

Study of the Economic and Rehabilitative
Aspects of Prison Industry:
Vol. IV: Prison and Statutes

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I. EXECUTIVE SUMMARY

A. Introduction

During the first few months of the Prison Industry Study, ECON, Inc. and the American Foundation, Inc. visited and examined the prison systems and prison industries of seven states. The field visits had several purposes:

- (1) to acquire an informed understanding of the nature and operations of "typical state prison industries" and to document the current state of the art of state prison industries;
- (2) to develop and test data-gathering procedures and instruments that would be used to conduct the in-depth study;
- (3) to select a single state in which to conduct an in-depth study of prison industries, to offer recommendations for change aimed at improving the economic and rehabilitative aspects of prison industries and to provide technical assistance for implementing these recommendations.

Toward these ends, the study team visited and interviewed correctional administrators, central office staff, wardens, industry managers and foremen, and inmate workers in seven states. In addition, a literature review was undertaken in order to acquire a broader knowledge of prison industry operations and related subject areas.

One major component of the literature review was a search of statutes and case law pertaining to prison labor and prison industries in the seven states visited by the study team--Colorado, Connecticut, Georgia, Illinois, Minnesota, Pennsylvania and Washington. It is important to recognize

that these seven states were not selected according to a probability sample design and that, as a result, the study team's findings in the seven state survey are not statistically valid for the entire population of 50 states. However, this does not mean that results cannot be generalized beyond the seven states actually surveyed; it does mean that the validity of any attempt to do so depends entirely upon the knowledge and judgment of those attempting to generalize and that no scientific measure of the accuracy of the "projected results" is possible.

The study team deliberately chose to employ a "judgment sample" of seven states, rather than a probability sample, in order to assure that our field visits would include prison systems which:

- (1) afforded a wide variety of types of prison industries, e.g., hobby shops, large scale production industries, service industries, private industry involvement, shops run by inmates, shops with profit sharing;
- (2) afforded the availability of adequate records with respect to inmates, parolees, industry shop operations;
- (3) were believed a priori to be receptive to fundamental change in the areas of interest to this project, e.g., improved inmate wages, improved productivity, transferability of inmate work skills, job placement; and
- (4) had neither an unusually large (e.g., New York, California) nor an unusually small (e.g., Vermont, Rhode Island) inmate population.

In short, a judgment sample of seven states was selected on the basis of several criteria: a) they had a broad geographic

spread; b) they offered a wide variety of prison industry forms; and c) they had the potential for including a state which could be selected for an in-depth analysis of its prison industry system and undertaking major changes therein.

B. Methodology

The focus of the statutory search is on prison industries as they exist and operate in state correctional institutions within the seven selected states. The statutes compiled are those pertaining to the authority granted to prison administrators and to the legislative directions and proscriptions in regard to employment of prisoners. Statutory provisions relating to prison labor in general are included as well as those enacted specifically to design prison industry systems. A valid reading of the latter provisions must take account of the former, unless express exceptions are made. It should also be noted that prison administrators enjoy substantial discretionary authority by statute and therefore a bare reading of state statutes may be inadequate as a full description of the operation of prison industry systems.

Both state and federal court decisions are included in this report in order to suggest a judicial response to innovations in prison industry operations should legislative amendments to existing statutes and/or challenges to those statutes be made.

The state statutes compiled here are those to be found from an examination of one or more of the following categories as they appear in the general index to each state's code:

1. Correctional Institutions
2. State Prison
3. Convict Labor
4. Inmate Compensation
5. Convict-made Goods.

Since the search was conducted during July and August of 1975, this report includes only those statutes which appear in the main volumes of the seven state statutes, the 1975 legislative service supplements or volume pocket parts to be used in 1975-76.

C. Summary of Statute Findings

A summary of the specific statutory provisions identified in the seven-state statutory search appears in Table I.1. An examination of this table shows that prisoners are required to work in each of the seven-state correctional systems reviewed. Such a requirement is commanded expressly by statute or indirectly through statutes which penalize refusal to work. Ironically, the view that prisoners ought to work during confinement is supported both by penologists who advocate that prisons serve a rehabilitative purpose as well as by those who advocate that prisons serve a punishment and/or deterrence function.

Agricultural labor and road work, as well as employment in prison industries, are permitted in most of the states. Manual labor is emphasized by implication in all states except

Table I.1 Summary of State Statutory Provisions for
Prison Industry Operations, July, August 1975

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

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

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

Minnesota. Pennsylvania expressly forbids the use of prisoners in work requiring skilled labor. The type of work generated by established prison industries is usually repetitious, manual and unskilled.

Despite the statutory language articulating a rehabilitative purpose (again with the exception of Minnesota), the statutory provisions reviewed indicate that the primary benefit from the establishment of prison industries is to be derived by the state. Express statutory provisions in six states require that articles necessary for state use be produced. Contracts with private parties for prison labor are usually forbidden, although contracts with political subdivisions may be authorized. In four states, specific provisions command the state to purchase from prison industries, and Washington provides sanctions in the event this requirement is willfully evaded.

Prison industries are usually intended to be self-sufficient, that is, expenses including materials, equipment and wages are to be met from the proceeds of sales. Profits in excess of necessary funding are transferred from the industries' revolving fund into the general treasury in Colorado, Connecticut, Georgia and Washington.

All seven states adhere to the traditional policy that prison labor should not come into competition with free labor. Consequently, six states forbid the sale of prison-made products on the open market, usually with the exception

of surplus agricultural by-products and/or articles made in handicraft programs. Three states, Minnesota, Pennsylvania and Washington, require that prison-made products be branded as such. Goods produced in prison industries out-of-state are subject to state laws relating to prison-made goods by virtue of the federal statutory provisions commonly known as the Hawes-Cooper Act of 1929 and the Ashurst-Somners Act of 1935.

Prisoner compensation for labor in prison industries is required to be substantially below minimum wage in each state. Having subjected the state to the cost of his confinement, a prisoner is not deemed entitled to payment for the value of his labor, and although awarded in all states, money compensation is gratuitous. Thus, the schedule of wages paid in state prisons perpetuates the ban on competition with free labor which is justified as preventing unfair competition said to result from the fact that the cost of prison labor is not comparable to the cost of free labor.

Disbursement of the money compensation earned by a prisoner is at the discretion of prison administrators in most states, provided that in no state is full payment to the prisoner allowed until his release from confinement. In addition to money compensation, good-time credit may be awarded. Good-time credit for satisfactory work performance, however, may be forfeited as a penalty for violation of prison disciplinary regulations. In Colorado and Washington, wages also may be forfeited for violation of rules.

Work release programs available to inmates in Connecticut, Georgia, Illinois, Minnesota and Washington state prisons are substantially the same. Statutes addressing work release programs provide that the limits of confinement may be extended so that a trustworthy prisoner may work at paid employment in a community training program if the following conditions are met:

- (1) representatives of local unions are consulted;
- (2) such employment does not displace employed workers, nor occur where there is an excess of available free labor or unpaid existing contracts; and
- (3) the rates of pay and conditions of employment are not less than those paid or provided for similar work in the locality.

Failure to observe rules relating to allowable personal movement is usually considered to be an escape and is punished as provided by law. Again, the compensation earned by the prisoner is not available to him in full during his confinement, but is distributed at the discretion of prison administrators.

Provision for prison labor in private and competitive enterprises within work release programs is an exception to the general rule that such labor not compete with free labor. Minimum wage requirements are therefore necessary in order that the competition be fair. Executive Order #11755 issued by President Nixon in 1973 is consistent in expressing concern with unfair competition in its requirement that prison

labor not be utilized in fulfilling federal government contracts, but acknowledges an exception where prisoners are participants in work release programs and thereby receive competitive wages.

Prison administrators in Minnesota are afforded authority in regard to prison industries which is substantially broader than that afforded in the six other states. Minnesota prison industry statutes are synopsisized in the following paragraphs.

Prison industries in Minnesota are established after consultation with representatives of business, industry, organized labor, the State Department of Education, the State Apprenticeship Council, the State Department of Labor and Industry, the Department of Employment Security, the Department of Administration and any other organization which the commissioner of corrections feels appropriate. Not only is such consultation sought to determine the quantity and nature of goods to be produced, but also the legislature is concerned that inmates employed in prison industries be prepared for the transition to being private citizens. Moreover, prison industries products are to benefit business, industry and labor interests as well as the state.

The commissioner of corrections in Minnesota is not limited to establishing and maintaining self-sufficient industry systems. The commissioner may, with the approval of the governor and the legislative advisory committee, transfer

up to \$50,000 in any one year from one industry to another in order to meet current fiscal demands in any one industry. Further, the commissioner and the warden of the state prison are authorized to borrow money from the state treasury for infusion into prison industry revolving funds.

Binder twine manufactured at the Minnesota state prison may be sold to private purchasers within the state under rules and regulations established by the commissioner. While limiting the profit to be gained thereby, it permits local selling agencies to be established throughout the state by the commissioner and contracted with for the local sale of prison-made products to the public.

Minnesota statutes dealing with prison industries are unique in authorizing the commissioner of administration to lease buildings on state correctional institution grounds to private corporations for the establishment of factories or other commercial enterprises consistent with proper training and rehabilitation of prisoners. Where products are to be introduced into interstate commerce, inmates employed in their manufacture must be paid the prevailing minimum wage for work of a similar nature.

D. Summary Findings of Court Decisions

The review of case law in the various states indicates a judicial reluctance to interfere in matters involving prison administration. The courts acknowledge the problems encountered by prison officials in attempting to maintain

adequate security and generally defer to administrative authority, discretion and experience in the resolution of prison disciplinary problems. Only where there is clear abuse of discretion will courts intervene. The courts also recognize the problems encountered by state legislatures in attempting to balance the public policy requiring that prisoners work with the policy which prohibits prison labor in competition with free labor and will defer to legislative judgments reconciling these competing policies. Specifically, state courts have held that the state is entitled to the labor of prisoners and that compensation for such labor is not required. As with compensation when authorized, rehabilitative prison programs are by grace of the state and not afforded a prisoner by right.

The federal courts too have hesitated to substitute judicial determinations for administrative experience and skill in managing prison affairs. The policy of nonintervention is viewed as desirable in order that prison officials retain the flexibility necessary to maintain adequate internal discipline. However, while a prisoner's status was once that of a slave, more recently the federal courts have ruled that a prisoner retains all the rights of citizenship except those taken away expressly or by necessary implication upon incarceration. The courts will review administrative action or nonaction, and substantial infringement of retained rights must be justified in terms of penal objectives.

As yet, prisoners are not afforded a right to rehabilitation. Certainly the courts will not compel specific programs to be operated within correctional institutions nor will they command that existing programs be made available to all prisoners. Prisoners may be constitutionally required to work for state benefit, and in the federal courts too it is held that compensation for labor (if authorized) is by grace of the state.

II. COLORADO

A. Overview of the Statutes

1. Prison Labor, General Provisions

All able-bodied male prisoners at the Colorado State Penitentiary must be put to work at jobs most suited to their capabilities and most advantageous to the state -- work which least conflicts with free labor. The Department of Institutions may establish the rules and regulations governing prison labor and industrial production. The warden must assign prisoners to jobs and purchase the equipment, materials and supplies which he considers necessary for the operation of industrial and agricultural projects.

In public works projects, the Board of County Commissioners may request trusty prisoners for work on state roads or county fish ponds. The warden must furnish the convicts and the necessary guards and equipment for their safe transportation. The county must bear the expenses for transportation, employment of guards, quarters and supplies. The warden is to retain full control over the prisoners except for project operations.

2. Prison Industries

In 1965 the state legislature recognized that the employment programs for prison labor were inadequate and enacted the Correctional Industries Act to provide more regular and suitable employment to rehabilitate prisoners and to

insure against the possibility of private profits from industrial activities. In enacting this legislation, they repealed all inconsistent laws and expanded the prison employment programs. The legislature intended that the correctional industries be both rehabilitative and productive and that training aspects not be subordinated to profit.

The Department of Institutions is required to establish prison industries and the rules and regulations for their administration. Prisoners are to produce articles for state use on the basis of state need. A five-member advisory committee consisting of one representative each from the Department of Institutions, organized labor, business and industry, agriculture and the public is to consider the feasibility of establishing such industries and their effect on established industries before their approval.

All moneys collected are to be deposited in the "correctional industries account" and be used solely for defraying all necessary expenses incident to production. The department may contract with any person on a self-liquidating basis for equipment and supplies. A ten-year term of payment is the limit, unless approved by the governor. Purchases and contracts for the operation of industries are to be made by sealed bids, except when it is in the best interests of the state to make purchases on the open market. All acquisitions and purchases are to be payable solely from the revenues derived from the Correctional Industries Act,

and the state is not responsible for incurred debts. Wardens must submit an annual statement itemizing procurements, costs and expenditures, and estimated earnings for the previous year, together with a statement of all materials on hand for future manufacturing purposes. The "correctional industries account" must be used solely for the purchase of equipment and supplies. State appropriations are to be made for the support of license plate production.

Convicts at the state penitentiary are to manufacture all license plates for sale within the state. The department may contract to manufacture license plates for other states, and also to make road signs, markers and badges for other states as well as for Colorado. The department is authorized to purchase equipment and supplies for the production of license plates. The state is to appropriate funds on the basis of estimated needs.

3. Inmate Compensation

The warden has the responsibility for determining which prisoners are entitled to trusty status because of good conduct. Every inmate who is entitled to trusty status may receive compensation for labor. The rate of compensation is to be determined by the Department of Institutions after consultation with the warden. After deducting maintenance costs, the earnings are to be given to the family or dependents. If there are no dependents, the earnings are accumulated and paid to the convict upon discharge.

The department may allow a good-time allowance for conscientious work. At the discretion of the warden, prisoners who work within or without the prison walls may be granted additional good time. At the warden's discretion, he may revoke good-time credit or restore lost good time.

4. Convict-made Goods

The Department of Institutions is to determine the prices for prison-made goods and issue catalogues describing all articles produced. The prices must be uniform and non-discriminatory for all purchasers, and the state is required to buy all goods, which can be furnished at a price within 10 percent of the open market price, for its own use and not for resale.

State agencies are supplied with prison-made goods first; political subdivisions of the state, second. Any surplus goods may be sold to charitable, civic, educational, fraternal or religious organizations for their own use but not for resale. Any sale or offer for sale of prison-made goods on the open market is punishable by fine and/or imprisonment. (This does not apply to goods produced by persons on parole or probation.) This by implication repeals laws which allow surplus goods to be sold on the open market. Foreign-made convict goods are subject to the same rules as Colorado prison-made goods.

5. Work Release

Work release programs in Colorado are only available to probationers.

B. Overview of State Court Decisions

In 1927, a legislative attempt to prohibit the sale of farm products produced with prison labor in competition with free labor was held invalid by the majority of the Colorado Supreme Court in Hessick v. Moynihan, 262 p. 907 (S. Ct. Colo. 1927). By specific reference, the prohibition in the Act of 1927 was intended to amend a 1907 Act which had vested certain powers and duties in a Board of Prison Labor. The court found that a subsequent Act of 1915 by creating the Department of Corrections had effectively rendered the Board of Prison Labor powers defunct, and the 1927 amendment was therefore ineffective. In addition, because the Colorado Board of Corrections had entered into contracts with third parties involving the use of convict labor in farm production prior to the 1927 enactment, the court held that the 1927 Act if effective would impair the obligations of existing contracts and therefore would be unconstitutional.¹

1

Section 10, article 1 of the United States Constitution provides that "[n]o state shall...pass any... law impairing the obligation of contracts." The Bill of Rights in Section II, article 2 of the Colorado constitution provides that "no...law impairing the obligation of contracts, or retrospective in its operation...shall be passed by the General Assembly."

The majority of the court, in Hessick v. Moynihan, supra, at 914, cautioned against too broad a reading of its holding:

We are confining ourselves to the case before us, and it is to be read in the light of these facts. As to convict-made goods and products of farms operated by prisoners, the general subject is limited by the record. We mean in its bearing upon the status of property rights of the state and individuals, existing when the act was passed, and its impairment of contracts theretofore made, and we intend no intimation of what our decision would have been in the absence of the prior acquirement of such rights.

Language in the dissent, at 916-17, highlights the problem with which the legislature was attempting to deal and also the solution intended in the Act of 1907 and the 1927 amendment:

There has always been a controversy between free labor and prison labor. All recognize the regenerating influence of work and the desirability of keeping prisoners employed in useful labor, not only in order that they may more usefully be employed, but also in order that they may learn trades, so that when they have served their terms and are released from custody, they may be qualified to earn an honest living. At the same time, all appreciate the fact that the products of prison labor sent into the general market in unrestrained competition with free labor may be seriously detrimental, and perhaps disastrous, to the latter. How to keep the prisoners thus usefully employed and at the same time not work a hardship upon free labor is a problem not easily solved. As a result of much thought and many discussions, eminent penologists concluded that what is known as the "state use" plan was a feasible compromise between the two conflicting ideas...

Subsequent legislation in Colorado has been more successful than the abortive attempt in 1927 to confine the use of prison labor to the benefit of the state. The Colorado Supreme Court in Isaah v. Perry et al., 193 p. 2d 269 (S. Ct. Colo. 1948) refused to review a contract claim, finding that the transaction involved would be unenforceable under the state statute which prohibited the sale or storage of goods manufactured by convicts in state penal institutions. The use and sale of such goods are matters of public policy and "as to that policy the legislature is the final authority," and the court would take no notice "of transactions contrary to the declared public policy of the state." Isaah v. Perry et al., supra, at 270.

In Hessick v. Moynihan, supra, at 914, the majority of the court emphasized that the rights protected by its holding were not those of convicts, but "those of the state and its citizens," for the products of a convict's labor may be "taken by the state, in payment of the cost of his maintenance." Apparently the state is also entitled to reimbursement, if possible, for the care and maintenance of persons confined in public institutions. Cf. State v. Estate of Burnell, 439 p. 2d 38 (S. Ct. Colo. 1968). Whereas by statute the state may recover such costs from the estate (if any) of persons confined in the state hospital having been adjudicated mentally ill or criminally insane, the cost of maintenance is deducted from the earnings of inmates confined in state prison. Id.

Since persons convicted of crime are required to work, and since by statute convicts are afforded compensation for their labor and deductions from such earnings are required for maintenance, the court in State v. Estate of Burnell, supra, at 39, reasoned that the state required reimbursement from both the criminally insane and the convicted, and distinguished only in the method of recovery. If those persons adjudicated criminally insane and those convicted of crime are considered a class, where the former are most often unable to work, and their care more expensive, such a distinction in method of recovery was found reasonable and therefore not a denial of equal protection. Moreover, the court found the situation of the criminally insane more analogous to that of the mentally ill in which case all members of the class were subjected to the same method of recovery of costs expended by the state on their behalf. State v. Estate of Burnell, supra, at 40.

Under the ruling in State v. Estate of Burnell, supra, the state may constitutionally distinguish between inmates in mental institutions and inmates in penal institutions for the purposes of determining a method of recovering the costs of their maintenance where the latter inmates are capable of working. More significantly, the court in Estate of Buzzle v. Colorado State Hospital, 491 p. 2d 1369 (S. Ct. Colo. 1971) distinguished between such inmates for the purposes of determining whether or not an inmate in the state hospital was entitled to compensation for work performed during confinement

to offset cost of maintenance. The latter court, at 1370, rejected an analogy to prison labor where, contrary to the position of the hospital inmate, the prisoner is required to work, and compensation is afforded by statute. The court went further and justified, at 1371, no compensation even where work is required on the basis of the rehabilitative purpose of such a program:

... states are not foreclosed from requiring that a patient perform certain chores without compensation if they are reasonably related to a therapeutic program, even though the state may incidentally receive financial benefits from the performance of such work, and... such requirement does not violate the constitutional prohibition against involuntary servitude.

Only where "the mandatory work programs are so ruthless... and thus so devoid of therapeutic purpose" to be thereby unrelated to rehabilitation, would involuntary servitude be found to exist. Id. Thus the court, in effect, approved a system of no compensation for convict labor, whether for a penal or rehabilitative purpose, except by grace of legislation.

C. Statutes

1. Topical Index to Statutes

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Work Release

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2. Statutory Provisions

27-20-104 *Reduced time for good conduct*

Every convict who is imprisoned in the state penitentiary and who performs faithfully the duties assigned to him during his imprisonment therein shall be entitled to a deduction from the time of his sentence for the respective years thereof, and proportionately, for any part of a year, when there is a fractional part of a year in the sentence: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; and for the sixth and each succeeding year, six months (Source G.L. 2009; G.S. 2588; R.S. 08, 4871; L. 21, p. 190, 756; CSA, C. 131, 73; CRS 53, [105-4-4; CRS 1963; 105-4-4.)

27-20-105 *Trusty prisoners--allowance*

Hereafter convicts of the state penitentiary undergoing sentence in accordance with law who are engaged in work connected with said state penitentiary within or outside the walls of said institution, and known as trusty prisoners, and who are employed on the ranches or gardens, lime kilns or quarries, stone yards or quarries, or upon public roads and highways in this state in accordance with law, or at any other class of work in a creditable manner, upon approval of the warden, may be granted such good time in addition to that allowed by law as the department of institutions may order, not to exceed ten days in any one calendar month. Trusty prisoners engaged in productive and constructive work, as defined by the department of institutions in its rules, may be granted additional good time not to exceed three days in any one calendar month. (Source: L. 21, p. 190, 2; C.L. 757; L. 31, p. 219, [1; CSA, C. 131, 74; CRS 53, 105-4-5; C.R.S. 1963, 105-4-5.)

27-20-106 *Forfeiture of good time*

If any convict escapes or attempts to escape from the state penitentiary, he shall forfeit all deductions from the time of his sentence which he has earned under sections 27-20-104 and 27-20-105. Upon the return to custody of a convict who has escaped or upon the apprehension of a convict who has attempted to escape, he shall at once be credited with the actual time which elapsed between the date when he was received

at the state penitentiary and the date when he escaped or attempted to escape. Said time so credited to the convict shall be deducted from the maximum time of his sentence, and the balance of time then remaining shall constitute the remainder of the sentence such convict is to serve. In serving the remainder of his sentence, said convict shall be entitled to earn deduction from the time thereof, or so-called good time, in accordance with the provisions of sections 27-20-104 and 27-20-105. The date of the return to the state penitentiary or apprehension of said convict shall be a new starting point for the earning of all such good time which shall thereafter be computed in the same manner as if said convict were then commencing to serve the first year of a new sentence. Successive attempts to escape shall be dealt with in the manner provided for in this section. (Source: L. 21, p. 191, 4; C.L. 759; CSA. C. 131, 75; CRS 53, 105-4-6; C.R.S. 1963, 105-4-6.)

27-20-107 *Time credit reductions if convicted since 1935*

- 1) Unless otherwise provided, every prisoner confined in the state penitentiary who has committed no infraction of the rules or regulations of the prison or the laws of the state and who performs in a faithful, diligent, industrious, orderly, and peaceable manner the work, duties, and tasks assigned

to him to the satisfaction of the warden may be allowed time credit reductions as follows: A deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and correspondingly for any part of the year, where such term of confinement is for more or less than a year. The mode of computing credits shall be shown by the following table:

<u>Number of yrs. of sentence</u>	<u>Good time that may be earned</u>	<u>Total good time that may be earned</u>	<u>Time to be served if full credits are earned and allowed</u>	
1st year	2 months	2 months		10 months
2nd year	2 months	4 months	1 year	8 months
3rd year	4 months	8 months	2 years	4 months
4th year	4 months	1 year	3 years	
5th year	5 months	1 year 5 months	3 years	7 months
6th year	5 months	1 year 10 months	4 years	2 months
7th year	5 months	2 years 3 months	4 years	9 months
8th year	5 months	2 years 8 months	5 years	4 months
9th year	5 months	3 years 1 month	5 years	11 months
10th year	5 months	3 years 6 months	6 years	6 months

And so continuing through as many years as may be the time of confinement.

- 2) To those prisoners whom the warden may designate as trustie's and who conduct themselves in accordance with prison rules and perform their work in a creditable manner, upon approval of the warden, additional good time to that allowed in the table set forth in subsection (1) of this section, not to exceed ten days in any one calendar month, shall be credited upon the time remaining to be served, such credit to be allowed only upon the actual number of months served in each year in the state penitentiary.
- 3) The warden may grant to any prisoner confined in the state penitentiary additional good time credit to that allowed under subsections (1) and (2) of this section, not to exceed five days per month for each calendar year remaining to be served, for the following reasons:
 - a) Meritorious service by a convict;
 - b) Donation of blood by a convict;
 - c) Outstanding performance of assigned tasks in correctional industries
- 4) The warden may restore to the credit to any prisoner confined in the state penitentiary

all or any portion of good time credits which have been forfeited by the prisoner as a result of any disciplinary action or provision of law. (Source: L. 35, p. 342, 1; CSA, C. 48, 556; CRS 53, 105-4-7; C.R.S. 1963, 105-4-7; L. 57, p. 329, 1.)

27-20-108 *Credits forfeited upon misbehavior*

If any convict assaults any keeper, guard, foreman, officer, convict, or other person, or threatens or endangers the person or life of anyone, or violates or disregards any prison rule or regulation, or neglects or refuses to do the work to which he is assigned, or is guilty of any misconduct, or violates any of the rules or regulations governing parole, he shall forfeit all time credits theretofore earned by or allowed to him before the commission of such offense under section 27-20-107. (Source: L. 35, p. 344, 2; CSA. C. 48, 557; CRS 53, 105-4-8; C.R.S. 1963, 105-5-8.)

27-20-109 *Sections affect only certain prisoners*

Sections 27-20-107 and 27-20-108 became effective September 1, 1935, and their provisions shall apply only to those convicted of crime on and after said date. It shall not apply to those so convicted prior to said date, but computations of time, credits for good conduct, or special services as trustees or otherwise, shall be made as may now be provided by law or by rules and regulations now in force at

the state penitentiary. (Source: L. 35, p. 345, 4; CSA, C. 48, 559; CRS 53, 105-4-9; C.R.S. 1963, 105-4-9.)

27-20-110 *Forfeiture for violation of rules*

In case any convict is guilty of willful violation of any of the rules or regulations of the state penitentiary and is entitled to any deduction from the time of his sentence by the provisions in sections 27-20-104 to 27-20-106, he shall forfeit, if entitled to so much, for the first offense two days, for the second offense four days, and for each subsequent offense four days, said forfeiture to be determined by the warden of the state penitentiary. (Source: G.L. 2010; G.S. 2589; R.S. 08, 4872; C.L. 760; CSA. C. 131, 76; CRS 53, 105-4-10; C.R.S. 1963, 105-4-10.)

27-20-115 *Males to perform labor*

All male persons convicted of crime and confined in the state penitentiary under the laws of this state, except such as are precluded by the terms of the judgment of conviction, shall perform labor under such rules and regulations as may be prescribed by the department of institutions. (Source: G.L. 2028; G.S. 2595; R.S. 08, 4878; C.L. 766; CSA, C. 131, 82; CRS 53, 105-4-15; C.R.S. 1963, 105-4-15.)

27-20-116 *County or municipal road work*

Upon written request of a majority of the board of county commissioners of any county in the state of Colorado and the order of the department of institutions, the warden of the state penitentiary shall detail such convicts as are

specified in such order, not exceeding the number specified in said written request, to work upon such public roads and highways of the state or of such county or streets and alleys of any city or incorporated town within such county as are designated in the written request of said county commissioners. Such county shall pay all additional expenses of guarding said convicts while working upon said public roads and highways within such county and shall furnish all tools and materials necessary in the performance of said work. When said work is done within the limits of any city or incorporated town within such county, the city or incorporated town where said work is done shall likewise pay all additional expenses of guarding such convicts while performing said work and shall furnish all necessary material used in said work. (Source: L. 21, p. 219, 7; C.L. 767; CSA, C. 131, 83, CRS 53, 105-4-16; C.R.S. 1963, 105-4-16.

27-20-117 *Labor of convicts--earnings*

Every able-bodied convict shall be put to, and kept at, the work most suitable to his capacity, and most advantageous to the people of the state of Colorado, and which may least conflict with the free labor of the said state during his confinement. The earnings of such convict, after deducting a sufficient amount thereof to pay and satisfy the cost of maintenance and retention, shall be given to the family of such convict, or dependents, if any, but, if there are none, the same shall be accumulated and paid to such convict upon

discharge from the state penitentiary. (Source: L. 1887, p. 232, 1; L. 1897, p. 32, 1; R.S. 08, 4882; C.L. 768; CSA, C. 131, 84; CRS 53, 105-4-17; C.R.S. 1963, 105-4-17.)

27-20-125 *Revolving fund*

There is hereby created, out of the convict's earning fund of the state penitentiary, a revolving fund of twenty-five thousand dollars, which said revolving fund shall be available for the use of the state penitentiary in any of its activities. (Source: L. 55, p. 664, 105-4-30; C.R.S. 1963, 105-4-30.)

27-24-101 *Prisoners to work*

All able-bodied prisoners at the state penitentiary shall be employed at such productive work as may be assigned to them by the warden of said institution. All goods, wares, or merchandise manufactured, produced, or mined, wholly or in part, by such prisoners shall be sold, to the extent possible, to the state and its institutions in accordance with the provisions of sections 27-24-105 to 27-24-114. Any surplus of such goods, wares, or merchandise which is not sold to the state or its institutions in such manner may be sold on the open market in the state of Colorado at prevailing market prices. All moneys realized from the sale of any goods, wares, or merchandise manufactured, produced, or mined by such prisoners, shall be used to defray the costs of operating the state penitentiary and to satisfy the costs of maintenance and retention of prisoners

at the state penitentiary. (Source: L. 33, p. 781, 2; CSA, C. 131, 94; L. 51, p. 670, 2; CRS 53, 105-5-1; C.R.S. 1963, 105-5-1.)

