

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