27-24-102 *Necessary purchases*

The warden of the state penitentiary has full power within the limits of the appropriations made to said institutions for such purpose, to purchase or otherwise acquire property and equipment, including such machinery, tools, supplies, and materials as he may deem necessary to operate such types of industrial or agricultural projects within said institution to keep all able-bodied prisoners productively employed. (Source: L. 33, p. 782, 4, CSA, C. 131, 96; L. 51, p. 671, 3; CRS 53, 105-5-2, C.R.S. 1963, 105-5-2.)

27-24-105 *Manufacture for state use--price*

The department of institutions is hereby authorized to cause to be manufactured, mined, supplied or produced articles, materials, and supplies which are used by the state, its departments, and its institutions and which can be manufactured or produced by the prisoners of said institutions. The state and its institutions and departments, except those which produce similar articles, shall be required to purchase through the state purchasing agent such articles as are produced. Such goods and products shall be furnished to the state and to the several departments and institutions thereof at or as near the prevailing market price for such goods and products as is practical

and no articles, materials, or products so mined, manufactured, or produced shall be purchased from any other source for the state or the several departments or institutions thereof, unless the department first certifies that the same cannot be furnished at a price within ten percent of that at which goods and products mined, manufactured, or produced within the state of Colorado, and of an equal quality, can be obtained from other sources. Said prices shall be considered on a comparable basis, giving due consideration to the cost of delivering said goods and products to the institution or department where the same are to be used or consumed, and no claim therefore shall be audited or paid without said certificate, subject, however, to any laws, rules, or regulations providing for central state purchasing. (Source: L. 33, p. 783, 5; CSA, C. 131, 97; L. 37, p. 922, 1; CRS 53, 105-5-5; C.R.S. 1963, 105-5-5.)

27-24-106 *Departments to report estimates*

On or before October first of each year or as often within the year as may be necessary, the proper officers of the several departments and institutions of the state, both eleemosynary and educational, shall report to the state purchasing agent estimates of the amounts and kinds of articles, supplies, or products required by them. The state purchasing agent shall thereupon report said estimates to the department of institutions. The purchasing order for those articles, supplies or products which the state penitentiary or the Colorado state reformatory cannot furnish shall

be certified back to the state purchasing agent at once so that the same may be purchased on the open market. The state purchasing agent shall not contract for nor pay any bill for articles that are made at the state institutions until a written statement has been given him that such articles cannot be furnished by any state institution. (Source: L. 33, p. 783, 6; CSA, C. 131, 98; L. 37, p. 923, 2, CRS 53, 105-5-6, C.R.S. 1963, 105-5-6.)

27-24-107 *Prices to be fixed--how*

It is the duty of the department of institutions from time to time to notify the state purchasing agent in writing of kinds of articles, products, or supplies which it is prepared to furnish and the prices thereof. The department shall fix and determine the price at which all labor is performed and at which all articles, supplies, and products so manufactured, mined, or produced are sold, which price shall be as near the prevailing market price for articles, supplies, and products of like kind and quality as is practical. (Source: L. 33, p. 784, 7; CSA, C. 131, 99; L. 37, p. 924, 3; CRS 53, 105-5-7; C.R.S. 1963, 105-5-7.)

27-24-108 *Development of industries*

The department of institutions, after having the facts at hand regarding the needs of the various state institutions, shall authorize the development of such industries along diversified lines at the state penitentiary and the Colorado state reformatory. In making their requisitions, the heads of departments and institutions shall specify quantity

and quality. It shall be for the department to decide whether or not that quality has been met by the products produced at the state penitentiary or the Colorado state reformatory. The department shall see that these institutions maintain a quality of output comparable fundamentally to those goods produced on the open market. (Source: L. 33, p. 784, 8; CSA, C. 131, 100; CRS 53, 105-5-8; C.R.S. 1963, 105-5-8.)

27-24-109 *Prisoners' Compensation*

Every inmate of the state penitentiary or the Colorado state reformatory who is entitled to trustyship because of good conduct, at the discretion of the warden of the state penitentiary or the warden of the Colorado state reformatory, may receive compensation for the work he performs in the various activities of the institutions. The rate of compensation as applied to all classes of work and to the individual worker of compensation as applied to all classes of work and to the individual worker shall be determined by the department of institutions after consultation with the respective wardens. The department has the power to make rules and regulations relative to the payment of wages and their disbursements, and there shall always be kept copies of these rules and regulations and the amendments thereto, so that there may be no question at any time about this subject. (Source: L. 33, p. 784, 9; CSA, C. 131, 101; CRS 53, 105-5-9; C.R.S. 1963, 105-5-9.)

27-24-110 *Allowance for endeavor--fines*

The department of institutions is hereby empowered to allow the same good time allowance for conscientious endeavor and outstanding application to work and training as is allowable for trusty prisoners working outside the walls of the institution. Fines imposed on inmates and deducted from their earnings shall be placed in the library and educational fund of the institution. (Sources: L. 33, p. 785, 10; CSA, C. 131, 102; CRS 53, 105-5-10; C.R.S. 1963, 105-5-10.)

27-24-111 *Wardens' reports*

The warden of the state penitentiary and the warden of the Colorado state reformatory shall make such reports to the department of institutions regarding the operation of prison industries as the department requires. (Source: L. 33, p. 785, 11; CSA, C. 131, 103; CRS 53, 105-5-11; C.R.S. 1963, 105-5-11.)

27-24-112 *Sealed bids*

The department of institutions is hereby authorized, within the appropriations which may be placed at its disposal, to produce or cause to be procured and maintained all necessary materials, supplies, and equipment required for the proper operation of the industries authorized under the provisions of sections 27-24-101 to 27-24-114. All purchases and contracts for materials, supplies, and equipment, unless otherwise provided by law, to be used in the manufacture of goods for the institutions shall be made by sealed proposals, except when in

the judgment of the department it is to the best interests of the state to purchase the same on the open market, and shall be awarded to the lowest bidder complying fully with the terms required by the department. The department has the right to reject any and all bids. (Source: L. 33, p. 785, 12; CSA, C. 131, 104; CRS 53, 105-5-12; C.R.S. 1963, 105-5-12.)

27-24-113 *Record of costs*

The department of institutions shall require that the operation of industries at the state penitentiary and the Colorado state reformatory be conducted on a thorough-going business basis, and the value of the labor and the amount of money received from state institutions shall be accurately kept. The cost of producing said articles and supplies shall be accurately kept, together with the number of work hours which have been put into the production of such products. Since the objective of the work in both institutions is that the vocational training as well as the actual production of goods, the idea of profit and the idea of the value of such vocational training are on a par with each other, and the vocational training aspects of the work must not be subordinated to the making of a profit. (Source: L. 33, p. 786, 14; CSA, C. 131, 106; CRS 53, 105-5-14; C.R.S. 1963, 105-5-14.)

27-24-115 *Use of convict-made goods*

It is unlawful for any person or corporation to use, consume, sell, or store in this state goods, wares, or merchandise manufactured, produced, or mined, wholly or in part, by the convicts or prisoners in any penal or reformatory institution in this state, but the provisions of this section shall not apply to the use, consumption, sale, or storage of such goods, wares, or merchandise by the state or any political subdivision thereof or by any public institution or agency owned, controlled, or managed by the state or by any political subdivision thereof, under the provisions of any laws enacted, and the provisions of this section shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners on parole or probation. (Source: L. 33, p. 391, 1; CSA, C. 131, 107; CRS 53, 105-5-15; C.R.S. 1963, 105-5-15.)

27-24-116 *Foreign-made convict goods*

All goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners in any penal or reformatory institution and transported into this state and remaining herein for use, consumption, sale, or storage, upon arrival and delivery in this state, shall be subject to the operation and effect of the provisions of sections 27-24-115 to 27-24-117 to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the penal institutions of this state and shall not be exempt

therefrom by reason of being introduced in the original package or otherwise. The provisions of this section shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners on parole or probation. (Source: L. 33, p. 392, 108; CRS 53, 105-5-16.)

27-24-117 *Violation--penalty*

Any person who violates any of the provisions of sections 27-24-115 and 27-24-116 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment. (Source: L. 33, p. 392, 3; CSA, C. 131, 109; CRS 53, 105-5-17; C.R.S. 1963, 105-5-17.)

27-24-118 *Convict work on state roads*

The chief engineer of the division of highways, with the consent of the state highway commission and the approval of the governor, may appropriate money from the state penitentiary and the Colorado state reformatory and paying the expenses of equipping the necessary camps for their accommodation, together with the expenses of maintaining such camps. The warden of the state penitentiary and the warden of the Colorado state reformatory, with the approval of the department of institutions, shall, on request of the chief engineer of the division of highways, furnish such number of able-bodied convicts as the chief engineer may require, and the respective warden of the institution from which said convicts are taken shall have full control

and supervision of whatever camps are established. The engineer in charge of the construction work shall have full charge of all labor. (Source: L. 31, p. 681, 1, CSA, C. 131, 110; CRS 53, 105-5-18; C.R.S. 1963, 105-5-18.)

27-24-119 *Convict work on fish ponds*

The board of county commissioners in each county has the power to engage the services of trusty convicts confined in the state penitentiary or the Colorado state reformatory for the purpose of building retaining ponds and ditches to connect therewith for the stocking and propagation of fish. (Source: L. 23, p. 239, 1, CSA, C. 131, 111; CRS 53, 105-5-19; C.R.S. 1963, 105-5-19.)

27-24-120 *Request filed with warden*

The board of county commissioners shall file with the warden of the state penitentiary of the Colorado state reformatory a request for said labor, stating the location of work and the number of men to be employed. (Source: L. 23, p. 239, 2, CSA, C. 131, 112, CRS 53, 105-5-20; C.R.S. 1963, 105-5-20.)

27-24-121 *Warden to transport convicts*

If men are available, within fifteen days from receipt of said written request, the warden shall transport to the point indicated in the request the number of men requested and shall furnish necessary guards and equipment for safe transportation of said convicts. (Source: L. 23, p. 239, 3, CSA, C. 131, 113; CRS 53, 105-5-21; C.R.S. 1963, 105-5-21.)

27-24-122 *County to furnish quarters*

The board of county commissioners shall furnish such quarters and supplies for said convicts as are approved by the warden of the state penitentiary or the Colorado state reformatory or his representative. (Source: L. 23, p. 239, 4, CSA, C. 131, 114; CRS 53, 105-5-22; C.R.S. 1963, 105-5-22.)

27-24-123 *County to bear expenses*

The county wherein said work is done shall bear all the expense of transportation, employment of guards, and maintenance of camp and every other expense connected with said work. (Source: L. 23, p. 240, 5, CSA, C. 131, 115; CRS 53, 105-5-23; C.R.S. 1963, 105-5-23.)

27-24-124 *Warden to control convicts*

The warden of the state penitentiary or the Colorado state reformatory has full control over said convicts, shall furnish necessary guards to be paid by the county wherein work is done, and has the right to order said convicts back to the penitentiary at any time he may deem it for the best interest of the state of Colorado. (Source: L. 23, p. 240, 6; CSA, C. 131, 116; CRS 53, 105-5-24; C.R.S. 1963, 105-5-24.)

27-25-101 *Correctional Industries Act of 1965*

This part I shall be known and may be cited as the "Correctional Industries Act of 1965." (Source: L. 65, p. 906, 2; C.R.S. 1963, 105-8-2.)

27-25-102 *Legislative declaration*

Whereas the means now provided for the employment of prison labor are inadequate to furnish a sufficient number of prisoners with employment, it is hereby declared to be the intent of the general assembly, in the passage of this part 1, to provide more adequate, regular, and suitable employment for the prisoners of this state, consistent with proper penal purposes; to more fully utilize the labor of prisoners for self-maintenance and for reimbursing the state for expenses incurred by reason of their crimes and imprisonment; and to effect the requisitioning and disbursement of correctional industrial products directly through established state authorities with no possibility of private profits therefrom. Notwithstanding anything contained in this part 1, all provisions of this part 1 shall be construed to rehabilitate prisoners with the intent of placing released prisoners back in society in a useful, productive manner. (Source: L. 65, p. 906, 1; C.R.S. 1963, 105-8-1.)

27-25-103 *Establishment of industries at state penitentiary and other correctional institutions--purpose and extent*

The department of institutions is hereby authorized to purchase, in the manner provided by law, equipment, raw materials, and supplies and to engage the supervisory personnel necessary to establish and maintain for the state, at the state penitentiary or any correctional farm or institution under control of the department, industries for the utiliza-

tion of services of prisoners in the manufacture or production of such articles and products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by the state and the political subdivisions thereof. As used in this part 1, "state agencies" means all state offices, department, institutions, and agencies. (Source: L. 65, p. 906, 3; C.R.S. 1963, 105-8-3.)

27-25-104 *Advisory committee*

1) There is hereby created an advisory committee of five members to be appointed as follows: One member shall represent the department of institutions, be appointed by the executive director of the department of institutions, and serve as chairman of the committee; four members shall be appointed by the governor, one member to represent organized labor, one to represent business and industry, one to represent agriculture, and one to represent the public. Of the members first appointed by the governor, two shall be appointed for three years, one for two years, and one for one year. Thereafter said members shall be appointed for terms of three years, except in case of a vacancy, which shall be filled for the remainder of the unexpired term. The committee shall meet on the call of the chairman, and a majority of the members of the committee shall constitute a quorum. Members shall serve without compensation but shall be entitled to their reasonable traveling expenses incurred in the perform-

ance of their duties, which shall be paid as a part of the expenses of administering this part 1.

2) Before any industry is established to utilize the services of prisoners as provided by this part 1, the advisory committee shall consider the feasibility of establishing such industry and the effect of such establishment on similar industries already established in the state and shall make its recommendations thereon to the executive director of the department of institutions. A majority of the members of the committee at any meeting duly called by the chairman has full power to act upon and resolve any matter or question referred to it by the executive director of the department of institutions. (Source: L. 65, p. 907, 4, C.R.S. 1963, 105-8-4.)

27-25-105 *Purchase of goods by state agencies and political subdivisions--purchases by organizations*

1) All state agencies and all political subdivisions of the state may purchase, for their own use and not for resale to others, from the department of institutions all articles or products required by such state agencies or political subdivisions which are produced or manufactured by the department of institutions through the use of correctional industrial labor as provided by this part 1. All purchases shall be made through the division of purchasing upon requisition by the proper authority of the state or political subdivision requiring such articles or products.

2) Any charitable, civic, educational, fraternal, or religious association, institution, or agency may also purchase from the department of institutions, for its own use and not for resale to others, any such articles or products produced or manufactured by the department through the use of correctional industrial labor. (Source: L. 65, p. 907, 105-8-5.)

25-26-106 *Catalogues of articles and products--
distribution--estimates of needs by
state agency*

The department of institutions shall prepare, at such times as it may determine, catalogues containing the description of all articles and products manufactured or produced by it. Copies of such catalogues shall be sent by the department to all state agencies and shall be made accessible to all political subdivisions of the state. At least thirty days before the commencement of each fiscal year, the proper officer of each state agency, when required by the department, shall report to the department estimates, for such fiscal year, of the kind and amount of articles and products which will reasonably be required during such fiscal year, referring in such estimates to the catalogue issued by the department, insofar as articles and products required are included therein. (Source: L.65, p. 980, 6; C.R.S. 1963, 105-8-6.)

27-25-107 *Order of distribution of articles
and products*

Articles and products manufactured or produced by

the department of institutions through the use of correctional industrial labor in accordance with the provisions of this part 1 shall first be used in supplying the requirements of state agencies and secondly in supplying the political subdivisions of the state which purchase the same. (Source: L. 65, p. 908, 7; C.R.S. 1963, 105-8-7.)

27-25-108 *Department of institutions to fix prices*

The department of institutions shall determine and fix the prices at which all articles and products are furnished, which prices shall be uniform and nondiscriminatory to all, and such prices shall not exceed the wholesale market prices for like articles and products. (Source: L. 65, p. 908, 8; C.R.S. 1963, 105-5-8.)

27-25-109 *Statements by heads of correctional institutions*

The warden of the state penitentiary and the head, by whatever name known, having charge of any other state correctional institution shall annually make a full detailed statement of all materials, machinery, or other property procured, and the cost thereof, and the expenditures made during the last preceding fiscal year for manufacturing purposes, together with a statement of all materials then on hand to be used or which are in the process of being used in the manufacture of articles and products and all machinery, fixtures, and other appurtenances used for the purpose of carrying on the correctional industrial labor authorized by this part 1. Such statement shall also itemize the earnings estimated to

have been realized during the preceding year as a result of the utilization of such labor. Said statement shall be verified under oath and shall be transmitted to the department on institutions within thirty days after the end of each fiscal year. (Source: L. 65, p. 908, p; C.R.S. 1963, 105-8-9.)

27-25-110 *Rules and regulations by department*

The department of institutions has the power to promulgate the rules and regulations which are deemed necessary to give effect to the provisions of this part 1. with respect to matters of administration and procedures. (Source: L. 65, p. 909, 10; C.R.S. 1963, 105-8-10.)

27-25-111 *Moneys in special fund--
expenditures--transfer of
excess--self-liquidating
contracts*

1) All moneys collected by the department of institutions from the sale or disposition of articles and products manufactured or produced by the department through the use of correctional industrial labor and credited to a special account designated as the "correctional industries account." All moneys in said account shall be used solely for the purchase of manufacturing supplies, equipment, machinery, and building facilities used to carry out the purposes of this part 1, for the payment of necessary personnel to carry out such purposes, and for defraying all necessary expenses incident thereto, all of which shall be under the direction and subject to the approval of the department of institutions; but such account shall never be in excess of

the requirements of the activities authorized by this part 1 as determined by the executive director of the department of institutions, and any such excess shall, upon order of the executive director, be transferred to the general fund by the state treasurer.

2) The department of institutions is empowered to enter into contracts and agreements with any person, on a self-liquidating basis, with respect to the acquisition and purchase of any equipment, tools, supplies, and materials, to the end that the same may be paid for over a period of not exceeding ten years; but the aggregate amount of such acquisitions and purchases shall not exceed five hundred thousand dollars, unless a larger amount is approved by the governor. All such acquisitions and purchases shall be payable solely out of the revenues derived from the activities authorized by this part 1, and nothing contained in this part 1 shall be so construed as authorizing the incurring of a debt against the state of any kind or nature. (Source: L. 65, p. 909, 11; C.R.S. 1963, 105-8-11.)

27-25-112 *Sale of correctional industrial goods on open market--penalty*

It is unlawful to sell or offer for sale on the open market in this or any other state any articles or products manufactured or produced wholly or in part by correctional industrial labor under the provisions of this part 1; except that this provision shall not be construed as applying to the labor of any person on parole or probation. Any

person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment. Each such sale or offer for sale constitutes a separate offense. (Source: L. 65, p. 910, 12; C.R.S. 1963, 105-8-12.)

27-25-113 *Inconsistent laws repealed*

All laws and parts of laws in conflict herewith are hereby repealed; but this part 1 is supplementary and additional to other provisions of law now existing relative to the employment of prisoners. (Source: L. 65, p. 910, 13; C.R.S. 1963, 105-8-13.)

27-25-201 *State penitentiary to make plates*

The department of institutions is directed to cause to be manufactured by the convicts in the state penitentiary all license number plates required to be furnished by this state under the statutes thereof relating to motor vehicles. Such license plates shall be manufactured in the amount of and in accordance with the specifications and requirements of the executive director of the department of revenue, and the department of institutions is directed to cause such license plates to be manufactured pursuant to such specifications and requirements and to cause the same to be delivered as directed by the executive director of the department of revenue not later than six months after receiving said order.

(Source: L. 33, p. 701, 2; CSA, C. 16, 399; CRS 53, 13-12-1; C.R.S. 1963, 13-12-1.)

27-25-203 Materials and equipment--estimates

1) The department of institutions is authorized to purchase from time to time as necessity may require any equipment and machinery, and to repair same, sheet steel, paints, enamels, or other materials necessary to manufacture and deliver as a finished product motor vehicle license plates, road signs, markers, and metal badges used by any department and manufactured under the authority of this part.

2. The executive director of the department of revenue is hereby directed each year prior to the time during any such year that the moneys collected by him from the sale of motor vehicle license plates under the laws of this state have been otherwise expended or disbursed, to estimate the number of license plates and the cost of manufacture thereof that will be required for the year for which such estimate is made and to certify such estimates to the state treasurer.

2) It is the duty of the state treasurer to set aside from the moneys received, during the year such estimate is so made and certified by the executive director of the Department of Revenue from the sale of motor vehicle license plates, the amount is hereby appropriated each year and shall

plates, the amount is hereby appropriated each year and shall be used and expended by the department of institutions for the purpose of purchasing any equipment and machinery, including repairs thereof, wheet steel, paints, enamels, and other materials necessary to manufacture and deliver as a finished product motor vehicle license plates required to be furnished under the motor vehicle laws of this state.

(Source: L. 33, p. 702, §4, CSA, C. 16, §401; CRS 53, §13-12-3; C.R.S. 1963, §13-12-3.)

III. CONNECTICUT

A. Overview of the Statutes

1. Prison Labor, General Provisions

After consulting with a council of seven members which is responsible for formulating policies for the rehabilitation and custodial care of prisoners, the governor is required to appoint a commissioner to administer the Department of Correction. The commissioner, with the council's approval, must establish rules for the administrative practices and the diagnostic and rehabilitative methods of the department. After consulting the council, he is required to appoint three deputy commissioners and wardens or superintendents for each institution. The warden of the Connecticut Correctional Institution at Somers must employ all prisoners in such labor as the commissioner orders. The commissioner may employ prisoners outside the institution walls, provided they remain within the state. The warden superintends the labor and conduct of the prisoners. All women at the State Prison for Women are under the supervision and control of the superintendent and the Commissioner of Correction and are subject to the statutes governing the State Prison for Women.

The commissioner is required to provide for prisoners under the death sentence but is not required to supply daily employment for these prisoners.

Contracts with public institutions for prison labor or prison-made products can be made only after public notice and the submission of sealed bids. No contract can extend beyond four years. This statute does not apply to prison industries authorized by the Correction Industries Advisory Commission. Any state department or state agency may employ an inmate, provided his participation is voluntary. Convicts are restricted from employment in or around the manufacture or preparation of tobacco or any article which, in its use, comes into contact with the mouth; but, this does not prevent the Department of Health from waiving this restriction.

The warden of the state prison is authorized to raise pheasants to be used in gaming reserves.

2. Prison Industries

The Correction Industries Advisory Commission (consisting of a representative from employers, labor, agriculture, the office of purchases, and the public) is required to approve all industrial activities after considering the extent to which each industry may compete with private industry. It is also expected to encourage a diversified industrial program. The commissioner may appoint a superintendent of institutional industries to manage their operation and to market and deliver the products. The commissioner is authorized to use the industrial fund as a revolving fund for the maintenance of prison industry and for the purchase of equipment and supplies, the proceeds of all sales being credited to the fund. Each

fiscal year the commissioner makes an estimate of needed funds, and all funds in excess of that projection are to be transferred to the general fund. The superintendent of the reformatory may make purchases up to \$2,000 for equipment and supplies, and that fund is to be maintained at that amount. Any excess money reverts to the state treasury. Both industrial funds are to be consolidated and all activities are to be under unified control.

3. Inmate Compensation

The commissioner is required to establish a schedule of compensation for inmates' services and labor. Earnings are deposited in individual accounts and paid to the prisoner upon his release. The warden may disburse earnings during the term of imprisonment to the convict himself, his dependents, or the court. Any interest accrued is credited to an institutional fund established for inmates' welfare. In case of injury arising from employment in an industry, the Commissioner of Correction may provide compensation not to exceed \$1.50 per week, payable solely from profits.

At the discretion of the commissioner or warden, all or any portion of the time earned may be revoked. In addition, each inmate or work releasee is entitled to one day's deduction in sentence for every seven-day work period. The commissioner is also authorized to grant outstanding performance awards. Releasees must pay board and travel expenses and receive the balance upon discharge. Inmates employed by the

state receive the same compensation as if employed in the institution.

The compensation and working conditions of any prisoner on work release must be equal to that of other workers.

4. Convict-made Goods

Goods are to be produced on the basis of state need (as determined by the commissioner), and sold at prices comparable to the lowest market prices of similar goods sold on the open market. The institution is required to distribute a catalogue and price list and all state agencies or political subdivisions are required to purchase prison-made goods, except in emergencies. In addition, the commissioner may sell handicraft articles directly to the public in retail hobby stores. Resale is prohibited.

Sale of prison-made goods on the open market is prohibited. No person, firm or corporation may possess, use, distribute, exchange, sell or offer for sale any state or out-of-state prison-made products, except where, after approval of the Commissioner of Finance and Control, they purchase such goods for use but not for resale. This provision does not apply to the sale of by-products from farming operations.

5. Work Release

At the commissioner's discretion, he may arrange for any convict who is either self-employed or regularly employed to continue employment, or he may attempt to secure

suitable employment for other prisoners. Before placing an inmate, the commissioner must verify that the inmate will not displace employed workers, or work in trades in which there is a surplus of labor in the locality. The commissioner may transfer any inmate from one institution to another to accomplish this purpose.

B. Overview of State Court Decisions

In cases where the Commissioner of Corrections in Connecticut is afforded statutory authority to use discretion in the supervision and control of convicts, the state courts will not intervene to direct the exercise of that discretion in the absence of extreme and unusual circumstances. Cf. Nash v. Reinch, 240 A.2d 877 (S. Ct. Conn. 1968); State v. Anonymous (1974-5), 326 A.2d 937 (Super. Ct. 1974). Apparently, the courts recognize an overriding concern with internal prison security which may account for and justify administrative action which appears not to be in the best interest of the prisoner. In the language of the court in State v. Anonymous (1974-5), supra, at 840:

Even if there were room for a difference of opinion as to where a prisoner should be held, it is not for the court to interfere and mandate a change....The Commissioner must in every instance formulate a value judgment based upon such information as he can gather to determine whether there may be a security problem and, if so, how to handle it. The court should not attempt to "second-guess" the commissioner in the absence of extraordinarily strong reasons none of which appears in this case.

The court refused to issue an order to change the prisoner's place of incarceration pending trial. Although the present location was approximately 85 miles from his counsel, the court stated, at 841, that "such inconvenience must yield in the face of the necessity for adequate security precautions as determined by the commissioner." Further, the court held that notice of an intent to make a change in location and a hearing prior to transfer were not required by law. Id.

Although the state legislature may create a statutory right for prisoners, for example, a right to good time, it may also condition that right by providing for its forfeiture. Moulthrop v. Walker, 26 A.2d 789 (S. Ct. Conn. 1942). The exercise of administrative discretion in determining whether or not the violations which would destroy the right to good time have occurred, will not be interfered with by the court so long as procedural requirements are met. Id.

A prisoner may institute a civil action in state court alleging injuries as a proximate result of breach of duty by state prison officials. Saia v. Warden of Connecticut State Prison, 209 A.2d 520 (Super. Ct. Conn. 1964). However, a Connecticut state court is without authority in "habeas corpus proceeding[s] to inquire into the propriety or legality of any punishment" that may be imposed upon a prisoner. Saia v. Warden of Connecticut State Prison, supra, at 520-21. Since the state courts are without power in habeas proceedings to hear claims of mistreatment in violation of

federal constitutional rights, the fact that a state superior court had ruled negatively upon such a claim by a state prisoner in such a proceeding did not preclude an action in federal court alleging the same violation. See LaReau v. MacDougall, 473 F.2d 974, f.n. 2 at 976 (2d Cir. 1972).¹

C. Statutes

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¹ Refusal to allow prisoners to attend chapel while in segregation was held necessary to maintain security and discipline and therefore not arbitrary or capricious official action in LaReau v. MacDougall, 354 F. Supp. 113 (D. Conn. 1971). On appeal, the circuit court affirmed the holding of the district court, but reversed its dismissal of the Eighth Amendment claim and remanded for a hearing on that issue. LaReau v. MacDougall, 473 F.2d 974 (2d Cir. 1972).

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2. Statutory Provisions

18-7 Powers and duties of warden. Punishment and reward of inmates

The warden shall manage the Connecticut Correctional Institution, Somers, subject to the direction of the

commissioner of correction, and he shall keep all the prisoners employed in such labor as the commissioner orders, during the term of their imprisonment. He shall also keep a record of any punishment inflicted upon a prisoner, showing its cause, mode and degree, and a like record of the conduct of each prisoner. Any prisoner may, by good conduct and obedience to the rules of said institution, earn a commutation or diminution of his sentence, as follows: Sixty days for each year, and pro rata for a part of a year, of a sentence which is not for more than five years; and ninety days for the sixth and each subsequent year, and pro rata for a part of a year, and in addition, thereto, five days for each month as a meritorious achievement; provided any serious act of misconduct or insubordination or persistent refusal to conform to institution regulations occurring at any time during his confinement in said prison shall subject the prisoner, at the discretion of the warden and the commissioner, to the loss of all or any portion of the time earned. Said commutation of sentence shall apply to any prisoner transferred from the Connecticut Correctional Institution, Somers, to the Connecticut Correctional Institution, Cheshire. When any prisoner is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuous term for the purpose of estimating the amount of commutation which he may earn under the provisions of this section. The commissioner may employ prisoners outside the

institution walls, within the state, under the charge of some officer of the institution. He shall provide for the prisoners suitable food and clothing and suitable implements and materials for their work, and shall provide for the relief of any sick or infirm prisoner, and the cost thereof shall be paid by the state from funds appropriated and available for such purpose. The warden shall superintend the labor and conduct of the prisoners, and, when requested, shall communicate to the commissioner any information in his knowledge respecting the prison. (1963, P.A. 28, §2, 1967, P.A. 152, §29, eff. May 25, 1967; 1969, P.A. 463, §1.)

18-10a Employment of prisoners under death sentence

The commissioner of correction shall provide for the employment and utilization of prisoners under sentence of death whose convictions are being appealed. Nothing in this section shall be construed so as to diminish security precautions for such prisoners, or to require co-mingling with other prisoners, or to require daily employment. (1963, P.A. 463.)

18-15 Raising of pheasants at Osborn division

The warden of the State Prison is authorized, in cooperation with the State Board of Fisheries and Game, to raise, at the Osborn division, not more than thirty thousand pheasants in any one year, such pheasants to be used to stock public shooting areas. (1963, P.A. 28, §4.)

18-23 Women prisoners. Certain statutes applicable

Any woman who, but for the establishment of the State Prison for Women, would have been confined in the State Prison,

shall be confined in said State Prison for Women. All women imprisoned at said State Prison for Women shall be subject to the provisions of the statutes applicable to prisoners at the State Prison, except as otherwise provided, and shall be under the supervision and control of the superintendent and the commissioner of correction. (1967, P.A. 152, §39, eff. May 25, 1967.)

18-70 Industrial fund

The superintendent of the reformatory shall use the industrial fund as a revolving fund in the establishment and continuance of such industries as he directs and for the purchase of manufacturing materials and equipment; provided no single article of equipment at a cost of more than two thousand dollars shall be purchased from said fund without the approval of the commissioner of finance and control. Claims against the state in behalf of said reformatory shall be paid by order of the comptroller drawn against said fund. The proceeds of all sales resulting from such industries shall be paid into the state treasury and credited to said fund. At the end of each fiscal period, any balance in excess of two hundred thousand dollars, as shown by the inventory of manufactured articles, material on hand or in process of being manufactured, bills receivable and cash balance, less accounts payable and a reasonable reserve for the replacement of and addition to equipment, subject to the approval of the commissioner of finance and control, shall revert to the state treasury. (1961, P.A. 120; 1967, P.A. 152 §25, eff. May 25, 1967.)

18-71 Consolidation of funds

The funds specified in sections 18-70 and 18-88 shall be consolidated, and the activities financed from them shall be placed under unified control, at such time as the governor, upon the recommendation of the commissioner and the council, certifies that all steps prerequisite to such consolidation have been accomplished. (1967, P.A. 152, §11, eff. May 25, 1967.)

18-78 Composition of department

There is established a state department of correction, which shall be a single budgeted agency consisting of a council of correction, the State Prison, the State Prison for Women, the Connecticut State Farm for Women, the Connecticut Reformatory, the Board of Parole and the state jails. (1967, P.A. 152, §1, eff. May 25, 1967.)

18-79 Council of correction

- (a) The council of correction shall consist of seven members, including at least one psychiatrist licensed to practice medicine in this state, all of whom shall serve without compensation except for necessary expenses incurred in the performance of their duties. The governor shall appoint members to replace those whose terms expire for terms of four years. The commissioner of correction and the chairman of the board of parole shall be ex-officio members

of said council without vote and shall attend its meetings. No appointive member of the council shall be employed by the state.

- (b) The council shall elect annually from its membership a chairman, vice chairman and secretary and may adopt such rules and bylaws as it deems necessary for the conduct of its affairs. The council shall meet at least quarterly, and oftener upon the call of the chair or the commissioner or on the written request of any three members, to formulate policies or for the administration of sound correctional program by the department and its subordinate institutions, to discuss the implementation and operation of said program, and to consider and act upon such matters as its members or the commissioner of correction may raise. The council shall recommend to the governor and the General Assembly such legislation as will in its judgement provide effective and humane correctional and rehabilitative custody and treatment of offenders. A majority of the council shall constitute a quorum. The council, by majority vote, may require any employee of the department to appear before it at any regular or special meeting.

(1967, P.A. 152, §2, eff. May 25, 1967; 1975, P.A. 74-150, §3.)

18-80 Commissioner

In accordance with the provisions of sections 4-5 to 4-8, inclusive, the governor shall, after consultation with the council of correction, appoint a commissioner of correction who shall be the administrative head of the department. Said commissioner shall be an experienced correctional administrator. He shall devote his entire time to the duties of his office. The term of office of the commissioner first appointed under this section shall expire February 28, 1971. (1967, P.A. 152, §3, eff. May 25, 1967.)

18-81 Duties of commissioner

The commissioner of correction shall administer, coordinate and control the operations of the department and shall be responsible for the overall supervision and direction of all institutions, facilities and activities of the department. He shall have supervision of parolees. He shall, after consultation with the council, establish rules for the administrative practices and custodial and rehabilitative methods of said institutions and facilities in accordance with recognized correctional standards. He shall be responsible for establishing disciplinary, diagnostic, classification, treatment, vocational and academic education, research and statistics, training and development services and programs throughout the department. Subject to the provisions of chapter 67, the commissioner shall appoint such professional, technical and other personnel as may be necessary for the efficient operation

of the department. The commissioner shall organize and operate interinstitutional programs for the development and training of institution and facility staffs. He shall provide for the services of such chaplains as are necessary to minister to the needs of the inmates of department institutions and facilities. He shall act as administrator of the interstate compact for parole and probation supervision established by section 54-133. (1967, P.A. 152, §5, eff. May 25, 1967.)

18-82 Deputy commissioners and institution heads

The commissioner of correction shall appoint, after consultation with the council of correction, and may remove in like manner three deputy commissioners and the following administrative heads of state institutions: The warden of the Connecticut Correctional Institution, Somers; the superintendent of the Connecticut Correctional Institution, Enfield; the superintendent of the Connecticut Correctional Institution, Niantic, who shall, by virtue of such appointment, be warden of the maximum security division of the Connecticut Correctional Institution, Niantic; the superintendent of the Connecticut Correctional Institution, Cheshire; and the state community correctional center administrator, all of whom shall possess skill and experience in correctional administration. Said institution heads shall manage their respective institutions in accordance with the rules and orders of the commissioner and with the policies and programs approved by the council. Wardens and superintendents shall assist the commissioner of correction

in his preparation of a consolidated budget request for the Department of Correction. (Approved May 8, 1975, P.A. 75-85.)

18-84 "Inmate" and "prisoner" defined

The terms "inmate" and "prisoner," as used in this Title and sections 17-194a, 17-246, 54-125 to 54-129, inclusive, and 54-131, include any person sentenced or transferred to any institution of the department until released from its control, including any person on parole. (1967, P.A. 152, §12, eff. May 25, 1967.)

18-85 Compensation of inmates

The commissioner, after consultation with the council and the personnel policy board, shall establish a schedule of compensation for services performed on behalf of the state by inmates of any institution or facility of the department. Such schedule shall recognize degrees of merit, diligence and skill in order to encourage inmate incentive and industry. Sums so earned shall be deposited, under the direction of the administrative head of such institution or facility, in a savings bank or state bank and trust company in the state, and shall be paid to the inmate on his discharge; but the warden, superintendent or jail administrator may, while the inmate is in custody, pay to the inmate or to his spouse, parent or parents or children such portion of such compensation as is necessary for the welfare of the inmate or such relatives or may pay to the clerk of the court in which a jail inmate, held only for payment of a fine, was convicted, such portion of such compensation as is

necessary to pay such fine. Any interest that accrues shall be credited to any institutional fund established for the welfare of inmates. Compensation under this section shall be in addition to any compensation received or credited under section 18-50. (1967, P.A. 152, §13, eff. May 25, 1967.)

18-88 Industrial activities

- (a) The Correction Industries Advisory Commission shall consist of the representative of each of the following categories: (1) Employers of labor, (2) employees, (3) agriculture, (4) the office of the director of purchases and (5) the public. Annually a member shall be appointed by the governor for a five-year term to replace the member whose term expires. The members of said commission shall receive no compensation for their services but shall receive their actual and necessary expenses incurred in the performance of their duties. The commission shall meet at least semiannually or on the call of the commissioner of correction but shall not be charged with any administrative or regulatory duties.
- (b) The commissioner shall use the industrial fund for the institutions of the department as a revolving fund for the maintenance and continuance of such productive industries as the

commission directs and for the purchase of supplies, stock, tools, machinery and other equipment to promote in any way the industrial activities of the institutions. The proceeds from all sales resulting from such activities shall be paid to the treasurer and credited to said fund.

- (c) The commission shall approve the establishment and maintenance of any and all such industrial activities after considering and determining the extent, if any, to which each industry may compete with private industry and, as far as possible, shall encourage a diversified program.
- (d) The commissioner may, by regulation, provide, for any injury suffered by any inmate arising out of and in the course of his employment in such industries, a compensation award not covered under section 18-95. Such payments shall not exceed the sum of one dollar and fifty cents per week and shall be payable solely from profits from such industries.
- (e) The commissioner may appoint, in accordance with chapter 67, a superintendent of institution industries and such assistants and employees as he deems necessary to (1) manage the industries

(2) market and deliver the products and (3) investigate complaints. The compensation of such appointees shall be paid from the industrial fund.

- (f) The commissioner shall cause such articles, materials and products as are used by state agencies and political subdivisions as determined by the commission, to be produced by the labor of prisoners and sold at prices comparable with the lowest market prices for such articles and materials sold or offered for sale outside institutions.
- (g) Any political subdivision of the state may purchase any articles, materials or products required by it which are produced or manufactured by the institutional industries. The commissioner may promulgate and circulate at sufficiently frequent intervals for distribution to the director of purchase, the comptroller and such political subdivisions a catalogue showing styles, designs, sizes and varieties of all articles, materials and products manufactured and produced at the institutions and periodical price lists for all such articles.
- (h) Except for emergency purchases made under section 4-98, the comptroller shall not approve any purchase order or commitment for the purchase other

than from such industries, of any such supplies, materials or products as are listed in said catalogue and available in sufficient quantity from such industries.

- (i) The commissioner shall file an annual report of the industrial operations with the governor and a balance sheet and statement of operations with the comptroller at such times as he requests. The commissioner with the approval of the commissioner of finance and control, shall determine at the end of each fiscal year the amount of cash working capital necessary to be retained in the industrial fund and the excess of the amount so determined shall be transferred to the general fund.
- (j) The commissioner of correction may establish retail hobby stores for the purpose of the sale to the public, but not for resale, of articles made by inmates of any of the institutions of the department. The proceeds of such sales, less a charge to defray the cost of the sales as determined by the commissioner, shall be deposited in the inmate's institutional account. Such hobby products shall be subject to approval by the commissioner of correction.
- (k) Any person who sells or offers for sale on the open market, to any person other than as

specified in this section, any articles, materials or products manufactured or produced by institution inmates, shall be fined not less than one hundred dollars nor more than five thousand dollars or be imprisoned not more than six months, or be both fined and imprisoned.

(1961, P.A. 45, §1; 1963, P.A. 28, §3; 1967, P.A. 152, §3, eff. May 25, 1967; 1969, P.A. 470.)

18-89 Contracts for labor; public institutions

No contract or agreement shall be made for the labor or services of inmates of any correctional or other state institution in the manufacture of goods or any portion of such manufacture, or for the product of such labor or services, except after public notice, by advertising in at least three daily papers having a circulation in different sections of the state, calling for sealed proposals or bids for such labor, or the product thereof, and such proposal or bid, received in accordance with such notice, as is by its terms most advantageous to the state shall be accepted by the authorities in charge of the disposal of such labor, or the product thereof, and such contract or agreement shall be made in accordance with the terms of such notice and such proposal or bid. No such contract or agreement shall be made for any period exceeding four years. The provisions of this section shall not apply to section 18-88. (1961, P.A. 517, §56; 1967, P.A. 152, §31, eff. May 25, 1967.)

18-90 Prisoners; employment restricted

No person confined for crime shall be employed in or about the manufacture or preparation of tobacco, or of the article which in its use comes into contact with the mouth of a human being; provided the state department of health may, subject to such inspection and such regulations as it may adopt concerning the persons so employed, permit such employment. (1949 Rev. §3005.)

18-90a Employment of inmates by state departments or agencies

The commissioner of correction may permit any inmate of a correctional facility under his jurisdiction to be employed by any department or agency of the state which desires to make use of the services of such inmates, provided participation by such inmates shall be voluntary. Any inmate employed under this section shall receive the same compensation he would receive if he worked within the correctional institution to which he is confined. (1973, P.A. 73-277.)

18-95 Compensation for injuries of inmates of state correctional and reformatory institutions

In case of injury which results in a fatality or in a permanent handicap to any inmate of any institution of the department of correction or the department of children and youth services, the commissioner of correction or the commissioner of youth services, as the case may be, shall carefully investigate such injury and report the facts, together with his recommendations for compensation, to a committee consisting

of the governor, the attorney general and the commissioner of finance and control. Said committee shall consider such reports and recommendations and fix the compensation, if any, to be paid either in monthly payments or in a lump sum. Such compensation shall be paid from the general fund of the state. (1961, P.A. 580, §1; 1971, P.A. 110.)

18-98a Deduction of time for periods of employment

Each person committed to the custody of the commissioner of correction who is employed within the institution to which he was sentenced, or outside as provided by section 18-100, for a period of seven consecutive days, except for temporary interruption of such period as excused by the commissioner for valid reasons, may have one day deducted from his sentence for such period, in addition to any other earned time at the discretion of the commissioner of correction. (1969, P.A. 298, §1, eff. May 28, 1969; 1973, P.A. 73-42.)

18-98b Outstandingly meritorious performance award

In addition to any commutation or diminution of sentence or any meritorious time serve award which may have been granted under section 18-7 or 18-53 any inmate committed to the custody of the commissioner of correction for a definite term, or for a term with a minimum sentence imposed, may have not more than one hundred and twenty days deducted from any one continuous term of imprisonment as an outstandingly meritorious performance award in the discretion of the commissioner of correction for exceptional personal achievement, accomplishment

and other outstandingly meritorious performance, provided the maximum number of inmates who may receive such an award in any one fiscal year shall not exceed ten per cent of the average inmate population of the department of correction who were in the custody of the commissioner of correction for either a definite term, or a term with a minimum sentence during the previous fiscal year; and provided any serious act of misconduct or insubordination or refusal to conform to institution regulations occurring at any time during his confinement shall subject the prisoner, at the discretion of the warden and the commissioner, to the loss of all, or any portion, of any time awarded under this section. When any prisoner is held under more than one conviction the several terms of imprisonment imposed thereunder shall be construed as one continuous term for purposes of determining eligibility for any outstandingly meritorious performance award authorized by this section. (Approved May 6, 1975. P.A. 75-36.)

18-100 Work-release and education-release programs

- (a) The commissioner of correction, or such person as said commissioner delegates, may at his discretion arrange for the continuation of the employment of any person committed to the custody of said commissioner in accordance with the provisions of section 54-120, including persons committed for contempt of court, who is self-employed or who has been regularly employed.

If such person has not been so employed the commissioner or his delegate or any suitable person or agency designated by the commissioner shall attempt to secure suitable employment for such person or provide for his attendance at an educational institution if his prior education, aptitude and ability indicate he would profit by such instruction.

- (b) Before securing employment for any prisoner under the provisions of this section the commissioner shall determine (1) that such paid employment will not result in the displacement of employed workers or be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and (2) that the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is performed.

- (c) Each person accorded the privileges of this section shall be confined in the institution to which he was sentenced during such time as he is not actually at his employment or is not in attendance at an educational institution.

- (d) The commissioner of correction shall establish such regulations as he deems necessary for the administration of this section and section 18-101 and for the conduct of persons granted the privileges of this section; and he may suspend the privileges of any persons who violate such regulations or whose conduct he believes is unsuitable for the continuation of such privileges.
- (e) If the commissioner of correction deems that the purposes of this section may thus be more effectively carried out, he may transfer any person from one correctional institution to another.

(1967, P.A. 773, §1-4, and §6, eff. July 1, 1968.)

18-100a Petty cash fund for loans for work-release program

- (a) There is established in the custody of the department of correction a petty cash fund to provide cash advances in the nature of loans to persons committed to the custody of the commissioner of correction in such amounts as are necessary to carry out the work-release program authorized comptroller to draw an order on the treasurer to pay from time to time such monies to the fund for working capital as the program necessitates, provided such outstanding loans shall not, at any time, exceed in the

aggregate five thousand dollars, and to reimburse such fund from time to time for any losses sustained by it for failure to recover monies so advanced.

- (b) Payments to the petty cash fund for working capital and for any losses as herein provided shall be charged to authorized appropriations of the department of correction. Nothing herein shall be construed to prevent the establishment of additional petty cash funds for defraying any expenses of the department of correction that the comptroller may find necessary or convenient for the efficient operation of the department, provided such expenses shall be charged to authorized appropriations of such department.

(1969, P.A. 609, §1, §2, eff. June 24, 1969.)

18-101 Disposition of compensation

- (a) When any person to whom privileges have been granted under section 18-100 is employed for compensation, the commissioner of correction or his designee shall collect such compensation or require such person to deliver to him the full amount thereof when received. The commissioner or his designee shall deposit such funds in trust in an account and shall keep a record

showing the status of the account of each person. Compensation received by such person during his term of imprisonment shall not be subject to levy or attachment.

- (b) On granting privileges to any person under section 18-100 the commissioner or his designee shall disburse any compensation earned by such person in accordance with the following priorities: (1) Costs of his board as determined by said commissioner; (2) his necessary travel expense to and from work and other incidental expenses; and (3) support of his dependents, if any, and the commissioner shall pay any balance remaining to such person upon his discharge. Each person gainfully self-employed shall pay to the commissioner the costs of his board, as determined by said commissioner; and on default in payment thereof his participation under section 18-100 shall be revoked.
- (c) The commissioner or his designee shall notify the welfare commissioner and the welfare department of the town where the dependents of any person employed under the provisions of section 18-100 reside of the amounts of any payments being made to such dependents.

53-329 *Products of prison labor*

No person, firm or corporation shall possess, use, distribute, exchange, sell or offer for sale in this state any goods, wares or merchandise manufactured, produced or mined wholly or in part by convicts or prisoners of this or any other state, except convicts or prisoners on parole or probation; provided nothing in this section shall be construed to forbid the sale of such goods to the state or any political subdivision thereof, or to any public institution owned and managed or controlled by the state or by any political subdivision thereof, when such goods are to be used or possessed solely by the state, such political subdivision thereof or such institution, or to any person, firm or corporation which may purchase such goods for its use or consumption but not for resale, when such purchase has been approved by the commissioner of finance and control, or to forbid sales under the provisions of section 18-46b. Nothing in this section shall be construed to forbid the sale of by-products of farming operations conducted for the dual purpose of keeping convicts or prisoners employed and of producing food for use in state institutions, such by-products to include but not to be limited to bulls or bull calves or parts of carcasses thereof resulting from operations conducted to produce milk and cockerel chicks resulting from the incubation of eggs in egg-production activities. Any person who violates any provision of this section shall be fined not more than one thousand dollars or imprisoned not more than ninety days or be both fined and imprisoned. (1963, P.A. 239, §2.)

IV. GEORGIA

A. Overview of the Statutes

1. Prison Labor, General Provisions

The Georgia Constitution provides that a State Board of Corrections shall be in charge of the state penal system. Ga. Const. §2-3401. This board establishes the rules and regulations governing the business of the penal system, except that the board has no authority with respect to misdemeanor offenders sentenced to county correctional institutions.

The state board provides rules and regulations governing the hiring out of prisoners to state political subdivisions authorized to contract for such prisoners, but prisoners may not be hired out to private persons nor be used in any business conducted for profit. An inmate enrolled in any vocational, technical or educational training program may utilize privately owned property or equipment in activities which contribute to his acquisition of skills.

The board or any penal institution under its jurisdiction is authorized to require prisoners to labor on public roads, public works or in such other manner as the board may deem advisable. The board may also contract with any political subdivision authorized to contract for inmate labor for the construction, repair, or maintenance of roads, bridges, public buildings and any other public works.

The Board of Offender Rehabilitation is empowered to establish the general policy of an Offender Rehabilitation Department. The Commissioner of Offender Rehabilitation supervises, directs and executes the functions of the department upon deletion of the constitutional reference to the Director of Corrections.

The Division of Community-Based Services in the Department of Offender Rehabilitation administers the supervision of offenders being treated outside the institution. The Division of Institutional Services, subject to the governance of the State Board of Corrections, administers correctional institutions and rehabilitative programs within the institutions.

2. Prison Industries

The State Board of Corrections is authorized, alone or in cooperation with the State Department of Education, the State Board of Regents, or the several state, local and federal agencies, to institute a program of rehabilitation which may include industrial, mechanical, agricultural and vocational training.

The Georgia Correctional Industries Administration has the authority to exercise the same powers possessed by the State Board of Corrections in connection with the manufacture and sale of products. The administration may utilize any and all convicts made available for its purpose, acquire and dispose of property for its purpose, provide training

facilities for prerelease rehabilitation and education of prisoners, and contract with a state department or political subdivision for furnishing any service which the State Board of Corrections may provide.

3. Inmate Compensation

Prisoner wages earned while employed in a work release program are held in trust until release. The cost of the prisoner's keep and confinement may be deducted as well as monies for the support of any dependents. The State Board of Corrections is authorized to pay compensation of not more than \$25 per month to inmates employed in prison industries.

4. Convict-made Goods

No goods produced, except unprocessed agricultural products or handicrafts, may be sold to any private person or association, but goods may be sold to state departments or political subdivisions. State agencies are permitted to sell to the public in the performance of their duties.

Anyone violating proscriptions on the sale of prison-made goods or the use of convict labor is guilty of a misdemeanor. Any warden or other prison official who causes an inmate to work on Sunday, except works of necessity, is guilty of a misdemeanor.

5. Work Release

The Director of Corrections designates the place of confinement and has sole authority to transfer prisoners. He may extend the limits of confinement of any inmate he

deems trustworthy to work at paid employment in a community training program, on a voluntary basis, provided that:

- (1) representatives of local unions are consulted;
- (2) such employment does not displace employed workers, or be applied where there is an excess of available labor, or impair existing contracts; and
- (3) the rates of pay and conditions of employment are not less than those paid or provided for similar work in the locality.

Whenever the warden of a state penal institution recommends, the director may authorize special leave for participation in a special community program which will contribute to the rehabilitation process of the inmate.

B. Overview of State Court Decisions

Georgia court decisions dealing with convict labor interpret statutes which were superseded (See G.S.A. 77-301) by newly enacted provisions in 1956. See e.g., Chattahoochee Brick Co. v. Braswell, 92 Ga. 631, 18 S.E. 1015 (1893); Penitentiary Co. No. 2 v. Rountree, 113 Ga. 799, 39 S.E. 508 (1901); MacDonald v. State, 6 Ga. App. 399, 64 S.E. 1108 (1909); Moore v. Baldwin, 209 Ga. 765, 74 S.E. 2d 449 (1954). The language contained in those decisions, however, may provide insight into the courts' interpretation of the status of prisoners and/or the role of the courts in regard to prison labor.

Where a statute had authorized the hiring out of prison labor for brickmaking, the court in Chattahoochee Brick Co., supra, held that the brick company in control of inmate labor was liable for injuries sustained by a prisoner in the course of such labor. In fact, the court provided more protection for the convict than would have been available to a freeman by disallowing the application of a general rule regarding a master's responsibility to his servant. The rule provides that when a servant goes voluntarily and knowingly into a dangerous situation he cannot then demand compensation from his master for resulting injuries. The Court in Chattahoochee Brick Co., supra, at 1016, made the following distinction:

...his [the prisoner's] movements were absolutely controlled and directed by a guard, or "boss," whose orders he was compelled to obey.... The plaintiff's position so far as the guard was concerned was more that of a slave than a mere servant, and it is apparent that he dared not disobey any of the guard's commands.

While the court was willing in the situation presented to provide added protection, the need for that protection was premised on the prisoner's status being "more that of a slave" than that of a free laborer.

In Penitentiary Co. No. 2, supra, the court held that contracting for the employment of convicts in work other than that specifically authorized by statute, in this instance for the purposes of conducting a sawmill, was invalid as contrary to public policy. The court, at 509, made the following

statement indicative of legislative concerns and the judicial role in regard to prison labor:

...The general assembly did not see fit to authorize "sawmill" contracts, or contracts with respect to numerous other legitimate business enterprises and useful occupations. It is not improbable that the "labor problem" had its influence, and that it may have been considered injudicious to permit "convict labor" to come in competition with "free labor" in the ordinary branches of trade. Again, the framers of the law may have been reluctant to "leave the bars down" as to render it possible for helpless criminals to be forced against their will to engage in perilous occupations - such, for instance, as the manufacture of powerful explosives. Really, however, the true reason is of absolutely no consequence, for the law must be enforced as written.

Again, in MacDonald, supra, the court stated that its function was to interpret the statutes and not to judge the wisdom of their provisions. Under a statute which provided that convicts be employed on public works or in such other work as the prison authority may deem appropriate, convict employment for private individuals was held legal by the MacDonald Court so long as control of the employment conditions remained with the prison authority and so long as such employment practice did not violate the statutory prohibition of prison labor where the products of such labor would come into competition with the products of free labor. The latter prohibition was described by the court as a benefit for free laborers and not one for convicts. The court, in dicta at 114, stated that a prisoner had no legal interest in whether

the products of his labor came into competition with the products of free labor.

In Moore, supra, in its resolution of the issue of county rights to convict labor, given the 1946 law which created and vested control and supervision over convict labor in a State Board of Corrections, the court did not question the right of the state to control and require prison labor. However, the then relevant statutes were interpreted as not divesting the county of its previous statutory rights to convict labor for work on public roads. The court found that the board, therefore, could not arbitrarily refuse to grant a county's request for prison labor.

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2. Statutory Provisions

26-9909 *Causing convict to work on Sunday*

Any warden or other prison official who shall cause any convict to do any work on Sunday, except works shall be guilty of a misdemeanor. (Acts 1968, pp. 1249, 1337.)

77-301 *Intent and purpose of Chapter 77*

It is the intent and purpose of this Chapter to supersede all previous laws of this State relating to the organization, powers and duties of the State Board of Corrections and to prisons, county correctional institutions and prisoners, and to provide a comprehensive revision of laws relating thereto. (Acts 1956, pp. 161, 162.)

77-302 *State Board of Corrections; members; appointment; tenure; compensation*

Pursuant to Article V, Section V, Paragraph I of the Constitution of Georgia of 1945 (§2-3041) there is hereby created a State Board of Corrections composed of five members appointed by the Governor with the consent of the Senate. Those members now serving shall serve out the remainder of their terms as provided by law, and their successors shall be appointed for terms of five years each and until their successors are duly appointed and qualified. Said members shall receive no salary, but shall receive the sum of \$20 per

day for each day of actual attendance at meetings of the board or on tours of inspection, in addition to actual expenses incurred in connection therewith, and actual cost of transportation to and from the place of meeting or place of visits and inspection of the respective institutions of the penal system of the State by the nearest practical route from their respective homes, such expenses to be paid from funds appropriated to the Department of Corrections upon the presentation of vouchers by the members of said board, approved by the chairman and signed by the secretary. (Acts 1956, pp. 161, 168; 1957, pp. 477, 478).

77-305 Director of Corrections; election; allowances; salary; duties

The State Board of Corrections shall elect a Director of Corrections who shall be the executive office of the board, and shall hold office at the pleasure of the board. (Acts 1956, pp. 161, 170; 1958, pp. 413, 414; 1962, p. 689; 1966, pp. 121, 122.)

77-307 Promulgation of rules and regulations governing penal system

- (a) The State Board of Corrections is hereby authorized to adopt, establish and promulgate rules and regulations governing the transaction of business of the penal system of the State by the State Board of Corrections, by the Director of Corrections and the administration of the affairs of the penal system in the different

penal institutions coming under its authority and supervision, and shall make said institutions as self-supporting as possible.

- (b) The State Board of Corrections shall adopt rules governing the assignment, housing, working, feeding, clothing, treatment, discipline, rehabilitation, training, and hospitalization of all prisoners coming under its custody. (Acts 1956, pp. 161, 170; 1969, p. 598.)

77-309 No authority over certain misdemeanor prisoners; assignment of prisoners; notification of director of sentences; personal history of prisoners; financial responsibility for transportation; necessities of prisoner; defense of habeas corpus cases; escape and recapture

- (a) The State Board of Corrections shall have no authority, jurisdiction, or responsibility with respect to misdemeanor offenders sentenced under subparagraph (a) of section 27-2506 to confinement in the county or other jail, county correctional confinement in the county or other jail, county correctional institution or such other places as counties may provide for maintenance of county prisoners, and the county wherein such sentence is imposed shall have the sole responsibility of executing such sentence and of providing for the care, maintenance, and upkeep of such prisoner while so serving: Provided, however,

that where the sentencing judge certified to the State Board of Corrections that the county facilities of that county are inadequate for maintaining female prisoners, any female prisoner may be committed to the State Board of Corrections for the service of her sentence in any State prison as may be directed by the State Board of Corrections: Provided, further, that the delivery of such female prisoners to the proper place of incarceration shall be at the expense of the county of conviction.

(b) Where any person shall be convicted of any offense, misdemeanor or felony, and sentenced to serve time in any penal institution in this State other than as hereinbefore provided, he shall be committed to the custody of the Director of Corrections, who, with the approval of the State Board of Corrections, shall designate the place of confinement where the sentence shall be served:

(1) The Director of Corrections may designate as a place of confinement any available, suitable, and appropriate correctional institution or public works camp in this State, operated under the jurisdiction or supervision of the Board of Corrections, anything

in such sentence to the contrary notwithstanding. Said director, with the approval of the State Board of Corrections, shall also have sole authority to transfer prisoners from one correctional institution or public works camp in this State to any other operated by or under the jurisdiction or supervision of or approved by the State Board of Corrections. Neither the director nor the board shall have authority to assign male or female prisoners to serve in any manner in a county jail. Further, the director, with the approval of the Board of Corrections, may transfer to the Attorney General of the United States for confinement, any prisoner where it is determined that the custody, care, treatment, training or rehabilitation of such prisoner is not adequate or in the best interest of the prisoner or his fellow inmates. The State Board of Corrections is authorized to contract with the Attorney General of the United States of America for the custody, care, subsistence, housing, treatment, training, and rehabilitation of such prisoners.

- (2) The Director of Corrections shall extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust by authorizing him, under prescribed conditions, to:

Work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution to which he is committed: Provided, that:

(i) representatives of local union central bodies or similar labor union organizations are consulted;

(ii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services, and

(iii) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed. A prisoner authorized to

work at paid employment in the community under the provisions of this subsection shall comply with all rules and regulations promulgated by the Board of Corrections relative to the handling, disbursement and holding in trust of all funds earned by said prisoner while under the jurisdiction of the Department of Offender Rehabilitation. An amount determined to be the cost of the prisoner's keep and confinement shall be deducted from the earnings of each prisoner, and the said amount shall be deposited in the treasury of the State Board of Corrections: Provided, however, that if the prisoner is assigned to a county correctional institution, said sum shall be deposited in the treasury of the said county. After the deduction for keep and confinement, the Director of Corrections shall

1. Allow the prisoner to draw from the balance a reasonable sum to cover his incidental expenses;

2. Retain to the prisoner's credit such amount as deemed necessary to accumulate a reasonable sum to be paid to him on his release from prison;

3. Cause to be paid any additional balance as is needed for the support of the prisoner's dependents.

No prisoner employed in the free community under the provisions of this subsection shall be deemed to be an agent, employee, or involuntary servant of the State Department of Corrections while working in the free community or going to and from such employment.

- (3) The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution designated by the Director of Corrections, shall be deemed an escape from a penitentiary or county correctional institution and punishable by law. (Acts 1956, pp. 161, 171; 1964, pp. 489, 490; 1968, p. 1399; 1969, p. 602; 1971, pp. 435, 436; 1972, p. 582; 1973, pp. 1297, 1298, 1299.)

77-311 Punishment of prisoners; modes; prohibitions

- (a) Whipping of inmates and all forms of corporal punishment shall be prohibited. All shackles, manacles, picks, leg irons, and chains shall be

barred from use by an correctional institution, public works camp, highway camp, or other institution of confinement operated under authority of the State Board of Corrections. In transferring prisoners from one locality to another, manacles may be used where necessary to restrain or prevent the prisoner's escape. The wearing of stripes shall not be required, but may be used as punishment for violation of prison rules and regulations for such time as the State Board of Corrections may direct.

- (b) The State Board of Corrections shall restrict punishment for infraction of correctional rules and regulations to isolation and restricted diet, or uniform standard humane punishment which the board may deem necessary for the control of prisoners. (Acts 1956, pp. 161, 174.)

77-318 Hiring out prisoners, rules and regulations concerning; sale of goods produced by inmates of prisons or county correctional institutions; restrictions; disposition of funds from sale of goods by prisoners

- (a) The State Board of Corrections shall provide rules and regulations governing the hiring out of prisoners by any penal institution under its authority to municipalities, cities, the State Highway Department, and any other political subdivision, public authority, public authority, public corporation, or agency or State local government, which

are hereby authorized to contract for and receive said prisoners, but said prisoners shall not be hired out to private persons or corporations, nor shall any instrumentality of government hereinbefore authorized to utilize prison labor use such labor in any business conducted for profit, except as provided in section 77-309: Provided, however, inmate trainees enrolled in any vocational, technical, or educational training program authorized and supported by the State Board of Corrections may repair or otherwise utilize any privately-owned property or equipment as well as any other property or equipment in connection with the activities of any such training program so long as the repair or utilization contributes to the inmate's acquisition of any desired vocational, technical, or educational skills.

- (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 Government, 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 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. 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.

(d) See §77-9910.

- (e) The Board of Corrections or any penal institution or county correctional institution operating under jurisdiction of the board shall be authorized to require prisoners coming into its custody to labor on the public roads, public works, or in such other manner as the board may deem advisable. The Board of Corrections may also contract with municipalities, cities, counties, the State Highway Department, or any other political subdivision, public authority, public corporation or agency or State or local Government now or hereafter created by law, which are hereby authorized to so contract with the board, for the construction, repair, or maintenance of roads, bridges, public buildings and any other public works by use of prison labor.
- (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. 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. (Acts 1956, pp. 161, 177; 1957, pp. 477, 480; 1968, p. 1092; 1968, pp. 1399, 1402; 1971, pp. 581, 582; 1972, pp. 577, 578.)

77-319 *Rehabilitation of prisoners; educational and recreational activities; religious activities*

- (a) The State Board of Corrections, acting alone or in cooperation with the State Department of Education, the State Board of Regents, or the several State, local and Federal agencies concerned therewith, shall be authorized to institute a program of rehabilitation which may include academic, industrial, mechanical, agricultural, and vocational training within the confines of the prison.
- (b) The State Board of Corrections, in institutions and facilities under its control and supervision, shall give the prisoners opportunity for reasonable educational, religious and recreational

activities where practical. (Acts 1956, pp. 161, 178; 1964, pp. 734, 735; 1968, pp. 1399, 1403.)

77-503a Board of Offender Rehabilitation, creation

There is created a Board of Offender Rehabilitation which shall establish the general policy to be followed by the Department. The board shall be composed of nine members. Five of the members shall be the members of the State Board of Corrections, created in Article V, Section V, Paragraph I of the Constitution (§2-3401), serving in an ex-officio capacity. They shall be appointed in the same manner and for the same term with respect to their membership on both boards. The other four members of the Board of Offender Rehabilitation shall be appointed by the Governor with the consent of the Senate for terms of four years. The first appointment shall be for terms of one, two, three and four years and their successors shall be appointed for terms of four years each. Nothing in this Chapter shall alter the duties of the State Board of Corrections with respect to the State penal institutions as provided in the Constitution. (Acts 1972, pp. 1069, 1073.)

77-504a Commissioner of Offender Rehabilitation, creation

There is created the position of Commissioner of Offender Rehabilitation. The commissioner shall be the chief administrative officer of the Department, and subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the Department by this

Chapter. The position of Director of Corrections, provided for in Article V, Section V, Paragraph I of the Constitution (§2-3401) is continued and the director shall serve ex-officio as the Commissioner of Offender Rehabilitation until such time as the Constitution is amended to delete the reference to the Director of Corrections. Following such constitutional amendment, the Commissioner of Offender Rehabilitation shall be appointed as provided by statute. (Acts 1972, pp. 1069, 1073.)

77-508a Division of Institutional Services, creation

There is created within the Department of Offender Rehabilitation the Division of Institutional Services. The divisions, which shall be subject to the governance of the State Board of Corrections, shall administer the State's correctional institutions and rehabilitative programs conducted therein. The Director of Corrections, pursuant to the Constitution, shall be the administrative head of the division. (Acts 1972, pp. 1069, 1074.)

77-901 Title: "Georgia Correctional Industries Act"

This Chapter shall be known as, and may be cited as, the "Georgia Correctional Industries Act." (Acts 1960, p. 880.)

77-902 Creation of Georgia Correctional Industries Administration; corporate powers

There is hereby created a body corporate and politic, an instrumentality and public corporation of this State to be known as the "Georgia Correctional Industries Administration." It shall have perpetual existence. In such name, it may contract and be contracted with, sue and be sued, implead and

be impleaded, and complain and defend in any and all courts.

(Acts 1960, p. 880.)

77-904 *General powers of administration; borrowing funds; acceptance of donations*

The administration shall have, in addition to any other powers conferred by this Chapter, the following powers:

- (a) To have a seal and alter the same at pleasure;
- (b) To acquire by purchase, lease, or otherwise, and to hold, lease and dispose of in any manner, real and personal property of every kind and character for its corporate purposes;
- (c) To appoint, upon the recommendations of its chief executive officer, such additional officers, agents and employees as may in its judgment be necessary to carry on the business of the administration; to fix compensation for such officers and employees and to promote and discharge the same: Provided, however, that all legal services for the administration shall be rendered by the Attorney General and his staff and no fee shall be paid to any attorney or law firm for legal services. The administration, however, shall be authorized to pay such fees, stamps, and licenses and any court costs that may be incurred by virtue of the powers herein granted;

- (d) The administration shall have the same powers and authority possessed by the State Board of Corrections in connection with the manufacture and sale of products;
- (e) To utilize any and all convicts who may be made available for its corporate purposes by the State Board of Corrections. Although the administration shall not be required to make any payment to the State Board of Corrections for the use of such labor, the administration shall be authorized to pay, under rules and regulations promulgated by the Director of Corrections, compensation to inmates employed in any industry, or performing services at any correctional institution, or performing outstanding services in institutional operations: Provided, however, such compensation shall only be paid out of funds and earnings arising from the sale of goods or other products manufactured or produced by any prison or other facility operated by or under the jurisdiction or supervision of the Authority;
- (f) To retain any earnings to be used for capital expansions; for operating capital in performing the duties and powers provided under this Chapter, in the repair, alteration, erection, and maintenance of industrial building and equipment; for

vocational training of inmates without regard to their industrial or other assignments; for payment of compensation to inmates employed in any industry, or performing services at any correctional institution, or performing outstanding services in institutional operations; and in the event that the administration shall accumulate a surplus in excess of the amount necessary for the efficient operation of the programs authorized by this Chapter, to turn such surplus over to the State treasury;

- (g) To borrow money and to pledge any or all property owned by the administration as security therefor;
- (h) To receive from any source, including, but not limited to, the State, municipalities and political subdivisions of the State and the Federal Government, gifts and grants for its corporate purpose;
- (i) To hold, use, administer and expend such sum or sums as may hereafter be appropriated by authority of the General Assembly or the Budget Bureau for any of the purposes of the administration;
- (j) To provide training facilities for the prerelease rehabilitation and education of prisoners confined in the Georgia Penal System;

- (k) To contract with any department, agency or instrumentality of the State and any political subdivision thereof for the furnishing of any service which the State Board of Corrections may provide. (Acts 1960, p. 880; 1968, p. 1011; 1973, p. 1300.)

77-9910 Penalty for violation of section 77-318 relating to sale of prison-made goods and hiring out of prisoners

Any warden, guard, official or other person who violates and of the provisions of section 77-318 or any regulations promulgated pursuant thereto, relating to the sale of prison made goods, or the hiring out of prisoners, shall be guilty of a misdemeanor and punished as provided by law. (Acts 1956, pp. 161, 178.)

V. ILLINOIS

A. Overview of the Statutes1. Prison Labor, General Provisions

The Department of Corrections has the responsibility for developing and maintaining programs for the rehabilitation and employment of inmates. The director appoints a chief administrative officer of each institution to administer the programs of the department for the custody and treatment of inmates. The governor and the director appoint a nine-member advisory board to confer on policy matters.

The department must employ all able-bodied prisoners over the age of compulsory school attendance, who are not otherwise participating in department programs, at useful work to equip them with marketable skills and work habits and to contribute to the expense of the employment program. The department is required to provide vocational training programs as part of the employment program and provide opportunities for training outside working hours. The department is also authorized to establish rules and regulations governing the hours and conditions of convict labor.

The department may lease its unneeded or unproductive land but such contracts are subject to cancellation when the department or any other state agency reclaims the land.

2. Prison Industries

The Department of Corrections is required to establish prison industries and may employ prisoners in industrial production, public works projects, food production or other departmental maintenance programs. The chief administrative officer assigns prisoners to work programs. Convict labor cannot be sold, contracted or leased except in these authorized programs.

The department may accept and use funds, goods or services for the general purposes of these provisions from the federal government, public or private sources.

3. Inmate Compensation

Prisoners are to be compensated in wages and/or good time. The Department of Corrections is empowered to prescribe rules and regulations for granting and revoking good-time allowances and to determine the rate of monetary compensation by the degree of effort, skill and economic value involved. A change in work, education or other program assignment must not be used for disciplinary purposes without prior approval. Profits from handicraft sales must be credited to the prisoner's account. All wages must be deposited in the individual's account under rules and regulations of the department, and the prisoner must receive all interest payments.

4. Convict-made goods

The Department of Corrections may purchase raw materials for industrial production and establish procedures

for the sale of goods. The department is required to issue a list of all available goods, with a standard price for all purchasers as near to the open market price as possible. Any disagreement between the department and an authorized purchaser which cannot be resolved between them must be submitted to arbitration. The department is required to furnish a financial report on the industrial production program to the legislature.

The state and its political subdivisions, agencies and public institutions are required to purchase prison-made goods. The Department of Corrections must issue certificates to any required purchase where the goods requested are not available. Any surplus goods may be sold to Illinois non-profit corporations.

Works of art, literature or handicraft articles may be sold to the public under rules and regulations established by the department.

5. Work Release

The Department of Corrections may release prisoners to work or attend an educational or vocational program to assist in their rehabilitation. The department is required to establish rules and sanctions for persons on release and to compel the inmate's employer or supervisor to notify the department of any infractions.

Prisoners on work release must be treated like other employees and given the prevailing wage and similar

working conditions. After deducting maintenance costs, travel expenses, and, upon request from the prisoner or the courts, aid to dependents, the remainder of all wages must be credited to the individual's account and paid to him upon discharge.

B. Overview of State Court Decisions

Illinois Supreme Court interpretation of the Prison Industries Act of 1937 in conjunction with the Motor Vehicle Act provision that the Secretary of State "supply and deliver" license plates to automobile owners led to the dismissal of a petition for mandamus to compel the secretary to secure the plates through the Department of Public Welfare. People v. Hughes, 18 N.E. 2d 453 (S. Ct. Ill. 1938). The pertinent provisions of the Act of 1937 authorized the Department of Welfare to cause only articles to be used in penitentiaries and reformatories, or required by the state, to be manufactured in prison industries, and expressly mandated a department duty to see that "under no circumstances shall any of the products of the labor of said convicts...enter into conflict with any of the established industries of the state" and "that the labor of said convicts...not enter into competition with the products of free labor." People v. Hughes, supra, at 454-55. The court reasoned that the use of license plates by automobile owners was not state use as required by law, and manufacture for that use could conflict with the primary purpose of the section prohibiting competition with free labor. Id.

The Illinois courts have practiced a general policy of nonintervention in administrative matters committed to the discretion of prison officials. See People v. Lewis 34 N.E. 2d 712 (S. Ct. Ill. 1941); People v. Tate, 201 N.E. 2d 390 (S. Ct. Ill. 1964); People v. Willis, 282 N.E. 2d 716 (S. Ct. Ill. 1972); In Re Petition of Owen, 295 N.E. 2d 455 (S. Ct. Ill. 1973). The function of a court in a criminal proceeding is to try the accused and, if conviction occurs, to impose the statutory punishment, while the authority to administer the sentence is vested in the executive branch. People v. Lewis, supra, at 714. For example the application of rules pertaining to diminution of punishment for good time and determinations as to forfeiture thereof are functions of the executive branch of state government. Id. It follows, according to the court in People v. Lewis, supra, that the department may determine that a prisoner's actions are in violation of prison rules, necessitating forfeit of good time credits, despite acquittal in a court of law after trial on criminal charges brought as a result of the same actions.

Thus, "[c]ourts do not have anything to do with the allowance of 'good time',....[t]hat is a matter which is left by the General Assembly to the Division of Correction." People v. Tyson, supra, at 797. So long as the legislature provides intelligible standards to guide the

department, board discretionary powers may be delegated to that agency. People v. Tate, supra, at 393. According to the Tate Court, rules governing the conditional right to good time, and forfeiture thereof, may be prescribed by the agency entrusted with the execution of the criminal sentence:

Because of the apparent purpose of the good-time statute to promote prison discipline and rehabilitation of convicts, matters which we have frequently held could be validly entrusted to administrative agencies, we are constrained to say that the legislature may constitutionally delegate the duty to prescribe a schedule of good-time credits. (Id.)

The adoption of new administrative rules and regulations by the Department of Corrections has in two recent court proceedings led the State Supreme Court to withhold judicial action to allow exploration of administrative channels. See People v. Department of Corrections, 282 N.E. 2d 716 (S. Ct. Ill. 1972); In Re Petition of Owen, 295 N.E. 2d 455 (S. Ct. Ill. 1973). In People v. Department of Corrections, supra, the petitioner contended that his confinement, following conviction, in the psychiatric division without treatment constituted cruel and unusual punishment and a deprivation of liberty without due process. The court, at 718, cited Department of Corrections authority to transfer prisoners from the psychiatric division to another division, and approved the department's position that such transfer determinations are more efficiently

handled without involved procedural requirements. Judicial action on the complaint, however, was withheld in order to afford opportunity for a transfer request pursuant to section 819 of the new administrative regulations and consideration by the department. The court, at 720, stated the opinion that "[t]he comprehensive administrative program which has been undertaken by the Department must have a reasonable opportunity to evolve procedures which will meet due process of law," but added that "[s]ome provisions for adequate internal review of the denial of a request for transfer must be made available."

In Re Petition of Owen, supra, involved an appeal from a lower court determination to enjoin the continuation of certain practices in effect at the Illinois Industrial School for Boys. That determination was based upon findings that:

...injections of a tranquilizing drug, thiorazine, were forcibly administered to the residents of the school as a behavior control device; that there is no evidence that the use of thiorazine was part of any program of psychotherapy; that solitary confinement of an inmate, referred to as "confined to room," was used as a behavior control device; and that the school has no educational or vocational training programs especially adapted to slow learners. The court also concluded that it had jurisdiction over both the subject matter and the persons here involved under the Juvenile Court Act. (at 456)

The Supreme Court reversed the lower court judgment and vacated extensive remedial orders issued to conjunction with

that judgment. The Supreme Court, at 458, stated a judicial policy of deference to administrative decisions in regard to correctional procedure:

The courts have traditionally accorded to correctional authorities wide discretion in matters of internal prison administration. Reasonable action within the scope of this discretion does not violate a prisoner's constitutional rights.

The court also recognized that "inmates do not lose all their constitutional rights" upon incarceration, but found it more appropriate (given the newly adopted statutory Uniform Code of Corrections, effective January 1, 1973, and Department of Corrections Administrative Regulations governing the Juvenile Division) to withhold judicial intervention to allow the redress of grievances through the statutory and administrative procedures. Id.

C. Statutes

1. Topical Index to Statutes

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2. Statutory Provisions

1003-2-2 Powers and duties of the Department

In addition to the powers, duties and responsibilities which are otherwise provided by law, the Department of Corrections shall have the following powers:

- (a) To accept persons committed to it by the courts of this state for care, custody, treatment and rehabilitation.
- (b) To develop and maintain reception and evaluation units for purposes of analyzing the custody and rehabilitation needs of persons to committed to it and to assign such persons to institutions and programs under its control or transfer them to other appropriate agencies.
- (c) To maintain and administer all State correctional institutions and facilities under its control and to establish new ones as needed. The Department shall designate those institutions which shall constitute the State Penitentiary System.
- (d) To develop and maintain programs of control, rehabilitation and employment of committed persons within its institutions.
- (e) To establish a system of release, supervision and guidance of committed persons in the community.

- (f) To maintain records of persons committed to it and to establish programs of research, statistics and planning. (P.A. 77-2097, §3-2-3, approved July 26, 1972, eff. Jan. 1, 1973)

1003-2-3 Director-Appointment-Powers and duties

- (a) The Department shall be administered by the Director of Corrections who shall be appointed by the Governor in accordance with The Civil Administrative Code of Illinois.¹
- (b) The Director shall establish such Divisions within the Department in addition to those established under Section-3-2-5² as shall be desirable and shall assign to the various Divisions the responsibilities and duties placed in the Department by the laws of this State. (P.A. 77-2097, §3-2-3, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-2-6 Advisory boards

- (2) There shall be an Adult Advisory Board and a Juvenile Advisory Board each composed of nine persons appointed by the Governor to advise the Directory on matters pertaining to adult and juvenile offenders respectively. The members of the Boards shall be qualified for

¹Chapter 127, §1 et seq.

²Chapter 38, §1003-2-5.

their positions by demonstrated interest in and knowledge of adult and juvenile correctional work and shall not be officials of the State in any other capacity. The members of the Boards now serving shall be appointed by the Governor to terms of six years. Any vacancy occurring shall be filled in the same manner for the remainder of the term. The Director of Corrections and the Assistant Directors, Adult and Juvenile Divisions respectively, for the two Boards, shall be ex-officio members of the Boards. Each Board shall elect a chairman from among its appointed members. The Director shall serve as secretary of each Board. Members of each Board shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. Each Board shall meet quarterly and at other times at the call of the chairman. At the request of the Director, the Boards may meet together.

- (b) The Boards shall advise the Director concerning policy matters and programs of the Department with regard to the custody, care, study, discipline, training and treatment of persons in the state correctional institutions and for the care

and supervision of persons released on parole.

(P.A. 77-2097 §3-2-6, approved July 26, 1972,
eff. Jan. 1, 1973.)

1003-4-1 Gifts and grants-Special trust funds

- (a) The Department may accept, receive and use, for and in behalf of the state, any moneys, goods or services given for general purposes of this Chapter by the Federal government or from any other source, public or private, and may comply with such conditions and enter into such agreements upon such covenants, terms and conditions as the Department may deem necessary or desirable if the agreement is not in conflict with state law.
- (b) Federal moneys, including reimbursement for services rendered under grant or contract, shall be deposited with the State Treasurer and held and disbursed by him under Section 1 of "An Act in relation to the receipt, custody and disbursement of money allotted by the United States of America or any agency thereof for use in this State," approved July 3, 1939, as now or hereafter amended.³

³Chapter 130, §19a.

- (c) Other moneys received by the Department including reimbursement for services rendered under grant or contract, may be deposited in special trust funds established by the Department with the State Treasurer, to be held by him outside the State treasury as ex-officio custodian in banks which have been approved by him as State depositories under "An ACT in relation to State moneys,"⁴ and with respect to such moneys, he shall be entitled to the same rights and privileges as are provided by such Act with respect to moneys in the Treasury of the State of Illinois.

1003-4-2 Disposition of property

- (a) The Department may lease its unneeded, unused or unproductive land upon such terms and conditions, as in its judgment are in the best provide for the cancellation thereof by the Department, upon reasonable notice given by the Department whenever such land may be needed by the Department or any other agency of this State. Land leased by the Department shall not be placed under a land trust.
- (b) The Department may transfer any realty under its control to any other department of this State

⁴Chapter 130, §20 et seq.

government or to the State Employees Housing-mission, or acquire or accept Federal or other lands, when such transfers or acquisition is advantageous to the State and approved in writing by the Governor.

1003-6-2 Institutions and facility administration

- (a) Each institution and facility of the Department shall be administered by a chief administrative officer appointed by the Director. A chief administrative officer shall be responsible for all persons assigned to the institution or facility. He shall administer the programs of the Department for the custody and treatment of such persons.
- (b) The chief administrative officer shall have such assistants as the Department may assign.
- (c) The Department shall provide educational programs for all committed persons so that all persons have an opportunity to attain the achievement level equivalent to the completion of the twelfth grade in the public school system in this State. Other higher levels of attainment shall be encouraged and professional instructions shall be maintained wherever possible.

1003-6-3 *Rules and regulations for diminution of sentence*

- (a) The Department of Corrections shall prescribe rules and regulations for the diminution of sentences on account of good conduct or meritorious service of persons committed to the Department.
- (b) Whenever a person is or has been committed under several convictions, with separate sentences, such sentences shall be construed under Section 5-8-4⁵ in granting and forfeiting of good time.
- (c) The Department shall prescribe rules and regulations for revoking good time during imprisonment or release on parole or mandatory release under supervision. (P.A. 77-2097 §3-6-3, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-8-7 *Disciplinary procedures*

- (a) All disciplinary action shall be consistent with this Chapter. Committed persons shall be informed of rules of behavior and discipline and such rules shall be posted or available to them.
- (b) A change in work, education, or other program assignment shall not be used for disciplinary purposes without prior review and approval under Section 3-8-3.⁶

⁵ Chapter 38, §1005-8-4.

⁶ Chapter 38, §1003-8-3.

1003-12-1 Useful employment

The Department shall, in so far as possible, employ at useful work committed persons confined in institutions and facilities of the Department, who are over the age of compulsory school attendance, physically capable of such employment, and not otherwise occupied in programs of the Department. Such employment shall equip such persons with marketable skills, promote habits of work and responsibility and contribute to the expense of the employment program. (P.A. 77-2097, §3-12-1, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-2 Types of employment

- (a) The Department may establish, maintain and employ committed persons in industries for the production of articles, materials or supplies for resale to authorized purchasers. It may also employ committed persons on public works, buildings and property, the conservation of natural resources of the State, anti-pollution or environmental control projects, or for other public purposes, for the maintenance of the Department's buildings and properties and for the production of food or other necessities for its programs. A committed person's labor shall not be sold, contracted or hired out by the Department except under this Section and under Section 3-9-2.⁷

⁷ Chapter 38, §1003-9-2.

(b) Works of art, literature, handicrafts or other items produced by committed persons as an avocation and not as a product of a work program of the Department may be sold to the public under rules and regulations established by the Department. The cost of selling such products may be deducted from the proceeds, and the balance shall be credited to the person's account Section 3-4-3.⁸ (P.A. 77-2097 §3-12-2, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-3 Vocational training

The Department shall maintain programs of training in various vocations and trades in connection with its employment programs and shall also provide opportunities for training outside working hours. (P.A. 77-2097 § 3-12-3, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-4 Hours and conditions

The Department shall make rules and regulations governing the hours and conditions of labor for committed persons and shall require a medical examination of all persons to determine their physical capacity to work. (P.A. 77-2097 §3-12-4, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-5 Compensation

Persons performing a work assignment under paragraph

⁸ Chapter 38, §1003-4-3.

(a) of Section 3-12-2⁹ shall receive wages or good conduct credit under Section 3-6-3¹⁰ or both under rules and regulations of the Department. In determining rates of compensation, the Department shall consider the effort, skill and economic value of the work performed. Compensation or good conduct credit may be given to persons who participate in other programs of the Department. All wages shall be deposited in the individual's account under rules and regulations of the Department. (P.A. 77-2097, §3-12-5 approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-6 Industrial production-Location-Assignment

The Department shall establish or cause to be established industrial production at its institutions and facilities to secure the most practical and efficient use of labor. It shall assign its personnel to direct the production of goods and shall employ committed persons assigned by the chief administrative officer. The Department may also direct such vocational programs as the institution or facility may require as a part of the employment program. (P.A. 77-2097, §3-12-6, approved July 26, 1972, eff. Jan. 1, 1973.)

⁹Chapter 38, §1003-12-2.

¹⁰Chapter 38, §1003-6-3.

1003-12-7 Purchasers-Allocation

- (a) The State, its political units, its agencies and public institutions shall purchase from the Department all articles, materials and supplies required by them which are produced or manufactured by persons confined in institutions and facilities of the Department. Not-for-profit corporations chartered in Illinois may purchase such goods. Others are prohibited from purchasing such goods except that the public may purchase crushed limestone and lime dust for agricultural and horticultural purposes.
- (b) Allocation of goods shall be made in the following manner:
- (1) first, for needs of the Department;
 - (2) second, for the State, its agencies and public institutions;
 - (3) third, for those political subdivisions of the State and their agencies in which the producing institutions or facility of the Department is located;
 - (4) fourth, for other political subdivisions of the State and their agencies and public institutions;
 - (5) fifth, for not-for-profit corporations chartered in Illinois;

- (c) Exemption from required purchases shall be on certification of the Department that the items requested are not then available. (P.A. 77-2097 S3-12-7, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-8 Purchase and control of supplies

The Department may enter into contracts for the purchase of raw materials required for industrial production and shall have charge of articles, materials and supplies manufactured for sale to purchasers. (P.A. 77-2097 S3-12-8, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-9 Sale of goods

- (a) The Department shall establish procedures and issue regulations governing the sale of goods. It shall issue a list of all goods available for sale and shall issue certificates to any required purchasers under Section 3-12-7¹¹ where the goods requested are not currently available.
- (b) Prices shall be determined by the Department as near to the usual market price for such items as possible and shall be uniform for all purchasers.
- (c) Any disagreement between the Department and an authorized purchaser which cannot be resolved

¹¹Chapter 38, S1003-12-7.

between the parties shall be submitted to arbitration. A board of three arbitrators shall be chosen: one by the Department; one by the purchaser; and one by the other 2 arbitrators. The decision of the arbitrators shall be final. The arbitrators shall receive no compensation but expenses shall be shared by the parties on an equal basis. (P.A. 77-2097 § 3-12-9, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-10 Contracts null and void

Any contract or agreement violating this article is null and void. The Attorney General of this State may bring legal action to challenge the validity of any contract agreement which he believes to be in violation of this Article. (P.A. 77-2097 § 3-12-10, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-12-11 Report to the Legislature

The Department shall furnish annually to the Legislature a statement showing the amount and quantity of each of the goods produced in the several institutions and facilities, the cost of material and labor, and the disposition thereof. (P.A. 77-2097 § 3-12-11, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-13-1 Establishment

The Department shall establish and maintain work and day release programs and facilities for persons committed to

the Department and not placed on parole. (P.A. 77-2097 § 3-13-1, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-13-2 Purposes

The Department may allow a committed person to leave an institution or facility during reasonable hours where such release would assist the individual's rehabilitation and would not cause undue risk to the public for any of the following purposes:

- (1) work; or
- (2) conduct a business or other self-employed occupation including housekeeping or attending family needs; or
- (3) attend an educational institution, including vocational education; or
- (4) obtain medical or psychological treatment, including treatment for drug addiction or alcoholism; or
- (5) other purposes directly related to programs to the Department. (P.A. 77-2097 § 3-13-2, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-13-3 Record of release status

The fact and circumstances of release status shall be entered in the master record file of each person placed on work or day release. (P.A. 77-2097 § 3-13-3, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-13-4 Rules and sanctions

- (a) The Department shall establish rules governing release status and shall provide written copies of such rules to both the committed person on work or day release and to the employer or other person responsible for the individual. Such employer or other responsible person shall agree to abide by such rules, notify the Department of any violation thereof by the individual on release status, and notify the Department of the discharge of the person from work or other programs.
- (b) If a committed person violates any rule, the Department may impose sanctions appropriate to the violation. The Department shall provide sanctions for unauthorized absences which shall include prosecution for escape under Section 3-6-4.¹²
- (c) An order or writ certified by the Director, Assistant Director Adult Division, or the Coordinator of Work Release, or a person duly designated by him, with the seal of the Department of Corrections and directed to all sheriffs, coroners, police officers, or to any particular persons named in the order or writ shall be sufficient warrant for the officer or person named therein

¹²Chapter 38, §1003-6-4.

to arrest and deliver the violator to the proper correctional officer. Such writ shall be executed the same as criminal processes.

In the event that a work-release is arrested for another crime, the sheriff or police officer shall hold the release in custody until he notifies the nearest Office of Field Services or any of above-named persons designated in this Section to certify the particular writ or warrant.

1003-13-5 Wages and working conditions

A person on work release shall not be required to work for less than the prevailing wage or under worse than prevailing working conditions in the area. (P.A. 77-2097 § 3-13-5, approved July 26, 1972, eff. Jan. 1, 1973.)

1003-13-6 Expenses-Disposition of wages

- (a) The Department shall establish reasonable fees for the costs of maintenance, transportation, and incidental expenses for those released for employment purposes. Advances of moneys as required by persons prior to receiving their first paycheck may be made by the Department under rules and regulations established by it.
- (b) Compensation paid on account of any person's employment shall be credited to the individual's account in a bank or other financial institution determined by the Department.

- (c) Any earnings after deduction of costs by the Department shall be sent to any legal dependents of the individual, if he shall direct, or to the appropriate agency if such dependents are receiving public assistance or are residents of a State hospital, State school or foster care facility provided by the State. The surplus shall be deposited in his account for distribution at his direction according to rules and regulations of the Department. (P.A. 77-2097 § 3-13-6, approved July 26, 1972, eff. Jan. 1. 1973.)

1005-7-6 *Duty of clerk of court or the Department of Correction-Collection and disposition of compensation*

- (a) The compensation due on account of such employment of an offender shall be paid by the employer directly to the offender in the form of a check. Compensation checks shall be collected by the clerk of the circuit court. Every offender gainfully employed is liable to the cost of his board in an amount not to exceed \$5.00 per day. If necessarily absent from the institution at mealtime he shall be furnished with lunch to carry to work. The clerk of the circuit court shall charge his account for such board. If the offender is self-employed, he shall pay to the clerk of the circuit court for such board, and

in default of such payment his release shall be terminated. By order of the court the wages or salaries of employed offenders shall be distributed by the clerk of the circuit court for the following purposes, in the order stated:

- (1) the board of the offender;
- (2) necessary travel expenses to and from work and other incidental expenses of the offender;
- (3) support of the offender's dependents, if any. The balance, if any, shall be paid to the offender upon his discharge.

- (b) If the offender has one or more dependents who are recipients of financial assistance pursuant to The Illinois Public Aid Code, or who are residents of a State hospital, State school or foster care facility provided by the State, the court shall order the clerk to pay the compensation after deductions under this Section to the appropriate agency as reimbursement for the cost of care of such dependents. The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to request the clerk that subsequent payments be made directly to the dependents, or to some agency or person in their behalf, upon

removal of the dependents from the public aid rolls; and upon such direction and removal of the recipients from the public aid rolls, the Illinois Department of Public Aid or the local governmental unit, as the case requires, shall give written notice of such action to the court. Payments received by the Illinois Department of Public Aid or by governmental units in behalf of recipients of public aid shall be deposited into the General Revenue Fund of the State Treasury or General Assistance Fund of the governmental unit, under Section 10-19 of The Illinois Public Aid Code.¹³

- (c) The clerk of the circuit court shall keep individual accounts of all money collected by him as required by this Article. He shall deposit all moneys as trustee in a depository designated by the county board and shall make payments required by the court's order from such trustee account. Such accounts shall be subject to audit in the same manner as accounts of the county are audited.
- (d) If an institution or the Department of Corrections certifies to the court that it can administer this Section with respect to persons committed

¹³ Chapter 23, §10-19.

to it under this Article, the clerk of the court shall be relieved of its duties under this Section and they shall be assumed by such institution or the Department. (P.A. 77-2097 § 5-7-6, approved July 26, 1972, eff. Jan. 1, 1973.)

VI. MINNESOTA

A. Overview of the Statutes1. Prison Labor, General Provisions

The Commissioner of Corrections is authorized to establish the conditions, rules and regulations for the employment and instruction of inmates. Inmates are to be instructed in trades or employed in jobs for which they seem best fitted.

No prison contractor or person interested in any prison business is permitted to hold office or be employed in the prison. Violators are to be discharged and barred from obtaining any contract for labor in the prison.

Contracts to sell or lease prisoners at a certain rate per day giving the contractor full control of the labor are prohibited. The Commissioner of Corrections is authorized to use inmates (selected by the warden) who are paroled and awaiting private employment or convicts who are not habitual offenders or guilty of heinous crimes to do conservation work on any land within his control, or pursuant to an agreement, on land under state control.

2. Prison Industry

Prisoners are to be employed in prison industries under the commissioner's direction, or in the manufacture of articles by the piece (under the so-called "piece price system") in contracts where private persons furnish the materials. The

chief officer, under the commissioner's direction, is authorized to purchase necessary tools, implements and machinery.

Binder twine manufactured at the state prison may be sold to actual consumers and to dealers within the state under rules established by the Commissioner of Corrections. Every dealer must record all sales. The commissioner must give a uniform discount to buyers who meet the payment terms of the contract. In cash agreements, the dealer is compelled not to charge more than one cent per pound above the purchase price; on time agreements, the cost must not exceed one-and-one-half cents above costs. The state retains a contingent in the twine sold, and upon breach of contract, the state may repossess the twine. Any land acquired by the prison arising from the sale of twine may be sold to any purchaser. At the commissioner's discretion, twine may be sold to out-of-state consumers and dealers.

The Commissioner of Correction is authorized to operate a laundry industry at the state prison and he may sell laundry services to state institutions.

The commissioner may establish, equip, maintain and operate industries to provide vocational training and proper work habits to inmates, but not as a competitive business venture. He must consult with representatives of the State Department of Education, the State Apprenticeship Council, the Department of Labor and Industry, the Department of Employment Security, the Department of Administration and other

qualified sources to determine the types of goods and production processes. He may employ administrative and supervisory personnel and skilled craftsmen to instruct the inmates.

The Commissioner of Administration, with the governor's approval, may lease one or more buildings on the grounds of any state adult correctional institution to a private corporation for the purpose of operating a factory or any other business or commercial enterprise which the Commissioner of Corrections considers to be consistent with the training and rehabilitation of inmates. The corporation may employ selected inmates from the institution where the business is operated and prisoners who have been convicted of a gross misdemeanor or felony, and who are eligible and being considered for parole. The factory is considered a private enterprise and will be subject to all laws, rules, and regulations governing similar businesses in the state.

Law restricting the number of inmate-employees in prison industries, providing road work in an adjacent county, establishing a rock-crushing industry, and restricting the sale of prison-made goods to the state, were all repealed.

A revolving fund, consisting of appropriations for the manufacture of twine and income from all other industries is used to purchase raw materials and to pay salaries and wages and other expenses. Money may be transferred from one fund to another at the commissioner's or warden's request. The commissioner may, upon approval, withdraw up to \$150,000

per year from the revolving fund to establish additional industrial activities. All expenses for industrial enterprises at the reformatory must be paid from a revolving fund, and the commissioner may borrow up to \$50,000 at a time from the working capital fund. The commissioner may expend funds from current appropriations, revolving funds, or the contingent fund to support conservation projects.

3. Inmate Compensation

The Commissioner of Corrections must pay inmates an amount dependent on the quality and character of the work performed. Inmates who are unable to work must receive a minimal amount per day, as determined by the commissioner. Earnings are to be paid from the state account or the current expense fund. Compensation is for the sole benefit of the prisoner unless, by order of the commissioner, it is used to support dependents. If so disbursed, at least one-half must be withheld and paid to the prisoner upon release. Compensation from private employment in the community must be deposited in a "work release account." After deducting board (which may be waived at the commissioner's discretion), travel expenses and support for dependents, the balance is paid to the convict. Wages are not subject to garnishment or attachment. Inmates employed in private industries on prison grounds may be paid prevailing minimum wages.

4. Convict-made Goods

The commissioner must distribute a price list of all

available goods at the reformatory. Prices must be comparable to the wholesale market prices on the open market. The commissioner can also provide retail sales outlets to sell handicraft articles to the public.

The commissioner and the warden fix the prices and establish local selling agencies throughout the state to sell prison-made goods. Local agencies are authorized to charge their customers advanced prices equalling 20 percent of the purchase price. The agency is obligated to seek customers diligently for the resale of the goods, and the commissioner is required to establish other regulations.

Except as prohibited in the United States Code, goods produced by private corporations on prison grounds may be introduced into interstate commerce and sold on the open market. All goods produced by prisoners (except those on parole or probation) in this or any other state must be visibly marked "prison made" followed by the name of the institution. When a brand is impossible, a label must be used. Barter or exchange of prison-made goods made in this or any other state is prohibited. All prison-made goods transported into the state and remaining there for use, consumption, sale or storage are subject to state laws.

No provision can prevent the production or sale of any article manufactured for the purposes of national defense.

5. Work Release

The commissioner may conditionally release selected

inmates who are being considered for parole to work at paid employment, seek employment, or participate in local vocational training programs, provided that union organizations are consulted and that such employment will not displace other workers. The commissioner must establish rules for their supervision and placement. He may contract with public or private agencies for an inmate's custody or house him in a community correction center if the participant does not require security. Conditional release may be revoked.

B. Overview of State Court Decisions

"[O]ne of the principal aims, if, indeed, not the predominant one, of [the Minnesota] penal system, is reform, and such is the policy which controls the conduct and management of state prison...." State, ex rel. Kelly v. Wolfer, 138 N.W. 315, 318 (S.Ct. Minn. 1912). Whereas, the outdated emphasis on compensatory punishment may have required judicial determinations as to the nature of a just compensatory confinement, the modern emphasis on reform necessitates greater flexibility and authority on the part of executive and administrative officials in the execution of statutory penalties. Id. A statute which provides administrative discretion to transfer a convict from a reformatory to a state prison is, therefore, not an unconstitutional delegation of a judicial function, but "a mere matter of administration and control, in thorough keeping with the broad and humane policy underlying [the] penal system." State, ex rel. Kelly v. Wolfer, supra, at 319.

"The medical care of prisoners is an administrative problem, not a judicial one." State, ex rel. Kopetka v. Young, 163 N.W.2d 49, 50 (S.Ct. Minn. 1968), cert. denied, 394 U.S. 954, 89 S.Ct. 1283, 22 L.Ed.2d 490 (1968). However, if a prisoner makes a prima facie showing that he has arbitrarily been denied proper medical treatment, "the court would be obliged to conduct an evidentiary hearing and grant relief." State, ex rel. Kopetka v. Young, supra, at 51. The judicial assumption is that the Department of Corrections will adequately carry out its duties, and in order to intervene in matters properly within the scope of administrative authority, the situation must be so grave as to come within the Eighth Amendment proscription on cruel and unusual punishment. Id.

Situations in violation of the Eighth Amendment and likely to warrant judicial relief are "of such a character as to shock the general consciousness of the community or are intolerable in fundamental fairness." Wilkinson v. McManus, 214 N.W.2d 671, 672 (S.Ct. Minn. 1974). Reasonable restrictions governing the conduct of prisoners will be upheld in the courts despite obvious problems created by those restrictions. The court in Wilkinson v. McManus, supra, at 672, stated that "a solution to the problem[s] must be found by legislation or by actions of the proper administrative officials in the executive branch of the government and not in the courts."

The constitutionality of the Minnesota mandatory, minimum compensation, prison labor program was challenged and

upheld in Wilkinson v. McManus, 216 N.W.2d 264 (S.Ct. Minn. 1974). In the language of the State Supreme Court, at 265:

With respect to the claim that requiring prisoners to work is unconstitutional in that it violates the Thirteenth Amendment, we need only say that the Thirteenth Amendment by express provision permits involuntary servitude "as a punishment for crime whereof the party shall have been duly convicted." And, see Draper v. Rhay, 315 F.2d 193 (9 Cir.), certiorari denied, 375 U.S. 915, 84 S.Ct. 214, 11 L.Ed.2d 153 (1963). With respect to the issue of compensation, we refer petitioner to Sigler v. Lowrie, 404 F.2d 659 (8 Cir. 1968), certiorari denied, 395 U.S. 940, 89 S.Ct. 2010, 23 L.Ed.2d 456 (1969), holding that as a general rule prisoners have no constitutional right to be paid anything for their prison labor, a holding with which we are in accord.

However, the Minnesota Supreme Court has also held in State ex rel. Djonne v. Schoen, 217 N.W.2d 508 (S.Ct. Minn. 1974), that work release, once permitted, may not be revoked without notice and an opportunity to defend against alleged violation of the conditions attached.

C. Statutes

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2. Statutory Provisions241.01 *Creation of department*

Subdivision 3a. The Commissioner of Corrections

shall have the following powers and duties.

- (a) To accept persons committed to him by the courts of this State for care, custody, and rehabilitation.
- (b) To determine the place of confinement of committed persons in a correctional institution or other facility of the Department of Corrections and to prescribe reasonable conditions, rules, and regulations for their employment, conduct, instruction, and discipline within or without the facility.

- (c) To administer the money and property of the department.
- (d) To administer, maintain, and inspect all state correctional institutions.
- (e) To transfer authorized positions and personnel between State correctional institutions as necessary to properly staff institutions and programs.
- (f) To utilize State correctional institutions in the manner he determines to be most efficient and beneficial in the accomplishment of these purposes, but not to close the Minnesota State Prison at Stillwater or the State Reformatory for Men at St. Cloud without legislative approval.
- (g) To organize the Department and employ personnel he deems necessary to discharge the functions of the Department, including a chief executive officer for each institution under his control who shall serve in the unclassified civil service and may, under the provisions of section 43.24, be removed only for cause.
- (h) To define the duties of these employees and to delegate to them any of his powers, duties and responsibilities, subject to his control and the conditions he prescribes.

- (i) To annually develop a comprehensive set of goals and objectives designed to clearly establish the priorities of the Department of Corrections. This report shall be submitted to the Governor and the State legislature commencing January 1, 1976. The commissioner shall have the power to establish ad hoc advisory committees.

Subdivision 5. Training program. For the maintenance of adequate standards of operation in discharging the functions of the Department, obtaining suitable candidates for positions for which there is a scarcity of qualified applicants, and the development of more effective treatment programs directed toward the correction and rehabilitation of persons found delinquent or guilty of crimes, and of more effective delinquency prevention the Commissioner of Corrections shall establish a training program including but not limited to in-service, pre-service, internship and scholarship programs, and an operational research program. Within the limits of appropriations available, the commissioner may provide educational stipends or tuition reimbursement in such amounts and upon such terms and conditions as may be determined jointly by the Director of Civil Service. Within the limits of appropriations therefor the commissioner shall establish and provide personnel, facilities and equipment for research and study to evaluate the effectiveness of correctional treatment in camps, institutions, probation and parole investigation and supervision and delinquency prevention.

Subdivision 5a. Acceptance of gifts, grants and subsidies; purposes. For the purposes of subdivision 5 and to discharge the functions of the Department through the establishment of additional facilities and services to persons committed to his care the commissioner may, subject to the provisions of section 15.43, accept and expend on behalf of the State, gifts, grants and subsidies from any lawful source; all monies and securities so received shall be deposited in the State Treasury subject to the order of the commissioner. From the fund to which such receipts are credited there is hereby appropriated annually to the Commissioner of Corrections such gifts, grants and subsidies as are received under the provisions of this subdivision.

Amended 1974, Chapt. 304, S. F. No. 242

241.08 Money of inmates of correctional institutions

Subdivision 1. The chief executive officer of each institution under the jurisdiction of the Commissioner of Corrections shall have the care and custody of all monies belonging to inmates thereof which may come into his hands, keep accurate accounts thereof, and pay them out under rules and regulations prescribed by law or by the Commissioner of Corrections, taking vouchers therefor. He shall give such additional bonds as the commissioner may require, conditioned to safely keep and account for such funds. All such moneys received by any officer or employee shall be paid to the chief executive officer forthwith. Every such executive officer, at

the close of each month, or oftener if required by the commissioner, shall forward to the commissioner a statement of the amount of all monies so received and the names of the inmates from whom received, accompanied by his check for the amount, payable to the State Treasurer. On receipt of such statement the commissioner shall transmit the same to the Commissioner of Finance, together with such check, who shall deliver the same to the State Treasurer. Upon the payment of such check, the amount shall be credited to a fund to be known as "Correctional Inmates Fund," for the institution from which the same was received. All such funds shall be paid out by the State Treasurer upon vouchers duly approved by the Commissioner of Corrections as in other cases. The commissioner may permit a contingent fund to remain in the hands of the executive officer of any such institution from which necessary expenditure may from time to time be made.

Subdivision 2. Notwithstanding the provisions of subdivision 1 and section 242.38 or other law to the contrary, the Commissioner of Corrections may permit the inmates of the institutions under his control to deposit money in a bank or other financial institution. The commissioner shall establish rules governing the deposits and shall require each inmate to maintain at the institution in which confined an amount adequate for his needs during the period of his confinement and to assist him upon his release therefrom on parole or by discharge.

241.10 Disposal of funds, correctional institutions

Every officer and employee of the several institutions under the jurisdiction of the Commissioner of Corrections shall pay to the accounting officer thereof any funds in his hands belonging to the institution. Every accounting officer, at the close of each month or oftener, shall forward to the Commissioner of Corrections a statement of the amount and sources of all monies received. On receipt of such statement, the commissioner shall transmit the same to the Commissioner of Finance, who shall deliver to the State Treasurer a draft upon the accounting officer for the same, specifying the funds to which it is to be credited. Upon payment of such draft, the amount shall be so credited.

Amended by Laws 1973, c. 492, §14.

241.13 Contingent funds; correctional institutions

The Commissioner of Corrections may permit a contingent fund to remain in the hands of the accounting officer of any such institution from which expenditures may be made in case of actual emergency requiring immediate payment to prevent loss or danger to the institution or its inmates and for the purpose of paying freight, purchasing produce, livestock and other commodities requiring a cash settlement, and for the purpose of discounting bills incurred, but in all cases subject to revision by the Commissioner of Corrections. An itemized statement of every expenditure made during the month from such fund shall be submitted to the commissioner under rules established by him. If necessary, the commissioner shall make proper

requisition upon the Commissioner of Finance for a warrant upon the State Treasurer to secure the contingent fund for each institution.

Amended by Laws 1973, c. 492, §14.

241.20 Inmates to do conservation work

Whenever he deems it conducive to the rehabilitation of inmates of correctional institutions under his control the Commissioner of Corrections may use selected inmates in the general improvement, maintenance, conservation, reforestation, soil erosion control, soil rehabilitation, and cultivation of any land within the control of the commissioner and, pursuant to agreement with the head of any other State department or agency, of lands under the control of such department or agency.

Amended by Laws 1957, c. 440, §1; Laws 1959, c. 263, §2.

241.21 Inmates available to state departments

To carry out the purposes of section 241.20, the Commissioner of Corrections may make inmates available to the head of any State department or agency for work upon any land which is within the jurisdiction or control of such department or agency, and the Commissioner of Corrections and the head of any State department or agency having land under its jurisdiction or control may enter into written agreements upon such terms as may be necessary to provide for the use and the orderly supervision of such inmates.

Amended by Laws 1957, c. 440, §2; Laws 1959, c. 263, §2.

241.22 May expend monies

For the purposes of sections 241.20 to 241.23, the Commissioner of Corrections may lawfully expend monies from any of the following funds: The current expense appropriations of the State Reformatory and the State Prison; revolving funds at either of these institutions, including funds heretofore appropriated for building purposes for the State Prison or the State Reformatory; and the contingent fund appropriation of the Commissioner of Corrections.

Amended by Laws 1959, c. 263, §2; Laws 1971, c. 24, §21, eff. March 5, 1971.

241.23 Warden to make selection

When convicts may be required to be used in any work as provided for in sections 241.20 to 241.23, they shall be selected, with the approval of the Commissioner of Corrections, by the warden of the State Prison, or the superintendent of the State Reformatory, in the following manner and order of preference: (1) Suitable paroled convicts who are being detained awaiting private employment; (2) Convicts who are not habitual offenders or guilty of heinous crimes and who, in the opinion of the heads of the institutions, are not incorrigible and who are physically capable and otherwise suitable for the character of the work provided for in sections 241.20 to 241.23.

Amended by Laws 1961, c. 263 §2; Laws 1971, c. 24, §22, eff. March 5, 1971.

241.26 *Private employment of inmates of state correctional institutions in community*

Subdivision 1. Authority. The Minnesota Corrections Authority upon recommendation of the Commissioner of Corrections may conditionally release selected inmates of State correctional institutions who are subject to their control, who have been convicted of a gross misdemeanor or a felony, and who are eligible and being considered for parole under section 243.05, to work at paid employment, seek employment, or to participate in vocational training programs in any community or area of the State, provided that (a) representatives of local union central bodies or similar labor union organizations are consulted; and (b) such paid employment will not result in the displacement of employed workers. Such release constitutes an extension of the limits of confinement and each inmate so released shall be confined in the institution from which released or in some other suitable place of confinement designated by the Commissioner of Corrections during such time as such inmate is not employed, seeking employment, or engaged in a vocational training program, or, if employed, seeking employment, or engaged in a vocational training program, between the times of such activity.

Subdivision 2. Use of local detention facilities. The Commissioner of Corrections shall designate State correctional institutions for participation in the program authorized in subdivision 1 and shall adapt facilities of such institutions to provide housing and supervision of inmates participating in such program. He may also enter into contractual agreements

with appropriate city and county authorities for the confinement of and provision of other correctional services to such inmates whose employment or vocational training programs so require, and such city and county authorities are hereby authorized to make and enter such contracts and agreements. When determined by the commissioner that the circumstances of a participant in the program authorized by subdivision 1 do not require the security of a public detention facility, he may contract with public and private agencies for the custody and separate care of such participant or house him in a community correction center.

Subdivision 3. Rules. The Commissioner of Corrections shall, upon consultation with the Minnesota Corrections Authority, establish rules for the placement and supervision of such inmates and for the administration of the programs authorized by this section. When consistent with the public interest the Minnesota Corrections Authority may grant furloughs not to exceed ten days duration to those persons subject to their control who participate in such conditional release program.

Subdivision 4. Revocation. The willful failure of an inmate to report to or return from planned employment, the seeking of employment, vocational training, or furlough as provided in subdivision 3 shall be considered an escape under section 609.485. If an inmate violates any of the rules as provided for in subdivision 3, his work placement or vocational

training privileges may be withdrawn by the authority granting such conditional release.

Subdivision 5. Earnings; work release account. The net earnings of each inmate participating in work release program provided by this section shall be collected by or forwarded to the Commissioner of Corrections under rules established by him and deposited by the commissioner in the State Treasury and credited to the "work release account," which account is hereby established, to the account of such inmate. Such monies shall be and remain under the control of the commissioner for the sole benefit of such inmate, subject to disbursement by the commissioner for the following purposes and in the following order:

- (1) The cost of such inmate's keep as determined by the provision of subdivision 7, which monies shall be deposited in the general fund of the State Treasury if such inmate is housed in a State correctional institution, or shall be paid to the appropriate city or county treasurer if such inmate is housed in a city or county facility;
- (2) Necessary travel expense to and from work and other incidental expenses of the inmate;
- (3) Support of inmate's dependents, if any;
- (4) After the above expenditures, the inmate shall have discretion to direct payment of the balance, if any, upon proper proof of personal legal debts;

- (5) The balance, if any, shall be disbursed to the inmate as provided in section 243.24, subdivision 1.

All monies in the "work release account" established by this subdivision are appropriated annually to the Commissioner of Corrections for the purposes of the work release program.

Subdivision 6. Exemption from process. Wages or salaries of work placement inmates shall not be subject to garnishment, attachment, or execution in the hands of either the employer or a State agent authorized to hold such funds.

Subdivision 7. Payment of board and room. The commissioner shall determine the amount to be paid for board and room by such work placement inmate. When special circumstances warrant or for just and reasonable cause, the commissioner may waive the payment by the inmate of board and room charges and report such waivers to the Commissioner of Finance and the legislative auditor.

Where a work placement inmate is housed in a jail or workhouse, such board and room revenue shall be paid over to such city or county official as provided for in subdivision 2, provided however, that when payment of board and room has been waived, the commissioner shall make such payments from funds appropriated for that purpose.

Amended by Laws 1973, c. 492, §7 and §14; Laws 1973, c. 654, §15.

241.27 Vocational training of inmates; revolving
accounts

Subdivision 1. For the purpose of providing more adequate, regular and suitable employment for the vocational training and rehabilitation of inmates of institutions under his control, the Commissioner of Corrections is hereby authorized and empowered to establish, equip, maintain and operate at such institutions such additional industrial activities as may be deemed necessary and suitable to such institutions. Such industrial activities shall be for the primary purpose of providing vocational training and teaching proper work habits to inmates of institutions under the control of the Commissioner of Corrections, and not as a competitive business venture. Prior to the establishment of such additional industrial activities, the Commissioner of Corrections shall consult with representatives of business, industry, organized labor, the State Department of Education, the State Apprenticeship Council, the State Department of Labor and Industry, the Department of Employment Security, the Department of Administration, and such other persons and bodies as he may feel are qualified to determine the quantity and nature of goods, wares and merchandise to be made, and the types of processes to be used in their manufacture, processing, repair, and production consistent with the greatest opportunity for reform and vocational training of such inmates, and with the best interests of the State, business, industry and labor.

The Commissioner of Corrections may employ administrative, supervisory and other skilled craftsmen for the proper instruction of such inmates.

Subdivision 2. To accomplish the foregoing purposes the Commissioner of Corrections may, with the approval of the Governor and the legislative advisory committee, withdraw from the State Prison revolving fund or that revolving fund at the State Reformatory for men established by section 243.85(f), such sums as may be necessary to establish the additional industrial activities authorized by subdivision 1. The sums so withdrawn shall not exceed, in any one year, a total of \$150,000.

When any additional industrial activity is established at an institution under the control of the commissioner, which had not previously contained an industrial activity, all the proceeds and income from the sale of products produced or processed by such industrial activity shall be deposited in an industrial revolving account at such institution, which industrial revolving accounts are hereby authorized to be established, and shall be used to defray the costs of the operation and conduct of such activities. The proceeds and income from any new industrial activities established at the State Prison or the State Reformatory for Men shall be deposited in the existing revolving accounts at such institutions.

When necessary to meet current demands of any industrial activity established under subdivision 1, the Commissioner of Corrections, with the approval of the Governor and the legislative advisory committee, may transfer funds from one industrial revolving account to another among the several institutions under his control in which industrial activities are conducted, provided that such transfer shall not exceed \$50,000 from one industrial revolving account in any one year.

Laws 1967, c. 883, §1, eff. May 26, 1967; Laws 1967, Ex. Sess., c. 1, §6.

243.19 Barter and exchange of prison-made goods prohibited

No goods, wares, or merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institutions in this or any other state, shall be bartered, traded, or exchanged by such penal institutions for any other goods, wares, or merchandise of any kind for use in such penal institutions. Derivation: St. 1957, §640.54; St. Supp. 1940, §10846-21; Laws 1937, c. 444, §1.

243.23 Compensation paid to inmates

Notwithstanding any law to the contrary, the Commissioner of Corrections is authorized and empowered to provide for the payment to inmates of correctional institutions under his management and control of such pecuniary compensation as he may deem proper, the amount of compensation to depend upon the quality and character of the work performed as determined by

the Commissioner of Corrections and the warden or superintendent, provided that such inmates who because of illness or physical disability cannot work may be paid a minimal amount per day as determined by the commissioner. Such earnings shall be paid out of the fund provided for the carrying on of the work in which the inmate is engaged when employed on State account, or from the current expense fund of the institution as the Commissioner of Corrections shall determine.

Amended by Laws 1973, c. 307, §1.

243.24 Monies, how used; forfeiture

Subdivision 1. Sole benefit of prisoners. Any money arising under section 243.23 shall be and remain under the control of the Commissioner of Corrections and shall be for the sole benefit of the prisoner, unless by special order of the Commissioner of Corrections it shall be used for rendering assistance to his family or dependent relatives, under such regulations as to time, manner and amount of disbursements as the Commissioner of Corrections may prescribe. Unless ordered disbursed as hereinbefore prescribed or for an urgency determined, in each case, by the warden or superintendent, at least one-half of such earnings, but not to exceed a maximum to be determined by the commissioner, shall be set aside and kept by the institution in the public welfare fund of the State for the benefit of the prisoner and for the purpose of assisting him when he leaves the institution and if released on parole said sum to be disbursed to the prisoner in such amounts and at

such times as the Commissioner of Corrections may authorize and on final discharge, if any portion remains disbursed, it shall be transmitted to the prisoner.

Subdivision 2. Warden to increase fund to \$100. If the fund standing to the credit of the prisoner or his leaving the institution by discharge or on parole be less than \$100, the warden or superintendent is directed to pay out of the current expense fund of the institutions sufficient funds to make the total of said earnings the sum of \$100, except when a prisoner is released under section 243.14, the Commissioner of Corrections may authorize a lesser amount.

Amended by Laws 1955, 261, §1; Laws 1959, c. 263, §2 and §3; Laws 1971, c. 878, §1, eff. June 8, 1971.

243.41 Revolving fund created

There is hereby created a State Prison revolving fund available for the purpose of carrying on all industrial enterprises which heretofore have been or hereafter may be authorized by law to be carried on at the State Prison at Stillwater.

Derivation: St. 1957, §640.02; St. 1927, §10790; Gen. St. 1923, §10790; Gen. St. 1913, §9291; Laws 1909, c. 151.

243.42 Sources of fund

The revolving fund shall consist of the \$150,000 appropriated as available for the manufacture of binding twine

at the prison, in and by General Laws 1891, Chapter 163,¹ together with all net earnings or net profits of the manufacture of binding twine at the prison which have accrued since the enactment of such chapter and which have meanwhile been added to the original appropriation, which additions thereto are hereby legalized, and all the future net earnings or net profits of any and all industries carried on at the State Prison under authority of law and as now or hereafter authorized by law.

Derivation: St. 1957, §640.03; St. 1927, §10791; Gen. St. 1923, §10791; Gen. St. 1913, §9292; Laws 1909, c. 151, §2.

243.43 Use of fund

Subdivision 1. The fund shall be used for the purchase of raw materials, payment of salaries and wages, and other expenses necessary and proper in the conduct of such industrial enterprises, authorized by law, and for such other purposes, or be devoted to such other uses, as may hereafter be by law duly authorized.

Subdivision 2. In addition to the authority contained in subdivision 1, the expenses of inmate vocational training and recreational programs may be financed from the fund in an amount

¹ Gen. Laws 1891, c. 163, appropriated money for the general expenses of the State government. Section 6 appropriated \$150,000 for the purchase of raw material required for the manufacture of twine in the State Prison at Stillwater, to be repaid by the sale of twine, and to be used as a revolving fund.

one year, 75 percent of the total of the revolving fund of the prison.

Amended by Laws 1959, c. 263, §2.

243.46 *Prison funds*

When the Commissioner of Corrections and the warden of the State Prison shall certify to the Commissioner of Finance and the State Treasurer that, in their judgment, it is necessary to borrow a specified sum of money in order to meet the current demands on the revolving fund of the State Prison, the State Treasurer and the Commissioner of Finance, may, in their discretion, transfer and credit to the revolving fund, from any monies in the State Treasury not required for immediate disbursement, the whole or such part of the amount so certified as they deem advisable, which sum so transferred shall be repaid by the commissioner from the revolving fund to the fund from which the same was transferred, at such time as shall be specified by the State Treasurer and the Commissioner of Finance, together with interest thereon at such rate as shall be specified by the Commissioner of Finance and the State Treasurer, not exceeding four percent per annum. When any transfer shall so have been made to the revolving fund of the State Prison, the State Treasurer and the Commissioner of Finance shall notify the Commissioner of Corrections and the warden of the State Prison of the amount so transferred to the credit of the revolving fund, the date when the same is to be repaid, and the rate of interest so to be paid.

Amended by Laws 1973, c. 492, §14.

*243.47 Contractors not to be employed; employees
may not accept gifts*

No prisoner contractor or his agent or employee, and no person, directly or indirectly, interested in any business carried on therein, shall hold office or employment in the prison; nor shall any officer or employee therein be, directly or indirectly, interested in any contract, purchase, or sale for or on account of the prison, or receive any compensation for services performed for or on behalf of any contractor, or for his services other than that prescribed by law. No official or employee shall receive any gift from a prisoner therein, or any money or other consideration for services rendered or to be rendered to him. Every contractor, his agent or employee, violating any provision of this section, shall be thereafter barred from obtaining any contract for labor in the prison, and every officer or employee violating the same shall be discharged, and thereafter disqualified from holding any position therein.

Derivation: St. 1957, §640.08; St. 1927, §10794; Gen. St. 1923, §10794; Gen. St. 1913, §9295; Rev. Laws 1905, §5433; Law 1895, c. 154, §16; Gen. St. 1894, §7469 and §7470; Laws 1889, c. 254, §21 and §22.

243.61 Contract labor; tools and machinery

No contracts for leasing the labor of prisoners confined in any such institution, at a certain rate per diem, giving the contractor full control of the labor of the prisoners,

shall be made; but such prisoners shall be employed, under regulations established by the Commissioner of Corrections, in such industries as shall, from time to time, be fixed upon by the officers in charge and the commissioner, or in the manufacture of articles by the piece, under the so-called "piece price system," by contracts with persons furnishing the materials. The chief officer, under the direction of the Commissioner, shall purchase tools, implements, and machinery as he shall deem necessary for the work.

Amended by Laws 1959, c. 263, §2.

243.62 Selling of labor of convicts prohibited

It shall be unlawful for the Commissioner of Corrections, or the warden of the State Prison, or any person exercising control of or supervision over any convict sentenced to and confined in the State Prison to enter into any contract or agreement, or any arrangement, whereby the labor or service of the convict is either sold or leased or otherwise disposed of for hire to any person or to any party.

Amended by Laws 1959, c. 263, §2.

243.63 Sale of binder twine

The price of binder twine manufactured at the State Prison shall be fixed by the warden and the Commissioner of Corrections not later than May 1st, each year. The Commissioner of Corrections, in his discretion, may agree to allow to purchasers of binder twine, uniform discounts from the price so fixed, on condition payment for twine purchased is made by

the purchaser at the time agreed upon for such payment. Such twine shall be sold to actual consumers in quantities needed for their use, and to dealers within the State under such rules and regulations as may be provided by the Commissioner of Corrections, for cash or on terms with such security as may be required and approved by the warden. Dealers desiring to purchase such twine shall enter into a written agreement with the State to sell the twine in keeping with rules and regulations established by the warden and the Commissioner of Corrections. Such agreement shall provide that when such twine is sold for cash it shall be at a price not greater than one cent per pound above the purchase price and freight from the prison to the station where such twine is sold, and when such twine is sold on time, at a price not greater than one and one half cents per pound above the purchase price and freight, as hereinbefore prescribed.

The Commissioner of Corrections shall cause to be held in reserve at the Prison until March 1st of each year, 1,500,000 pounds of twine for the purpose of filling club and cash orders received from customers, and thereafter until July 1st of each year the Commissioner of Corrections shall reduce such reserve to 500,000 pounds, after which date all twine shall be sold. The State shall retain a contingent interest in twine so sold, and if any dealer shall violate his agreement, the Commissioner of Corrections may declare such twine forfeited to the State and retake possession thereof. Every

dealer purchasing such twine shall keep it separate from other twine and keep a correct record of all his sales, showing the date, amount, price, and name and post-office address of purchaser, which shall be open to the inspection of the warden, Commissioners of Corrections, and the proper county attorney. Every dealer who shall violate the terms of the written agreement, and every person violating any provision of this section, shall be guilty of a gross misdemeanor.

When, in the opinion of the Commissioner of Corrections and the warden of the prison, the best interests of the State require such action, such binder twine may be sold to dealers or consumers without the State in conformity with federal and individual state laws governing the sale of binder twine.

Amended by Laws 1959, c. 263, §2.

243.64 Sale of land acquired in collection of a debt for binding twine

When the State of Minnesota shall have heretofore or shall hereafter acquire title to any land in the course of legal proceedings for the collection of a debt arising out of the sale by the State of farm machinery, binding twine, or other articles manufactured or improved at the State Prison, the same may be sold by the Governor to such persons and for such price as shall be recommended by the warden of the State Prison, and the Governor is hereby authorized to execute, in the name of the State and in its behalf, any deeds or conveyances necessary or desirable to convey the title and interest

of the State to the purchaser, and the proceeds of the sale shall be paid into the State Treasury to the credit of the appropriate fund.

Derivation: St. 1957, §640.25; St. 1927, §10813; Gen. St. 1923, §10813; Laws 1917, c. 58, §1.

243.66 Factory at the State Prison

The Commissioner of Corrections is hereby authorized, empowered, and directed to establish, construct, equip, maintain, and operate, at the State Prison, a factory for the manufacture of goods, wares and merchandise. The factory herein authorized shall be for the primary purpose of providing suitable employment for the inmates of the State Prison, their vocational training, and to aid them in the development of proper work habits. For the purposes of, and to give full effect to sections 243.66 and 243.67, the commissioner may use all of the existing State Prison revolving fund created by and existing under sections 243.41 to 243.44. The commissioner and the warden of the prison shall, at all times, in the line of manufacturing herein authorized and directed, employ and make use of inmate labor to the largest extent feasible, provided, however, that the commissioner may employ such administrative, supervisory and other skilled craftsmen as are necessary for the efficient and profitable operation of the factory herein authorized and the proper instruction and supervision of the inmates employed therein.

The commissioner and the warden of the prison are hereby authorized, directed, and instructed to establish in and throughout all parts of this State, local selling agencies, and to contract with such agencies for the local sale of goods, wares and merchandise, the manufacture of which is authorized by sections 243.66 and 243.67, at prices to be fixed by the warden and the Commissioner of Corrections, and the local agencies so contracted with are hereby authorized, in the resale thereof to their actual customers therefor, to charge advance prices equaling 20% of the prices charged them for such products, plus actual freight charges, but not a greater profit thereon, and the contract entered into with these agencies shall be so worded as to obligate them to be diligent in the prosecution of the sales of such products to the customers therefor.

Amended by Laws 1973, c. 512, §1.

243.67 Sale of products

Except as provided otherwise, the Commissioner of Corrections shall cause the products manufactured at such factory to be sold under and pursuant to such rules and regulations as the commissioner shall make, from time to time, for the sale thereof and sold for cash or security approved by the warden.

Amended by Laws 1973, c. 512, §2.

243.68 Laundry; establishment, sale of services

The Commissioner of Corrections is hereby authorized and empowered to establish, equip, maintain and operate a laundry industry at the State Prison. This facility shall be for

the primary purpose of teaching proper work habits to, and providing vocational training for the inmates of the State Prison and not as a competitive business venture. To accomplish the foregoing purpose, the commissioner shall have the authority to sell such laundry industry services to State institutions under such rules and regulations as he may prescribe.

Laws 1959, c. 263, §2; Laws 1959, c. 639, §1.

243.80 Instruction in trades; contract system prohibited

The Commissioner of Corrections shall cause the inmates to be instructed in trades or employments for which they seem best fitted. Contract labor is hereby prohibited in the reformatory, and no inmate thereof shall be required to labor at stonework more than eight hours per day.

Amended by Laws 1959, c. 263, §2.

243.88 Private industry on grounds of correctional institutions

Subdivision 1. Notwithstanding the provisions of any law to the contrary, the Commissioner of Administration, with the approval of the Governor, may lease one or more buildings or portions thereof on the grounds of any State adult correctional institution, together with the real estate needed for reasonable access to and egress from the leased buildings, for a term not to exceed 20 years, to a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of goods, wares or merchandise, or any

other business or commercial enterprise deemed by the Commissioner of Corrections to be consistent with the proper training and rehabilitation of inmates.

Subdivision 2. Any corporation operating a factory or other business or commercial enterprise under this section may employ selected inmates of the correctional institution upon whose grounds it operates and persons conditionally released subject to the provisions of section 241.26. Persons conditionally released as provided in this subdivision shall be deemed to be parolees within the purview of 49 United States Code, Section 60.

Except as prohibited by applicable provisions of the United States Code, inmates of State correctional institutions may be employed in the manufacture and processing of goods, wares and merchandise for introduction into interstate commerce, provided that they are paid no less than 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.

Subdivision 3. Any factory established under the provisions of this section shall be deemed a private enterprise and subject to all the laws, rules and regulations of this State governing the operation of similar business enterprises elsewhere in this State, and the products manufactured therein shall be exempt from the provisions of section 243.86.

Subdivision 4. The authority of the Commissioner of Corrections over the institutions of the Department of Corrections and the inmates thereof shall be diminished by this section.

Laws 1973, c. 145, §1. Amended 1974. Chapt. 304, S.F. No. 242.

325.44 Prison-made goods are subject to laws of state

All goods, wares, and merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institutions, transported into the State and remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in the State, be subject to the operation and effect of the laws of the State, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the State, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

Derivation: St. Supp. 1940, §3976-21. Laws 1935, c. 267, §1.

325.45 Prison-made goods must be marked

All goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institutions in this or any other state, shall be branded, labeled, or marked, as herein provided,

before being exposed for sale, and shall not be so exposed or sold without such brand, label, or mark thereon.

Derivation: St. Supp. 1940, §3976-31. Laws 1935, c.268, §1. Prior Laws: Laws 1929, c. 216.

325.46 *"Prison made" to be placed on prison-made goods*

The brand, label, or mark required by section 325.45 shall contain, at the head or top thereof, the words "prison made," followed by the name of the penal or reformatory institution in which it was manufactured, produced, or mined, in plain English lettering of the style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, a label shall be used and attached. Such brand, mark, or label shall be used and attached. Such brand, mark, or label shall be placed or attached so as to be plainly visible to the purchasing public and also be placed outside of its box, crate, or covering.

Derivation: St. Supp. 1940 §3976-32. Laws 1939, c. 57. Laws 1935, c. 268, §2.

325.47 *Sale of unmarked goods forbidden*

No person shall sell, offer for sale, or have in possession for the purpose of sale, goods, wares, or merchandise described in section 325.45 without the brand, label, or mark required by section 325.45 being placed thereon or attached thereto, or remove, conceal, or deface such brand, label, or mark. Derivation: St. Supp. 1940, §3976-33. Laws 1935, c. 268, §3.

VII. PENNSYLVANIA

A. Overview of the Statutes1. Prison Labor, General Provisions

Discretionary authority to establish industries in state prisons is vested in the Bureau of Correction in the State Department of Justice of Pennsylvania. Prisoners physically capable may be employed eight hours per day, six days per week, for the purpose of:

- (1) printing;
- (2) manufacturing and producing supplies;
- (3) preparing and manufacturing building materials for construction or repair of any state institution and construction thereon;
- (4) planting seed trees;
- (5) industrial training or instruction; or
- (6) manufacturing and producing crushed stone, etc., for draining state roads or in preparation or road building.

The Bureau of Correction is authorized to supervise and determine prison employment and to establish rules and regulations for that purpose. Prison labor in the first instance is to be used for the maintenance of the institution and the raising of food products for prison use.

If the bureau is unable to provide work for every physically able inmate, it is authorized to permit inmates

to engage in approved work or industries from other sources. All such work must be performed, the products sold, and proceeds disposed of under bureau rules and regulations covering prison industries and labor.

The board of trustees of a state prison has general direction and control of the property and management of the institution. Specifically, the board of trustees for the State Correctional Institution at Pittsburgh is authorized to purchase farm implements and livestock necessary to farm the tract of land connected with the institution and to employ prisoners in the mining of rock or minerals, except coal, located upon land owned by the state and used by the prison.

Upon the written request of the Secretary of Highways or a county commissioner, the prison warden has discretionary authority to detail prisoners for road work. Such employment, however, cannot be compelled. Prisoners so employed are not required to wear stripes and remain under the general direction of the warden. Convicts employed in road work cannot be used for building any bridge or similar structure which would involve skilled labor.

2. Prison Industries

The Bureau of Correction determines the industries to be established and may sell or contract to sell the products which cannot be used in the prison to the state, its political subdivisions, state institutions, educational or charitable institutions receiving aid from the state, the

United States government and its political subdivisions, any other state or state authority and any institution receiving aid from the United States government or another state.

The Bureau of Correction is authorized to charge the institution for inmate wages according to an amount determined by the department and dependent upon the work or labor of each inmate. The institution is also charged the same amount per article of production used as it would receive from sale to the State. Such monies, in addition to proceeds from all sales of manufactured products, are paid into a Manufacturing Fund. Expenses necessary for the proper maintenance of prison industries are met from that fund.

3. Inmate Compensation

The board of trustees of a state prison may establish a scale of wages, as compensation for inmate labor, subject to department approval. In no case shall the wage be less than ten cents per day. Three-fourths of the amount accumulated in the Manufacturing Fund as wages earned by an inmate, or the entire amount if he wishes, shall be for the support of his dependents and paid out upon the order of a board of trustees. Each convict employed in road work shall receive 25 cents per day in compensation and additional good-time. Upon the petition of the convict, the warden may pay out all or part of road work wages in support of dependents. Any sums accumulated from wages earned are paid to the convict upon the termination of his sentence.

4. Convict-made Goods

The products of prison industries are to be sold to the state or its political subdivisions, except that surplus mining production may be sold for private use.

All goods, wares, merchandise or other articles made by inmate labor for any purpose must display a brand "convict-made", either on the article itself or, if not feasible, on its packaging. Failure to so brand convict-made goods is a misdemeanor.

Any person who sells or exchanges on the open market goods or merchandise prepared wholly or in part by prisoners currently serving terms in out-of-state prisons is guilty of a misdemeanor.

5. Work Release

No applicable statute.

B. Overview of State Court Decisions

The courts in Pennsylvania, generally, will not interfere with prison administration and disciplinary procedure, but defer to prison officials' authority and expertise. Commonwealth ex rel. Marsh v. Cavell, 388 Pa. 571, 131 A.2d 81 (1957); Petition of Peiffer, 193 Pa. Super. 476, 166 A.2d 325 (1961); Commonwealth ex rel. Duronio v. Prausse, 83 Dauph. 53 (Pa. Com. Pl. 1964); Commonwealth v. Christina, 225 (Pa. Super. 95, 311 A2d 318 (1973).

The legislature has exclusive power to determine the penal system and vest discretionary authority in an office

of the Deputy Commissioner for Treatment in the Bureau of Correction to assign and transfer prisoners of the state. Peiffer, supra; see also Marsh, supra. In Duronio, supra, the court refused a prisoner his choice of educational reading material. The court, at 55, stated:

Rules and regulations with respect to reading and educational material allowed prisoners are necessary for the proper conduct and discipline of penal institutions. It is within the discretion of prison authorities and not this court to determine what books and educational matter shall be made available to prisoners and which shall not be made available.

Despite the dissent of three judges who found a violation of constitutional due process, the majority of the court in Christina, supra, in a per curiam opinion, affirmed a lower court decision upholding the revocation without notice of a court ordered work release privilege.

Judicial intervention will be warranted only where there is shown a clear abuse of administrative discretionary authority which denies a clear right. Commonwealth ex rel. Saunders v. Creamer, 11 Pa. Com. 160, 312 A.2d 454 (1973). For example, a prisoner may gain judicial protection from "deplorable" prison conditions which constitute cruel and unusual punishment in violation of his rights under the Eighth Amendment of the federal Constitution. Commonwealth ex rel. Bryant v. Hendrick, 280 A2d 110 (Pa. 1971).

The Pennsylvania courts have not dealt with issues of inmate rights with regard to prison industries. Prisoners'

rights in general, however, are severely limited: "A convict has no constitutional or other inherent right to serve his imprisonment in any particular institution or type of institution." Commonwealth ex rel. Radzlewicz v. Burke, 1969 Pa. Super. 263, 267, 82 A2d 252, 254 (1951); Peiffer, supra, at 327. In Saunders, supra, a prisoner's claim that failure to place him in a community treatment program or to release him on furlough constituted deprivation of a right to rehabilitation was rejected. The court, at 457, analogized work release to parole in that such treatment was a matter of grace, not right, involving a professional evaluation of many factors and refused to interfere with what it termed the "skilled discretion" of the administrative officials in authority. In Goldvack v. Board of Prison Inspectors, 64 Lanc. Rev. 157 (Pa. Com. Pl. 1974), the court found that the state was entitled to the labor of its convicts, even when routine and unpaid for, and rejected a prisoner's claim to a federally protected right not to work.

C. Statutes

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Work Release

No applicable statute.

2. Statutory Provisions

61-141 *Convict labor to be employed for the state*

At the expiration of existing contracts, the board of inspectors, wardens, or other officers of state and reformatory institutions, are directed to employ the convicts under their control for and in behalf of the state. 1883, June 13, P.L. 112 §1.

61-165 *Employment of convicts in construction, farming and dairying*

Upon the completion of such building or buildings as may be necessary for the custody of prisoners, the

board shall transfer the convicts from the Eastern State Penitentiary¹ in Philadelphia as rapidly as feasible until all such convicts are so transferred, and such convicts may be assigned with the necessary guards to assist in any work connected with the improvement of said tract, the preparation of building materials or the construction of the said building and improvements pertinent thereto, or to engage in farming or dairying work for the purpose of supplying the prisoners at Graterford and at the Eastern State Penitentiary, Philadelphia, with food products. For the labor of all such prisoners, the Board of Trustees of Eastern State Penitentiary shall enter into an agreement with the Department of Welfare, and shall pay to the Department of Welfare Manufacturing Fund such wages for each prisoner employed as may be agreed upon in accordance with the laws regulating the employment of prison or inmate labor. Wages paid hereunder for the labor of prisoners engaged in farming or dairying or cooking, or other work in connection with the maintenance of prisoners at Graterford, shall be charged to the counties as a part of the cost of keeping prisoners; and all wages paid hereunder for the labor of prisoners engaged in the preparation of building materials, or in improving the site of the new penitentiary, or in the construction of buildings, shall be paid out of any monies appropriated by General Assembly for the construction

¹Now State Correctional Institution at Philadelphia.

of the new penitentiary. The expense of keeping the convicts at the site of said new Eastern State Penitentiary shall be borne by the respective counties in which they shall be convicted, and the said expense shall be paid as provided by law in the case of convicts confined in the Eastern State Penitentiary at Philadelphia. 1927, May 4, P.L. 761, §4; 1928, April 26, P.L. 826, No. 359, §1.

61-221 Definitions

As used in this act, the term "jail" means penitentiary, jail, prison or workhouse.

"Warden" means any person in charge of a jail.

"Highway" means any highway, road, street or alley.

"Convict" means any inmate of a jail.

"Municipality" means any municipal corporation or quasi municipal corporation. 1951, June 4, P.L. 812, §1.

61-222 Road work for convicts

The warden of any jail is hereby authorized and directed to detail for work on the public highways such convicts as he may deem advisable, excepting prisoners under sentence of death, upon the written request of the State Highway Commissioner,² for all state roads; the county commissioners, for all county roads; the township commissioners or township supervisors, as the case may be, for township roads; the mayor or burgess, as the case may be, for all

²Now Secretary of Highways.

municipal streets. The detail shall be voluntary on the part of the convict, and shall in no way be compulsory. 1915, June 4, P.L. 812, §2.

61-223 Rules and regulations

Convicts detailed to highway work shall, while so engaged, be under the general direction of the warden, or overseers appointed by him and shall be subject to such rules and regulations with respect to their hours of labor, conduct, and control as the warden shall establish. 1915, June 4, P.L. 812, §3.

61-224 Violation of rules and regulations

The convicts shall not be required to wear stripes. For any infraction or violation of the rules and regulations the maximum punishment of any convict shall be his summary return to confinement in the jail, and loss of all deductions from the time of his sentence which he may have been entitled to up to the time of such infraction or violation. 1915, June 4, P.L. 812, §4.

61-225 Remuneration

Each convict shall be allowed the sum of 25 cents for each day's labor. This sum shall accumulate as a fund to be paid the convict on the termination of his sentence, or on his release by pardon or parole, and which shall be in addition to the sum of money ordinarily given discharged convicts. The sum shall be paid by the State, county, township, or municipality having the work done. 1915, June 4, P.L. 812, §5.

61-226 *Disposal of fund*

On petition of any convict, the warden may pay out from any sum so accumulated a portion, or all thereof, in support of a dependent wife, children, or parent of such convict in need or distress. 1915, June 4, P.L. 812, §6.

61-227 *Supervision of work*

The warden, on the written requests for convicts by the State Highway Commissioner,³ in the construction of State roads; or the county commissioners of each county, in the construction of county roads; or the township supervisors or township commissioners, as the case may be, in the construction of township roads; or the municipal authorities, in construction so detailed shall be employed, whether in the improvement of existing highways or in the construction of new highways. The State Highway Commissioner shall have general supervision and direction of all State road work, and the county commissioners of all county roads, the township commissioners or township supervisors, as the case may be, of all township roads, and the municipal authorities of all municipal streets, to the improvement or construction of which convicts have been detailed. 1915, June 4, P.L. 812, §7.

61-228 *Providing for the granting of additional good-time*

Hereafter, convicts of any jail, undergoing sentence in accordance with the law, who shall or may be engaged in work

³ Now Secretary of Highways.

on any highway, and who shall conduct himself in accordance with the rules of the prison and perform his work in a creditable manner, shall be granted such good time in addition to that allowed by law as the Governor may order, not to exceed (10) days in any one calendar month. The Governor shall not execute any of the rights or powers herein granted unto him until the Lieutenant Governor, Secretary of the Commonwealth, Attorney General, and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, upon such rules as they shall provide, shall have recommended the commutation of sentence. 1915, June 4, P.L. 812, §8.

61-229 Skilled labor not interfered with

Convicts employed under this act shall not be used for the purpose of building any bridge, or other structure of like character, or to do any work in connection therewith, which requires the employment of skilled labor. 1915, June 4, P.L. 812, §9.

61-251 Convict-made goods to be branded

From and after the passage of this act, all goods, wares, merchandise or other article or thing made by convict labor, in any penitentiary, reformatory prison, school or other establishment in which convict labor is employed, whether for the direct benefit and maintenance of such penitentiary, reformatory prison, school or other establishment, or upon contract by the authorities of the same with any third person,

all and every such goods, wares, merchandise, article or thing, immediately upon the completion of the same, shall be branded as hereinafter provided, and shall not be taken into or exposed in any place for sale at wholesale or retail, without such brand. 1883, June 20, P.L. 125, §1.

61-252 Style and place of brand

The brand herein required shall be in plain English lettering, and shall contain at the head or top of said brand the words "convict-made," followed by the year and name of the penitentiary, reformatory prison, school and other establishment in which made. That the brand aforesaid shall in all cases, when the nature of the article will permit, be placed upon the same, and only where such branding is impossible it shall or may be placed on the box or other receptacle or covering in which it is contained. And the same shall be done by casting, burning, pressing or other such process or means as that the same may not be defaced, and in all cases shall be upon the most conspicuous place upon such article, or the box, receptacle or covering containing the same: Provided, that goods, wares and merchandise shipped to points outside of the state shall not be so branded. 1883, June 20, P.L. 125, §2.

61-254 Dealing in convict-made goods, not branded, prohibited

It shall not be lawful for any person dealing in any such convict-made good, wares, merchandise, or other article, at wholesale or retail, to have his possession, or offer for sale, any such convict-made goods, wares, merchandise or other

article manufactured by convict labor in Pennsylvania, or any other state, without the brand provided by this act. And in all cases where the brand aforesaid is upon the box, receptacle or other covering in which such goods, wares, merchandise, or other article is contained, it shall not be lawful for any such person retailing to remove the same from such box, receptacle or other covering, except as he shall retail the same to a customer for his individual use, and at all times, the box, receptacle or covering containing said brand, shall be open to the inspection of such customer, and any person knowingly and willfully offending against this section, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or undergo an imprisonment not exceeding six months, or both or either, at the discretion of the court. 1883, June 20, P.L. 125, §4.

61-255 Counties of first class; prison inspectors authorized to sell prison-made goods

The boards of inspectors of prisons now erected or which may hereafter be erected, in counties of the first class of this Commonwealth, are hereby authorized and empowered to sell to such county, to any city or school district coexisting therewith, or political subdivision within such county, and to any public institution suitable within such county, and maintained by such county or city or other political subdivision within such county, such surplus printing or products manufactured or prepared in the industries established in prisons in

said counties of the first class, and, for these purposes, may execute and deliver bonds, conditioned for the performance thereof, which such board or boards may deem it expedient to make.

The authorities of such counties, cities, school districts, or other political subdivisions of such counties situated therein, purchasing such products, shall not be required to advertise for such products or require competitive bidding.

1931, May 20, P.L. 138, §1.

61-256 Wages; disposition of earnings

The board of inspectors may establish, from time to time, a scale of wages, and may pay, and the inmates may receive compensation for their work, according to such scale: provided, that in no case shall the wage be less than ten cents per day. The earnings of each prisoner shall be credited to his account and disbursements made on approval of the superintendent of the institution and the written order of the inmate: provided, that when an inmate is committed for non-support, the court which sentenced the prisoner shall order payment of said earnings: and provided further, that in the case of other inmates, the court which sentenced the prisoner may order payments from a prisoner's earnings to be paid to the prisoner's dependents. At time of release or discharge, the prisoner shall receive all monies remaining in his account and give receipt for the same. 1931, May 20, P.L. 138, §2.

61-307 Out-of-state convict-made goods

A person is guilty of a misdemeanor of the second degree if he sells or exchanges on the open market any goods,

wares or merchandise prepared, wholly or in part, or manufactured by convicts or prisoners of other states, except convicts or prisoners on parole or probation. 1972, December 6, P.L.____, No. 334, §1, eff. June 6, 1973.

61-348 Farming implements for Western Penitentiary

The board of inspectors of the said Western Penitentiary⁴ is hereby authorized to purchase such farming implements and livestock as may be necessary, from time to time, for the purpose of farming the tract of land connected with the said Western Penitentiary in Centre County, and charge the cost of the same to the several counties in the Western Penitentiary District, in proportion of the number of convicts from each county in the said Western Penitentiary District. 1913, April 4, P.L. 44, §1.

61-349 Western Penitentiary; utilization of minerals

In order to utilize the natural resources of the land now owned by the Commonwealth, used for the Western Penitentiary⁵ in Centre County, to afford occupation for the inmates thereof and to assist in the development and maintenance of said institution, it shall be lawful for the board of inspectors⁶ of the said penitentiary by the inmates thereof, to cause to be mined, quarried, or dug any rock or other minerals (other than coal) existing upon the said land, and to make the same

⁴ Now Board of Trustees of State Correctional Institution at Pittsburgh.

⁵ Now Board of Trustees of State Correctional Institution at Pittsburgh.

⁶ Now State Correctional Institution at Pittsburgh.

into such products and by such means as said board may find desirable; and the said board is further authorized to use the said materials, or the said products thereof, in all such ways as may be found useful for the purposes of the said penitentiary and the improvement and development of the lands thereof, and to sell the surplus, if any, and devote the proceeds thereof to the maintenance of the said institution. 1915, June 3, P.L. 787, §1.

71-301 (*Adm. Code §911.*) *Supervision and control of correctional institutions, regional jails, penal grounds, and facilities*

The Department of Justice shall have the power and its duty shall be to supervise and control the State Correctional Institution at Philadelphia, State Correctional Institution at Pittsburgh, State Correctional Institution at Rockview, State Correctional Institution at Graterford, State Correctional Institution at Huntingdon, State Correctional Institution at Camp Hill, State Correctional Institution at Muncy, State Correctional Institution at Dallas, and such State regional jails, forestry camps and other State penal or correctional off-institution grounds, facilities, or installations which have been and which may be established by law. As amended 1965, Dec. 22, P.L. 1215, §1; 1968, July 16, P.L. 350, No. 172, §1.

71-302 (*Adm. Code §912.*) *Bureau of Correction*

There shall be a Bureau of Correction in the Department of Justice, in charge of a Commissioner of Correction

appointed by the Attorney General with the approval of the Governor. 1929, April 9, P.L. 177, art. IX, §912, added 1953, July 29, P.L. 1428, §1.

71-303 (Adm. Code §913.) *Deputy Commissioner for Treatment*

The Commissioner of Correction shall appoint one (1) Deputy Commissioner for Treatment, who shall be in charge of and responsible for the administration of the Eastern Correctional Diagnostic and Classification Center and the Western Correctional Diagnostic and Classification Center. He shall have the sole responsibility for the transfer of persons from said diagnostic and classification centers to State institutions and transfer of persons from one State institution to another. If for any reason he is unable to act or his office is vacated, his duty with regard to such transfers may be performed by the Commissioner of Correction or someone specifically delegated by the Commissioner of Correction. 1929, April 9, P.L. 188, art. IX, §913, added 1953, July 29, P.L. 1428, §1.

71-305 (Adm. Code §915.) *Inmate Labor*

The Bureau of Correction shall have the power and its duty shall be:

- (a) To establish, maintain and carry on industries in the State penal and correctional institutions under the jurisdiction of the Department of Justice as it may deem proper, in

which industries all persons sentenced to, assigned to or transferred to such institutions, who are physically capable of such labor, may be employed at labor for not to exceed eight (8) hours each day other than Sundays and public holidays. Such labor shall be for the purpose of doing printing or of manufacturing and producing supplies, or for the preparation and manufacture of building materials for the construction or repair of any State institution or in the work of such construction or repair, or for the planting of seed trees, or for the purpose of industrial training or instruction, or in the manufacture and production of crushed stone, brick, tile and culvert pipe or other material suitable for draining roads of the State or in preparation of road building and blasting material.

- (b) To determine the amount, kind and character of the machinery to be erected in each of the said penitentiaries, reformatories, or other penal or correctional institutions in the Department of Justice and the industries to be carried on therein, having due regard to

the location and convenience thereof with respect to other institutions to be supplied to the machinery therein and the number and character of inmates.

- (c) To contract to sell or sell the articles manufactured or produced in the said industries carried on in the said penitentiaries, reformatories, or other penal or correctional institutions, which cannot be used therein, to the Commonwealth or to any political subdivision thereof, or to any State municipality, or county authority, created by or under any law of this Commonwealth, or to any State institution or to any educational or charitable institution receiving aid from the Commonwealth, or to the Government of the United States or any department, bureau, commission, authority or agency thereof; or to any other State or political subdivision or authority thereof, or to any institution receiving aid from the Government of the United States or of any other State.
- (d) To arrange for the employment of inmates of such institutions at such work or labor within or upon the grounds of such institutions

as may be necessary for the maintenance of the institutions or the raising of food products therefor.

- (e) To charge to each institution such rate per diem as may be paid by the department to such inmate hereunder for this services, for the work or labor of each inmate engaged in work or labor within or upon the grounds of such institution for the maintenance of the institution or the raising of food products therefor.

Also, to collect from each such institution for any manufactured supplies or products used by it, the same price per article used as it would receive upon the sale of such article in similar quantities to the Commonwealth or any other agency to which it is authorized to sell articles manufactured or produced by inmate labor. All amounts collected by the Department of Justice from such institutions hereunder shall be paid through the Department of Revenue into the Manufacturing Fund in the State Treasury and all such amounts shall be considered a part of such institutions' maintenance expense.

- (f) To charge to each such institution, in like manner, for the labor of all inmates engaged in preparing materials for the construction of buildings or in doing construction work, such payments to be made by the institutions out of funds available for construction work. All monies received hereunder shall be paid into the Manufacturing Fund through the Department of Revenue.
- (g) Through the Department of Revenue, to pay into the Manufacturing Fund the proceeds of all sales of manufactured products made under this section and all monies received for the labor of inmates in State forests or elsewhere than on the grounds of the institution. This clause shall not, however, apply to the sale of surplus food products or products of the soil as elsewhere in this act permitted.
- (h) To pay out of the Manufacturing Fund all expenses necessary for the proper conduct of the work of the Department of Justice pertaining to the establishment, maintenance and carrying on of industries in the State penal and correctional institutions and the rehabilitation of the inmates thereof.

Estimates of the amounts to be expended from the manufacturing Fund shall be submitted to the Governor, from time to time, for approval or disapproval, as in the case of other appropriations, and it shall be unlawful for the Department of the Auditor General to honor any requisition for expenditures or monies out of this appropriation in excess of the estimates approved by the Governor. Subject to this provision, the Department of the Auditor General shall, from time to time, draw warrants upon the Treasury Department for the amounts specified in such requisitions, not exceeding, however, the amount in the Manufacturing Fund at the time of the making of any such requisitions.

- (i) To require that an amount shall be kept, by the proper officers of each said penitentiary, reformatory and other correctional institution, of the labor performed by inmates. In such account shall be shown, at the time each inmate is actually engaged in work, the rate of wage at which he is to be paid, which shall be regulated by the department. In no case shall the amount be less than ten cents for each day of labor actually performed. The rate of compensation

shall be based both upon the pecuniary value of the work performed and also on the willingness, industry and good conduct of the inmate. All amounts payable to inmates hereunder shall be paid to the institution out of the Manufacturing Fund, to be disbursed or held by such institution in the manner following:

Three-fourths of the amount of wages payable to an inmate of such penitentiary, reformatory or other institution, or the entire amount if the inmate so wishes, shall constitute a fund for the relief of any person or persons dependent upon such inmate, and shall be paid, upon the order of the board of trustees of the penitentiary, reformatory or other institution in which the inmate is a prisoner, to the person or persons establishing such dependency to the satisfaction of such board, at such time or times as said board may order.

All sums credited to any inmate and not paid to a dependent or dependents shall be paid to the inmate on his discharge from the penitentiary, reformatory or other institution in which he was a prisoner: Provided, however, that subject to the rules and regulations of the board of trustees of the penitentiary, reformatory or other institution in which such

inmate is a prisoner, the whole or any part of said sum may be paid to him during his imprisonment for his present needs, such rules and regulations to be subject to the approval of the department.

- (j) To have an exercise supervision over the labor employed in the aforesaid industries and to make rules and regulations for carrying on such industries.
- (k) To the extent to which the Bureau of Correction is unable to provide work for every physically able inmate of such institutions, to permit inmates to engage in such work or industries as the Bureau may approve and which they are able to provide from other sources, but all such work shall be performed, the products thereof sold, and the proceeds thereof disposed of, under the rules and regulations of the Bureau of Correction covering the same. 1929, April 9, P.L. 177, art. IX, §915, added 1953, July 29, P.L. 1428, §1.

71-306 (Adm. Code §916) *Boards of trustees of state institutions*

The boards of trustees of each state institution within the Department of Justice and the Commissioner of Correction shall have general direction and control of the property and management of such institutions.

VIII. WASHINGTON

A. Overview of the Statutes1. Prison Labor, General Provisions

Under the Washington Constitution, no prisoner's labor may be let out by contract, and the legislature is required to provide by law for the labor of convicts for the benefit of the state.

Every prisoner in the Washington State Penitentiary is required to work. The Director of Social and Health Services is authorized to cause inmates to be employed in rendering services or manufacturing products needed by the state, one of its political subdivisions, or a public institution. He must provide for the useful employment of inmates, but is prohibited from employing them in the contract system of labor. The superintendent of each institution, subject to the director's approval and department regulations, may:

- (1) grant leaves of absence to confined inmates for the performance of labor in the industrial or agricultural programs of the institution;
- (2) supervise the management of the institution, grounds, buildings, employees and inmates;
- (3) take custody of the personal property of inmates and govern the accounting of all monies earned; and
- (4) establish such industrial, vocational and agricultural programs as will benefit prisoners.

The director is authorized to establish honor camps as branches of correctional institutions to employ convict labor in farming, reforestation, etc. to conserve the natural resources of the public domain. Any state department may use convict labor at such camps, and the director may enter into contracts for this purpose. The director determines which inmates are eligible for employment in labor camps, and the department retains jurisdiction over their discipline and control. The director has authority to supervise and control programs of vocational education at state correctional institutions. Such programs--defined as a planned series of learning experiences to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals--are stated to be essential to rehabilitation. These are not programs whose primary characteristic is repetitive work for the purpose of production, such as the institutional industries program.

2. Prison Industries

The Director of Social and Health Services has full power to manage and govern state penal institutions. The director's duties include:

- (1) the establishment of suitable farming operations for supplying the necessary food products to the institutions under his control. He is expected to exchange food products with other institutions at the cost of production and sell any surplus;

- (2) the establishment and operation of suitable industries and industrial plants which can be operated at the least relative cost and the greatest relative benefit to the state. Products are to be exchanged with other state institutions, at prices fixed by the department not to exceed market price or sold upon conditions which in the director's judgment are in the best interest of the state. Products of the plate mill are to be sold to the state or one of its departments on terms set by the director.

An Institutional Industries Commission was created in order to aid the department in minimizing idleness among inmates and to promote rehabilitation through industrial and agricultural activities. The commission is empowered to:

- (1) recommend enterprises which will provide diversified work activities and serve as a means of vocational education as well as of occupation and financial support;
- (2) determine the kind, quality and quantity of goods to be produced and services to be rendered; and
- (3) determine the advisability of establishing, expanding, diminishing or discontinuing each enterprise.

An "enterprise" is defined as an agricultural or manufacturing operation for the purpose of producing saleable items above and beyond the needs of the producing institution, not to include or apply to self-sustaining activities, maintenance and construction work or handicrafts of prisoners.

The gross annual production value of any enterprise must not exceed \$275,000, except upon a determination by the commission after a public hearing. The commission is expected to fix the gross annual production value of each new enterprise which may exceed that limit only in direct proportion to an increase in the population of state institutions or in the wholesale price index of the U.S. Bureau of Labor Statistics.

All monies received from prison industries are paid into the state treasury to the credit of the Institutional Industries Fund. All excess beyond that necessary for the efficient operation of prison industries is paid over to the state treasury for deposit in the General Fund of the Treasury. The proceeds from the sale of products of vocational education programs are credited to the institution where made to be used for vocational program supplies.

The provision for prison industries and the employment of inmates in industrial production are not intended to restore civil rights. No inmate is considered an employee of the state, and, except as otherwise provided, does not come within any of the provisions of the State Workmen's Compensation

Act. All monies paid to a prisoner are to be considered a gratuity. Inmates employed in industrial industries enterprises are eligible for industrial insurance except that no payment for temporary or permanent disability is paid until the termination of his sentence. Such monies are payable out of the Institutional Industries Fund.

3. Inmate Compensation

The Director of Social and Health Services establishes a graduated scale of inmate compensation based upon the quality, quantity and skill required in the labor. An inmate's wages are credited to his account, a portion of which may be forfeited for violation of rules. At the inmate's request, monies may be paid out of his account to relatives with the approval of the superintendent. All monies accrued are paid out to the inmate upon termination of his sentence.

Convicts employed in work release programs are entitled to prevailing wages and all employee benefits except unemployment compensation. They are not employees of the state, and the department cannot enter into contracts for their labor. Their earnings are surrendered to the director or the superintendent, who may deduct expenses for vocational training, room and board, transportation, clothing and the support of dependents. The remainder is deposited in a personal fund which becomes the prisoner's upon termination of his sentence.

4. Convict-made Goods

The Institutional Industries Commission approves the prices (as near as possible to market prices) of articles produced in prison industries. A list of goods available is prepared by the department and circulated to all state departments and subdivisions. State agencies may purchase prison-made goods and institutions within the Department of Social and Health Services, and the State Supervisor of Purchasing is directed to give preference to such goods. No department may evade purchasing from prison industries by slight variations in needs requirements, but where the products, in the opinion of the Supervisor of Purchasing, the Attorney General and the Commissioner of the Employment Security Department do not meet reasonable requirements, they need not be purchased.

Production by prison industries for private use or profit is prohibited. However, to prevent waste, the surpluses and by-products of agricultural and animal husbandry enterprises may be sold under rules prescribed by the director. The sale of convict-made goods on the open market is prohibited except handicrafts produced as a result of occupational therapy, products that result from convict participation in a work release program, and products of vocational education programs. All goods manufactured in the prisons of the state must have plainly marked on the outside of any shipping container, "Washington Institutional In-

dustries." The sale of out-of-state convict-made goods is prohibited except for use by state penal institutions and departments.

5. Work Release

The director may authorize a work release program for any inmate convicted of a felony and sentenced to a state correctional institution. The inmate may work at paid employment, participate in a vocational training program or interview for prospective employment. Any prisoner may apply to participate in such a program. The superintendent may deny the application or recommend it to the director. Permission to participate may be revoked at the sole discretion of the director.

B. Overview of State Court Decisions

Once an accused is validly adjudged guilty of a criminal offense and duly sentenced to imprisonment, legal authority over him passes from the judicial to the Department of Social and Health Services and those agencies in the executive branch which are delegated the responsibility for executing the judgment. See January v. Porter, 75 Wash.2d 768, 453, P2d 876 (1968).

In Woods v. Burton, 8 Wash. App. 13, 503 P2d 1079 (1972), the position of the Washington state courts vis-a-vis the discretionary authority vested in prison officials was clearly articulated:

It is not the function of the Courts to superintend treatment or discipline of prisoners in penal institutions. This is the responsibility of those officers, both

state and local, who are given supervisory powers. However, where there is a clear abuse of discretion, or violation of a Constitutional right, all persons, including prisoners, have the right to petition the government for redress. (at 1081)

The extent to which the courts are willing to defer to the authority of prison officials and/or are reluctant to extend prisoners' rights may be gleaned from the fact that the appellate court in Woods, supra, found no error in a trial court determination that despite 25 violations of established minimum standards for the operation of a jail, the prisoner plaintiff was not subjected to cruel and unusual punishment in violation of his constitutional rights.

C. Statutes

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2. Statutory Provisions

House Bill No. 159 (1975) Sale on open market forbidden

An Act relating to correctional institutions; and amending section 1, chapter 294, Laws of 1927 as last amended by section 1, chapter 73, Laws of 1970 ex. sess. and RCW 19-20.020.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 294, Laws of 1927 as last amended by section 1, chapter 73, Laws of 1970 ex. sess. and RCW 19-20.020 are each amended to read as follows:

The selling, offering, keeping, exposing or displaying for sale on the open market within this state of any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole, probation, or work or training release is hereby prohibited except that, any fair, bazaar, or other public gathering of a temporary nature which displays and offers for sale handcrafted articles, may provide adequate space for the display and sale of handcrafted articles manufactured as result of occupational therapy by persons confined to any institution in this state. Such space shall be furnished without charge. The secretary of social and health services shall credit the proceeds derived from the sale of such articles to the institutions where produced or manufactured to be deposited in a revolving fund to be expended for the purchase of supplies, materials, and equipment for the production of handcrafted articles, provided, that any resident of a state correctional institution who produces a handcrafted article with supplies or materials purchased or procured by him, not at state expense, may be permitted by the secretary, or his designee, to sell such article

under the authority of this section, the proceeds to be deposited in his personal account.

No goods, wares, or merchandise manufactured, produced, or mined, in whole or in part, by convicts or prisoners of other states, except convicts or prisoners on parole or probation, shall be shipped into this state to be sold on the open market in this state, or sold to or exchanged with an institution of this state, or any of its political subdivisions: *Provided*, This chapter shall not prohibit the sale to or exchange between penal, reformatory, or custodial institutions and/or departments of this state, including any of its political subdivisions, for use or consumption by said institutions, of goods, wares, or merchandise manufactured, produced, or mined, in whole or in part, by convicts or prisoners of the state of Washington: *And provided, further*, this chapter shall not apply to commodities manufactured by federal, penal or correctional institutions for use by the federal government and/or goods displayed or sold within any of the penal, reformatory, or custodial institutions of the state for the benefit of the inmates thereof. Nothing in this section shall be construed to apply to goods, wares, or merchandise manufactured, produced, or mined, in whole or part by convicts or prisoners employed by employers other than the state of Washington under work, training, or similar rehabilitative or vocational programs. Furthermore, such convict or prisoner participants shall be compensated at fair market prevailing wages and shall be entitled to all benefits and privileges in their employment to the same extent as other em-

ployees of their employer to the maximum extent which is not inconsistent with the rules, regulations, and conditions imposed upon the convict or the prisoner as the result of confinement or probation, except that such participants shall not receive unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW. Procedures for distribution of earnings shall be developed for the department of social and health services in accordance with RCS 72-65. 050. All participants who become engaged in employment or training under this program shall not be considered as agents, employees or involuntary servants of state, and the department of social and health services is prohibited from entering into a contract with any person, copartnership, company, or corporation for the labor of any participant under its jurisdiction. The institutional industries commission as established by chapter 72-60 RCW shall be responsible for overall supervision of any in-prison work opportunities organized in accordance with this 1975 amendatory act. Approved March 24, 1975.

19-20.010 *Definitions*

The words "open market" as used in this chapter shall mean all sales or exchanges conducted or transacted through the medium of stores, shops, sales offices, sales agents or agencies, whether retail or wholesale.

72-01.005 *Department of institutions abolished*

See RCW 43-20A.500.

72-01.010 *Definitions*

As used in this title: The word "department" after July 1, 1970 means the department of social and health services;

The word "director" after July 1, 1970 means the secretary of social and health services. [Amended by Laws 1st Ex. Sess. 1970, ch. 18, §56, effective July 1, 1970.]

72-01.050 *Director's powers and duties--Management of public institutions*

The director shall have full power to manage and govern the following public institutions.

The western state hospital, the eastern state hospital, the northern state hospital, the state penitentiary, the state reformatory, the state training school, the state school for girls, the state soldiers' home and colony, the Washington veteran's home, Lakeland Village, the Rainier school, the state narcotic farm colony, the Fort Worden school for the care and custody of children and youth and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions. [1959]

72-01.060 *Superintendents--Appointment--Terms--Salaries--Assistants*

It shall be the duty of the director to appoint a chief executive officer for each public institution under his control, who shall devote his entire time to the duties of his office and whose title shall be "superintendent". Said appointment shall be for a term of four years, but the appointee may be

removed by the director at his discretion.

72-01.140 *Agricultural and farm economy*

The director shall:

- (1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;
- (2) Establish and carry on suitable farming operations at the several institutions under his control;
- (3) Supply the several institutions with the necessary food products produced thereat;

- (4) Exchange with, or furnish to, other institutions, food products at a cost of production;
- (5) Sell and dispose of surplus food products produced.

72-01.150 *Industrial economy*

The director shall:

- (1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;
- (2) Supply the several institutions with the necessary industrial products produced thereat;
- (3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;
- (4) Sell and dispose of surplus industrial products produced, to such persons and under such rules

- regulations, terms and prices as may be in his judgment for the best interest of the state;
- (5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state.

(1959)

72-01.160 *Deposit of money--Institutional revolving account*

The director shall have the power, and it shall be his duty, to cause all monies or credits received from the sale or exchange of farm or industrial products produced or manufactured at the several institutions under the control of the department to be paid into the state treasury to the credit of a revolving account, to be known as the state institutional revolving account, from which account there shall be biennially appropriated for the benefit of the several institutions under the control of the department sufficient monies to cover the estimated biennial contribution to such account of each of the said institutions.

[1959]

72-01.370 *Leaves of absence for inmates--Grounds*

The superintendents of the state penitentiary, the state reformatory, the state honor camps and such other penal institutions as may hereafter be established, may, subject to

the approval of the director of the department of institutions, grant leaves of absence to inmates confined in such institutions to:

- (1) Perform labor in connection with the industrial or agricultural programs of such institutions.
[1959]

72-01.380 --Rules--Restrictions--Costs--

The director of the department of institutions is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: *Provided*, that leaves of absence granted in inmates under RCW 72-01.370 shall not allow or permit any inmate to go beyond the boundaries of this state.

72-08.070 *Disposition of moneys*

All monies received or collected by the superintendent, unless otherwise provided, from sales of industrial or agricultural products of the state penitentiary or for services in relation to the industrial and agricultural operations of the penitentiary shall be paid by him into the state treasury to the credit of the state institutional revolving account.
[1959]

72-13.080 *Powers and duties of superintendents*

The superintendent shall have the following powers, duties and responsibilities:

- (1) Subject to the rules and regulations of the department, the superintendent shall have supervision and management of the institution, the grounds and buildings, subordinate officers and employees, and the prisoners committed or transferred to such institution and the custody of such persons until released as provided by law.
- (2) The superintendent shall be the custodian of the personal property of all inmates in the institution and shall make rules and regulations governing the accounting and disposition of all monies received and earned by the inmates, not inconsistent with law, and subject to the approval of the director. [1959]

72-13.100 *Industrial, vocational and agricultural programs*

The superintendent, subject to the approval of the director and institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as will be most beneficial to the inmates of such institutions. [1959]

72-15.010 *Institution established--Name*

There is hereby established under the supervision and control of the director of the department of institutions, a correctional institution for the confinement, rehabilitation

and reformation of female persons convicted of a felony and sentenced and committed to such institution for a term of confinement by the superior courts. Such institutions shall be known as the Washington correctional institution for women. [Added by Laws 1st Ex. Sess. 1967, ch. 122, §1.]

72-15.050 *Industrial, vocational and agricultural programs*

The superintendent, subject to the approval of the director and the institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as would be most beneficial to the inmates of such institution. [Added by Laws 1st Ex. Sess. 1967, ch. 122 §7.]

72-15.070 *Rules and regulations*

The supervisor of the division of adult corrections and the superintendent, subject to the approval of the director, shall make, amend, and repeal rules and regulations for the administration, supervision, discipline, and security of the Washington correctional institution for women. [Added by Laws 1st Ex. Sess. 1967, ch. 122 §9.]

72-60.010 *Definitions*

As used in this chapter, unless the context requires otherwise:

- (1) "Institution" means any place under the jurisdiction of the department of institutions at which individuals are confined pursuant to court order.

- (2) "Commission" means the institutional industries commission as herein created.
- (3) "Enterprise" means an agricultural or manufacturing operation or group of closely related operations within a single institution which in accepted trade practices would ordinarily be carried on as a single unit for the purpose of producing saleable items above and beyond the needs of the producing institution, not to include or apply to self-sustaining activities, maintenance and construction work and handiwork or prisoners. [1959]

72-60.020 *Declaration of purpose*

The purpose of this chapter is to aid and assist the department of institutions in minimizing or eliminating idleness among the inmates of the state penal, correctional, or reformatory institutions and promoting rehabilitation by affording such inmates an opportunity to participate in industrial and agricultural activities and to provide for the disposition and sale of the articles produced. [1959]

72-60.030 *Commission created*

There is hereby created the institutional industries commission which shall consist of the director of the department and six members appointed by the governor of whom two shall be representatives of organized labor, two shall be representatives

of industry, one shall be a representative of agriculture and one shall be a representative of the general public. [1959]

72-60.070 *Powers and duties*

The commission shall:

- (1) Recommend productive, industrial and agricultural enterprises in the institutions under the jurisdiction of the department in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities which will serve as means of vocational education as well as of occupation and financial support.
- (2) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing each separate industrial or agricultural enterprise at each institution involving a gross annual production of more than twenty-five thousand dollars value but less than two hundred seventy-five thousand dollars value and authorize or prohibit such action. The commission shall determine the gross annual production, within the limit set above, of each new enterprise at the time of its establishment. The annual production to set shall not be increased until a public hearing concerning the proposed increase has been held before the commission.

It shall be the duty of the commission, annually, to adjust the maximum gross annual production value of two hundred seventy-five thousand dollars permitted for each separate enterprise at each institution, the purpose of such adjustment being to keep said limit in balance with changes in population of state institutions and changes in cost of production. Such adjustment shall be made in the following manner:

- (a) The maximum limitation of two hundred seventy-five thousand dollars shall serve as a base figure as of December 31, 1954, for such computation.
- (b) The maximum limitation for each enterprise at each institution shall be increased or decreased in the same proportion as the population of state institutions shall have increased or decreased in comparison with their population on December 31, 1954.
- (c) The maximum limitation for each enterprise at each institution shall be further increased or decreased in the same proportion as the wholesale price index of the United States Bureau of Labor Statistics shall have increased or decreased in comparison with such wholesale price index as of December 31, 1954.

The maximum gross annual limitation on production as adjusted in accordance with the above formula shall replace and serve in lieu of the two hundred seventy-five thousand dollars limitation until the next annual adjustment is made by the commission. It shall apply to enterprises previously authorized as well as to those authorized during the current period, and such adjustment may be made without public hearing.

- (3) Hold hearings and make rules for the conducting of such hearings. The commission may in its discretion hold public hearings on any subject within its jurisdiction. [1959]

72-60.080 *Hearing to establish certain industrial enterprises--Prior industrial enterprises*

No industrial enterprise which involves a gross annual production of more than twenty-five thousand dollars shall be established unless and until a hearing concerning the enterprise has been had before the commission. Public notice of the hearing shall be given prior to the hearing. At the time this commission becomes established by law, it shall at the earliest possible time convene and make necessary arrangements to place industrial enterprises that were in operation prior to this law under compliance with this law. [1959]

72-60.090 *Compensation for inmates*

Each inmate, who is engaged in productive work in any state prison or institution under the jurisdiction of the department as a part of the work program, may receive for his work such compensation as the director shall determine. Such compensation shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance, and be limited to such amounts as are set up by the director and approved by the commission. Said compensation shall be credited to the account of the inmate.

When any inmate violates the rules of the institution or escapes, the director shall determine what portion of his earnings shall be forfeited and such forfeiture shall be deposited in the industrial operations revolving fund of such institution.

Said compensation shall be paid from the industrial operations revolving fund of the institution. Whenever by any statute a price is required to be fixed for any article, material, supply, or services to be produced, manufactured, supplied, or performed in connection with the work program of the department, the compensation paid to inmates shall be included as an item of cost in fixing the final statutory price.

Inmates not engaged on work programs under the jurisdiction of the commission and financed out of the industrial operations revolving fund, but who are engaged in productive labor outside of such programs may be compensated in like manner. The compensation of such inmates shall be paid either out of

funds appropriated by the legislature for that purpose or out of the industrial operations revolving fund of the institution, as the director of the department may direct. [1959]

72-60.100 *Civil rights of inmates not restored--
Other laws inapplicable*

Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated under this chapter shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in sections 2 and 3 of this 1972 amendatory act, come within any of the provisions of the workmen's compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. All monies paid to inmates shall be considered a gratuity. [Amended by Laws 1st Ex. Sess, 1972, Ch. 40 §1, effective July 1, 1973]

Effective date--1972 1st ex.s. c 40: "This act shall be effective July 1, 1973." [1972 1st ex.s. c 40 §4.] This applies to the 1972 1st ex.s. amendment to this section and to RCW 72-60.102 and 72-64.065.

72-60.102 *Industrial insurance--Application to certain inmates--Payment of premiums and assessments*

From and after July 1, 1973, any inmate employed in an industrial enterprise pursuant to the provisions of chapter 72-60 RCW, shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51-32.090 or 51-32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51-36 RCW relating to medical aid.

Any and all premiums or assessments as may arise hereunder pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid from the institutional industries revolving fund. [Added by Laws 1st Ex. Sess. 1972, Ch. 40 §2, effective July 1, 1973.]

72-60.110 *Employment of inmates according to needs of state*

The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959]

72-60.120 *Kind, quality, quantity of goods and services*

The commission shall, from time to time, determine the kind, quality, and quantity, of the several articles, materials, and supplies to be thus produced and manufactured or the services to be rendered. [1959]

72-60.130 *Goods for public use--Exception*

All articles, materials, and supplies, produced or manufactured under the provisions of this chapter shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this chapter shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever, except that to avoid waste or spoilage and consequent loss to the state, by products and surpluses of agricultural and animal husbandry enterprises may be sold to private persons, at private sale, under rules prescribed by the director. [1958]

72-60.140 *Markings on containers*

Each and every article manufactured under the provisions of this chapter shall have plainly marked or stamped on the outside of the shipping container thereof, the words "Washington Institutional Industries." [1959]

72-60.150 *Prices of goods*

The commission shall from time to time examine and approve the price at which such articles, materials, and supplies are sold, which price shall be as near the prevailing market price as possible. [1959]

72-60.160 *State agencies and subdivisions may purchase goods--Purchasing preference required of certain institutions*

All articles, materials, and supplies herein authorized to be produced or manufactured may be purchased from the institution producing or manufacturing the same by any state agency

or political subdivision of the state and at the prices fixed in the manner herein provided, and the director shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are produced under this chapter. [1959]

72-60.170 *Unlawful sales--Penalty*

It shall be unlawful for any person to sell, expose for sale, or offer for sale within this state, any article or articles manufactured wholly or in part by inmate labor, except articles the sale of which is specifically sanctioned by law.

Every person selling, exposing for sale, or offering for sale any article manufactured in this state wholly or in part by inmate labor, the sale of which is not specifically sanctioned by law, is guilty of a misdemeanor. [1959]

72-60.180 *Use of profits*

If and when the industries or enterprises covered by this chapter develop to a point where they accrue profits, profits shall be utilized as follows:

- (1) Maintenance of facilities or equipment used in existing industries.
- (2) Establishment and maintenance of new industries
- (3) To provide vocational training for employees of the industries and other inmates.
- (4) To hold in a reserve all additional profits for the purpose of creating a fund to establish forest camps and treatment facilities. [1959]

72-60.190 *Supervisor of purchasing to give preference to goods produced by authorized industries*

The supervisor of purchasing for the state of Washington shall give preference in the purchase of materials and supplies for the institutions, departments and agencies of the state, to those produced by industries authorized and approved by the institutional industries commission. [1959]

72-60.200 *Exceptions from operation of chapter--Board--Variance from adopted standards*

Exceptions from the operation of the provisions of this chapter may be made in any case where in the opinion of the supervisor of purchasing, the attorney general and the commissioner of the employment security department, or a majority of them who are hereby constituted a board for such purpose, the articles so produced or manufactured do not meet the reasonable requirements of such departments, institutions, or agencies of the state of Washington. In any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required, the director may grant an exemption to such requisitioning department or agency of the state of Washington. No department, institution, or agency of the state of Washington shall be allowed to evade the intent and meaning of this section by slight variations from adopted standards when the articles produced or manufactured by such institutional industries are reasonably adapted to the actual needs of such departments, institutions, or agencies of the state of Washington. [1959].

72-60.210 *Vouchers not to be questioned for violation of chapter--Violation is malfeasance in office*

No voucher, certificate, or warrant issued on the state treasurer by any such department, institution, or agency of the state of Washington shall be questioned by him or by the state auditor on the grounds that this chapter has not been complied with by such department, institution, or agency, but if intentional violation of this chapter continues after notice from governor to desist, such violation shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance. [1959]

72-60.220 *List of goods to be supplied to all departments, institutions, agencies*

The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced pursuant to the provisions of this chapter; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1959]

72-60.240 *Institutional industries revolving fund
--Established--Composition--RCW 43-01.050
not applicable*

There is hereby established under the supervision and control of the director of the department of institutions a fund to be known as the institutional industries revolving fund, which shall consist of all funds collected and all profits which

shall hereafter accrue from the industrial and agricultural operations under the jurisdiction of the institutional industries commission, and such funds appropriated by the legislature from the state institutional revolving account of the state general fund to the institutional industries revolving fund created by this section. The provisions of RCW 43-01.050 shall not be applicable to such fund, nor to any of the monies received, collected or deposited in such fund.

State institutional revolving account abolished:

"From and after the first day of August, 1959, the state institutional revolving account in the state general fund is hereby abolished." [1959 c 273 §7.]

Monies transferred: "All monies to the credit of the state institutional revolving account of the state general fund on the first day of August, 1959, and all monies thereafter paid to the state treasurer to the credit of such account in the general fund are hereby transferred to the state institutional industries fund created by this act." [1959 c 273 §8.]

Payment of warrants drawn on revolving account: "From and after the first day of August, 1959, all warrants drawn on the state institutional revolving account in the general fund of the state treasury and not presented for payment, shall be paid from the state institutional industries revolving fund."
[1959]

72-60.260 *Expenses payable from fund*

All expenses arising in the administration of the industrial and agricultural programs of the department of institutions under the jurisdiction of the institutional industries commission, including the payment of expenses of the members of the commission and the salaries of employees administering such programs and all expenditures incurred in establishing, maintaining, and operating the industrial and agricultural programs of the department of institutions, shall be paid from the institutional industries revolving fund, subject to the approval of the institutional industries commission. [1959]

72-60.270 *Excess monies*

At such times as the monies in the institutional industries revolving fund exceed such amount as shall be necessary for the efficient operation of the institutional industries program to be determined by periodic audits of the director of budget, the excess shall be forwarded and paid over by the secretary to the state treasurer for deposit in the general fund of the state treasury. [Amended by Laws 1st Ex. Sess., 1971 ch. 189 §11.]

72-62.010 *Purpose*

The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the

correctional institutions of the state. [Added by Laws 1st Ex. Sess. 1972, ch. 7 §1.]

72-62.020 *Definitions*

When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the institutional industries program. [Added by Laws 1st Ex. Sess. 1972, ch. 7 §2.]

72-62.030 *Sale of products, etc.--Recovery of Costs, etc.*

Products, goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market, at public auction. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [Added by Laws 1st Ex. Sess. 1972, ch. 7 §3.]

72-62.040 *Crediting of proceeds of sales*

The secretary of the department of social and health services shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education.

[Added by Laws 1st Ex. Sess. 1972, ch. 7 §4.]

72-62.050 *Trade advisory and apprenticeship committees*

Labor-management trade advisory and apprenticeship committees shall be constituted by the department for each vocation taught within the vocational education programs in the state correctional system. [Added by Laws 1st Ex. Sess 1972, ch. 7 §5.]

72-64.010 *Useful employment of prisoners--Contract system barred*

The director shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: *Provided*, that no prisoners shall be employed in what is known as the contract system of labor. [1959]

72-64.020 *Rules and regulations*

The director shall make the necessary rules and regulations governing the employment of prisoners, the conduct of

all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1959]

72-64.030 *Prisoners required to work*

Every prisoner in the Washington state penitentiary or reformatory or other state penal or correctional institution shall be required to work in such manner as may be prescribed by the director, other than for the private financial benefit of any enforcement officer. [1959, Amended 1961]

72-64.040 *Crediting of earnings--Payment*

Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. (Amended by Laws 1st Ex. Sess. 1973, ch. 154 §105.)

Severability--1973 1st ex.s. c 154: See note following RCW 2-12.030.

72-64.050 *Branch institutions--Honor camps for certain purposes*

The director shall also have power to establish temporary branch institutions for the state penitentiary, state reformatory and other penal and correctional institutions of

the state in the form of honor camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas and other work to conserve the natural resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1959, Amended 1961]

72-64.060 *Labor camps authorized--Type of work permitted*

Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any other political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72-64.060 through 72-64.090: *Provided*, that such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The director may enter into contracts for the purposes of RCW 72-64.060 through 72-64.090. [1959, Amended 1961]

72-64.065 *Industrial insurance--Application to certain inmates--Payment of premiums and assessments*

From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72-64.050, 72-64.060, and 72-64.100

shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be, entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51-32.090 or 51-32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [Added by Laws 1st Ex. Sess 1972, ch. 40 §3, effective July 1, 1973.]

72-64.070 *Eligibility for employment--Procedure--Return*

The department shall determine which prisoners shall be eligible for employment under RCW 72-64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72-64.060. The director may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall

be released for such employment until his eligibility therefor has been determined by the department.

The director may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp.

[1959]

72-64.080 *Duties of employing agency--Costs--Supervision*

The agency providing for prisoners under RCW 72-64.060 through 72-64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The director shall supervise and manage the necessary camps and commissaries. [1959]

72-64.090 *Department's jurisdiction*

The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72-64.060 through 72-64.090.

72-65.010 *Definitions*

As used in this chapter, the following terms shall have the following meanings:

- (3) "State correctional institutions" shall mean and include the Washington state penitentiary; the Washington corrections center; the Washington state reformatory; the Clallam Bay honor

camp in Clallam county; the Larch Mountain honor camp in Clark county; the Washougal honor camp in Clark county; the Okanogan honor camp in Okanogan county; and such other state correctional institutions, camps or facilities as may hereafter be established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

- (4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

72-65.020 *Extension of limits of place of confinement authorized--Conditions*

The director is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

- (1) Work at paid employment.

(2) Participate in a vocational training program: *Provided*, that the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf or by the department: *Provided Further*, that any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72-65.050.

(3) Interview of make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to RCW 72-01.420, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners. [Enacted Laws 1967, ch. 17 §2, effective July 1, 1967.]

72-65.030 *Application of prisoner to participate in
program-Contents of application*

Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the director shall require. [Enacted Laws 1967, ch. 17 §3, effective July 1, 1967.]

72-65.040 *Approval or denial of application--Adoption
of work release plan--Terms and conditions--
Revocation--Reapplication*

The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend

to the director, or such officer of the department as the director may designate, that the prisoner be permitted to participate in the work release program. The director or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the director or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the director or his designee. Any prisoner who has been initially rejected either by the superintendent or the director or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the director or his designee, according to the individual circumstances in each case. [Enacted Laws 1967, ch. 17 §4, effective July 1, 1967.]

72-65.050 *Disposition of earnings*

A prisoner employed under a work release plan shall surrender to the director, or to the superintendent of such state correctional institution as shall be designated by the director in the plan, his total earnings, (1) less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and (2) less such amount which his work release plan specifies he should retain to help meet his personal needs, including costs necessary for his participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The director, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

- (1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72-65.020(2), or for expenses incident to a work release plan pursuant to RCW 72-65.090.
- (2) Payment of board and room charges for the work release participant: *Provided*, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be

paid from the work release participant's earnings to the general fund of the state treasury: *Provided Further*, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

[(3) Blank]

(4) Payments for the necessary support of the work release participant's dependents, if any.

(5) Payments to creditors of the work release participant, which may be made at his discretion and request, upon proper proof of personal indebtedness.

(6) Payments to the work release participant himself upon parole or discharge, or for deposit in his personal account if returned to a state correctional institution for confinement and treatment.

[Enacted Laws 1967 ch. 17 §5, effective July 1, 1967.]

72-65.06. *Earnings not subject to legal process*

The earnings of a work release participant shall not be subject to garnishment, attachment or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds. [Enacted Laws 1967 ch. 17 §6, effective July 1, 1967.]

72-65.090 *Transportation, clothing, supplies, etc.
for participants*

The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participants: *Provided*, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants. [Enacted Laws 1967 ch. 17 §9, effective July 1, 1967.]

72-65.100 *Powers and duties of director -- Rules and regulations -- Cooperation of other state agencies enjoined*

The director is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

- (1) Supervise and consult with work release participants;
- (2) Locate available employment or vocational training opportunities for qualified work release participants;
- (3) Effect placement of work release participants under the program;
- (4) Collect, account for and make disbursement from

earnings of work release participants under the provisions of this chapter;

- (5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department of institutions in the administration of the work release program as provided by this chapter. [Enacted Laws 1967 ch. 17 §10, effective July 1, 1967.]

*72-65.110 Earnings to be deposited in personal funds
-- Disbursements*

All earnings of work release participants shall be deposited by the director, or the superintendent of a state correctional institution designated by the director in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [Enacted Laws 1967 ch. 17 §11, effective July 1, 1967.]

72-65.120 Participants not considered agents or employees of the state -- Contracting with persons, companies, etc., for labor of participants prohibited -- Employee benefits and privileges extended to

All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the

labor of any participant under its jurisdiction. *Provided,*
That such work release participants shall be entitled to all
benefits and privileges in their employment under the provisions
of this act to the same extent as other employees or their
employer, except that such work release participants shall not
be eligible for unemployment compensation benefits pursuant
to any of the provisions of Title 50 RCW until released on
parole or discharged on expiration of their maximum sentence.

[Enacted Laws 1967 ch. 17 §12, effective July 1, 1967.]

IX. FEDERAL LAW

A. Federal Statutes

Title 49 U.S.C. §60, commonly known as the Hawes-Cooper Act, divests prison-made goods of interstate character.

It provides that:

Five years after January 19, 1929, all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions, except commodities manufactured in federal penal and correctional institutions for use by the federal government, transported into any state or territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such state or territory be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such state or territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

The Ashurst-Somners Act of 1935, as amended and codified in Title 18 U.S.C. §1761 and §1762, prohibits the interstate transportation of state prison-made goods, with certain exceptions, and requires that any such goods validly transported be plainly marked as convict-made. Section 1761 provides that:

- (a) Whoever knowingly transports in interstate commerce or from 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 prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.
- (b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a federal, District of Columbia, or state institution for use by the federal government, or by the District of Columbia, or by any state or political subdivision of a state.

Section 1762 requires that:

- (a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.
- (b) Whoever violates this section shall be fined not more than \$1,000, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to this United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

B. Executive Order #11755

Executive Order #11755, issued by President Richard Nixon on December 29, 1973, alters that issued by President Theodore Roosevelt in 1905, Order No. 325A, which it supersedes,

in that "persons on parole or probation to work at paid employment during the term of their sentence" to a state or federal penal institution may now be employed by a contractor in the performance of a federal contract. However, although recognizing that "the development of occupational...skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society" and that "[m]eaningful employment serves to develop those skills," the 1973 order also states that "care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor...." In light of these perceived "evils," the order continues to limit the use of inmate labor by providing that:

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 sentence 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.

C. Federal Court Decisions

The constitutionality of both the Hawes-Cooper Act and a state statute which prohibited the sale of out-of-state convict-made goods on the open market was challenged and upheld

in Whitfield v. Ohio.¹ The court held that the Hawes-Cooper Act did not constitute an invalid delegation of congressional power to the states by simply allowing their jurisdiction over such goods to attach upon delivery into the state.² Since jurisdiction is permitted at that point, the state could then rightfully legislate concerning their sale. The reasoning of the state that the sale of such goods on the open market must be prohibited to prevent the evil of their competition with the products of free labor, according to the court, was amply supported in fact and legislation:

In addition to the Hawes-Cooper Act, the importation of the products of convict labor has been denied the right of entry at the ports of the United States and the importation prohibited. C. 497 §307, 46 Stat. 689; Title 19 U.S.C. (1934 ed), §1307. And the sale to the public in competition with private enterprise of goods made by convicts imprisoned under federal law is forbidden. C. 340, §5, 46 Stat. 391; Title 18 U.S.C. (1934 ed.), §774c.

All such legislation, state and federal, proceeds upon the view that free labor, properly compensated, cannot compete successfully with the enforced and unpaid or underpaid convict labor of the prison. A state basing its legislation upon that conception has the right and power, so far as the federal Constitution is concerned, by nondiscriminating legislation, to preserve its policy from impairment or defect, by any means appropriate to the end and not inconsistent with that instrument.³

¹ 297 U.S. 431, 56 S. Ct. 532, 80 L.Ed. 778 (1948).

² Petitioner was relying upon the rule, propounded yet frequently questioned in litigation involving the Commerce Clause, that a state may not interfere with the sale of goods transported in interstate commerce and sold while still in the original package. Id. at 439-40.

³ Id.

The Ashurst-Somners Act of 1935 was challenged and upheld in Kentucky Whip & Collar Co. v. Illinois Central.⁴ At the time of the litigation, the Act⁵ provided that, except for goods made by convicts on parole or probation or in federal penal institutions, convict-made goods could not knowingly be transported in interstate commerce where their intended sale or use would be in violation of the laws of the destination state. The law also required labeling of such goods. The court held that the Act did not exceed congressional authority under the Commerce Clause⁶ despite the fact that the goods themselves were useful and harmless. According to the court, since the use of interstate transportation was necessary "to effect the evil intended," that is, sale or use in violation of state law, Congress may regulate that use to prevent an impediment to the forwarding of a legitimate state policy.⁷ Of further significance, in light of subsequent amendment of the Act to preclude any transportation in interstate commerce, the court reasoned that "Congress in exercising the power confided to it by the Constitution is as free as the states to recognize the fundamental interests of free labor."⁸

1. The Role of the Federal Courts

Traditionally the federal courts had applied a "hands-off" doctrine in regard to alleged abuse of discretion

⁴ 299 U.S. 334, 57 S.Ct. 277, 81 L.Ed. 270 (1936).

⁵ 49 Stat. 494 (1935).

⁶ U.S. Const. Art. I, sec. 8, par. 3.

⁷ 299 U.S. at 350-51.

⁸ Id. at 352.

on the part of prison officials. In Seigal v. Ragen⁹ the court stated the limited extent to which a federal district court would interfere with the administration of a state penal institution:

This Court is prepared to protect state prisoners from death or serious bodily harm in the hands of prison authorities, but is not prepared to establish itself as a "co-administrator" of state prisons along with duly appointed state officials.¹⁰

The United States Court of Appeals for the Seventh Circuit¹¹ affirmed the lower court decision and reiterated a policy of nonintervention:

The Government of the United States is not concerned with, nor has it power to control or regulate the internal discipline of the penal institutions of its constituent states. All such powers are reserved to the individual states.¹²

Sostre v. Rockefeller¹³ appeared to signal the end of the hands-off doctrine. The United States District Court found that the punitive segregation imposed upon the plaintiffs by prison officials at the Green Haven New York State Prison was "physically harsh, destructive of morale, dehumanizing in the sense that it is needlessly degrading, and dangerous to the maintenance of sanity."¹⁴ Upon that determination, the

⁹ 88 F. Supp. 996 (N.D.Ill. 1949), aff'd 180 F.2d 785 (7th Cir. 1950), cert. denied 339 U.S. 990, 70 S.Ct. 1015, 94 L.Ed. 1391 (1950), rehearing denied 340 U.S. 847, 71 S.Ct. 12, 95 L.Ed. 621 (1950).

¹⁰ 88 F. Supp. at 999.

¹¹ 180 F.2d 785 (7th Cir.)

¹² Id. at 788.

¹³ 312 F. Supp. 863 (S.D.N.Y. 1907).

¹⁴ Id. at 868.

court held the confinement unconstitutional in violation of the Eighth Amendment proscription of cruel and unusual punishment.¹⁵ The court held further that a prisoner retained due process rights under the Fourteenth Amendment and ordered that he be afforded written notice of charges against him, a hearing before impartial officials, a written record of the hearing, decision and reasons thereof, and the opportunity to retain counsel before disciplinary action which resulted in a loss of good time.¹⁶

The court of appeals,¹⁷ however, rejected the district court finding of cruel and unusual punishment and modified procedural requirements, indicating continued deference to, and hesitancy to interfere with, state administrative authority. Despite substantial expert testimony in the record as to the effects of the type of punitive segregation imposed, which the appeals court acknowledged to be an accurate representation of the "new penology," the appropriate punishment of prisoners was held to be the function of the expertise and skill of state prison officials and not the proper subject of unqualified judicial judgment. Although the court affirmed the district court finding that disciplinary procedure must comport with due process requirements, it held that the decision

¹⁵ "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII (1791).

¹⁶ 312 F. Supp. at 868.

¹⁷ sub nom. Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978, 92 S.Ct. 1190, 31 L.Ed. 2d 254 (1972).

as to the necessary extent of those requirements should be left to the discretion of prison officials:

It would be mere speculation for us to decree that the effect of equipping prisoners with more elaborate Constitutional weapons against the administration of discipline by prison authorities would be more soothing to the prison atmosphere and rehabilitation of the prisoner, or, on the other hand, more disquieting and destructive of remedial ends. This is a judgement entrusted to state officials.¹⁸

The United States Supreme Court has recognized that the "internal problems of state prisons involve issues...peculiarly within state authority and expertise."¹⁹ Federal courts properly are most reluctant to interfere with a state's administration of its own penal system.²⁰ Moreover, the nature of the responsibility and the flexibility and expertise required to meet it account for judicial deference to administrative authority on both a federal and state level:

...Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate recourses allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the

¹⁸ 442 F.2d at 197.

¹⁹ Preiser v. Rodriques, 411 U.S. 475, 492, 98 S.Ct. 1827, 36 L.Ed. 2d 439 (1973); Pell v. Procunier, 417 U.S. 817, 94 S.Ct. 2800, 2805, _____ L.Ed. 2d _____ (1974).

²⁰ Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed. 2d 224 (1974).

legislative and executive branches of government. For all of those reasons, courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism.²¹

That deference will only give way where a state prisoner asserts a valid constitutional claim. Where state prison officials act so as to infringe upon a fundamental constitutional guarantee the federal courts will intervene to protect constitutional rights.²²

2. Prisoners' Status

Early judicial opinions indicate that a prisoner's status was once that of "a slave of the state" with no rights.²³ The more contemporary view is that "a prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."²⁴ Where state regulations applicable to prison administration and discipline infringe upon retained rights they may be invalidated by the courts.²⁵ Where a regulation has no justification in terms of

²¹ Id. at 1807.

²² Id.

²³ Ruffin v. Commonwealth, 62 Va. (21 Gratt.) 790, 792 (1871).

²⁴ Coffin v. Reichard, 143 F.2d 433, 445 (6th Cir. 1944); See also 312 F. Supp. at 872.

²⁵ Johnson v. Avery, 89 S.Ct. 747, 749 (1969).

penal objectives²⁶ and is in conflict with a fundamental right retained by the prisoner, it will be invalidated.²⁷

The contemporary view, however, acknowledges that upon incarceration "the considerations underlying our penal system" may justify "the withdrawal or limitation of many privileges and rights."²⁸ Although a prisoner may retain a right, where the exercise of that right is "inconsistent with his status as a prisoner or with the legitimate penological objectives of the correction system," reasonable regulations which infringe upon that right will be upheld.²⁹ Prisoners, therefore, may lose rights upon lawful incarceration, should penal objectives warrant such withdrawal, or have limitations placed upon retained rights where such restrictions are justified by legitimate objectives of the correctional system.

²⁶ In Procunier v. Martinez, 94 S.Ct. at 1804, penological objectives were stated as follows:

(1) to deter criminal activity, by the prisoner or others;

(2) confinement of the offender to protect society while rehabilitation is going on;

(3) since most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody;

(4) central to all other correction goals is the institutional consideration of internal security within the corrections facilities themselves.

²⁷ 94 S.Ct. at 1807-08.

²⁸ Price v. Johnson, 334 U.S. 266, 285 (1948); 94 S.Ct. at 2804; 94 S.Ct. at 2974.

²⁹ 94 S.Ct. at 2804; See also Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 2975, 41 L.Ed. 2d 935 (1974).

Where rights are retained, "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application."³⁰

3. Prisoners' Rights and Prison Labor

Prisoners' rights are broader today than the singular right to protection from serious bodily harm afforded in Seigal v. Ragan.³¹ They retain a right of access to the courts,³² and do not lose all their Fourteenth Amendment due process and equal protection rights.³³ Prisoners retain substantial religious freedom under the First and Fourteenth Amendments,³⁴ as well as freedom from unreasonable restrictions on communications with nonprisoners.³⁵ Prison conditions and/or official actions

³⁰ 94 S.Ct. at 2975.

³¹ See Note 10, and surrounding text.

³² 89 S.Ct. 747 (1969); Younger v. Gilmore, 404 U.S. 15, 92 S.Ct. 250, 30 L.Ed. 142 (1971); See also 442 F.2d at 200.

³³ Washington v. Lee, 263 F. Supp. 327 (N.D. Ala. 1967) aff'd sub nom. Lee v. Washington, 389 U.S. 967, 88 S.Ct. 451, 19 L.Ed. 2d 457 (1968); 94 S.Ct. 2963 (1974).

U.S. Const. Amend. XIV (1868) provides in pertinent part: "...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

³⁴ 442 F.2d at 202; Cruz v. Beto, 45 U.S. 319. 92 S.Ct. 1079. 31 L.Ed. 2d (1972).

U.S. Const. Amend. I (1791) provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

³⁵ 94 S.Ct. 2800 (1974).

which "shock the consciousness" of civilized society are violative of prisoners' constitutional right to be free from cruel and unusual punishment.³⁶

Prisoners have been held entitled to reasonable medical care,³⁷ and the adequacy of that care held "a condition subject to Eighth Amendment scrutiny."³⁸ While prison medical officials are granted wide discretion in their treatment of inmates, an allegation that necessary medical treatment is not provided will be heard by the courts.³⁹ However, the relief sought will be withheld where the evidence indicates a mere difference of opinion between the lay prisoner and the prison doctor as to the proper course of treatment.⁴⁰ Violation of constitutional guarantees occurs, and relief is granted, only "[w]hen practices within a prison system result in deprivation of basic elements of adequate medical treatment...."⁴¹

In comparison, despite the necessity of rehabilitation as an objective of a modern day penal system,⁴² a prisoner is

³⁶ Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968); 442 F.2d at ; Holt v. Sarver, 309 F. Supp. 362 (D.Ark. 1970), affirmed 442 F.2d 304 (8th Cir. 1971).

³⁷ Edwards v. Duncaon, 355 F.2d 993 (4th Cir. 1966); Riley v. Rhay, 407 F.2d 496 (9th Cir. 1969); Newman v. Alabama, 349 F. Supp. 278 (M.D.Ala. 1972).

³⁸ 349 F. Supp. at 280.

³⁹ 407 F.2d 496 (9th Cir. 1969).

⁴⁰ Coppinger v. Townsend, 398 F.2d 392 (10th Cir. 1968); Paniagua v. Mosley, 451 F.2d 228 (10th Cir. 1971).

⁴¹ 349 F. Supp. at 281.

⁴² See Note 26.

not entitled to rehabilitative treatment during his confinement. While recognizing such a goal as a salient point in any correctional system, and indeed acknowledging the fact that many penologists today hold the view that rehabilitation is the primary goal, the district court in Holt v. Sarver⁴³ did not find that such treatment had as yet become a right. In the language of the court:

This Court knows that a sociological theory or idea may ripen into Constitutional law; many such theories and ideas have done so. But, this Court is not prepared to say that such a ripening has occurred as yet as far as rehabilitation of convicts is concerned. Given an otherwise unexceptional penal institution, the Court is not willing to hold that confinement in it is unconstitutional simply because the institution does not operate a school or provide vocational training, or other rehabilitative facilities and services which many institutions now offer.⁴⁴

Certainly, the court will not compel the opportunity to participate in a specific program for rehabilitation.⁴⁵ In Green v. United States⁴⁶ the court rejected the petitioners' assertion of a right to rehabilitation in the form of work release:

Although Congress recognized in amending section 4082 in 1965 that work releases may, in some instances be a valuable rehabilitative tool, it did not establish an absolute legal right to immediate work release such as is urged by petitioners.⁴⁷

⁴³ 309 F. Supp. 362, 379 (E.D. Ark. 1970), affirmed 442 F.2d 304 (8th Cir. 1971).

⁴⁴ Id.

⁴⁵ Green v. United States, 481 F. Supp. 1140 (D.C. Cir. 1973).

⁴⁶ Id.

⁴⁷ Id. at 1142.

That determination was based upon a recognition that "a recently convicted offender is not always the best judge of the optimum path to rehabilitation,"⁴⁸ and more importantly, a finding that the literal terms and legislative history of the statutory provisions concerning federal work release programs indicated a congressional intent that their implementation be at the discretion of the attorney general.⁴⁹

Yet, the fact that adequate rehabilitative programs are not provided is an important consideration in an examination of the totality of prison conditions subject to a constitutional challenge alleging cruel and unusual punishment.⁵⁰ The district court in Holt v. Sarver stated that:

The absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such a program conditions and practices exist which actually militate against reform and rehabilitation.... [T]he absence of rehabilitative services and facilities...remains a factor in the overall constitutional equation....⁵¹

A situation which militated against reform and rehabilitation was found to exist in the Arkansas penal system under scrutiny in Holt v. Sarver. Noticeably, however, while declaring that the overall conditions in the system amounted to cruel and unusual punishment requiring affirmative remedial action on the

⁴⁸ Id. at 1141.

⁴⁹ Id.

⁵⁰ 309 F. Supp. at 379; Taylor v. Sterrett, 344 F. Supp. 411, 419 (N.D. Texas 1972), modified 499 F.2d 367 (5th Cir. 1974), U.S. appeal pending.

⁵¹ Id.

part of state officials, the court did not specifically order that rehabilitative programs be instituted. More recently, the court in Taylor v. Sterret⁵² did include a mandatory order to "provide...a rehabilitative program of recreation" in the relief granted.⁵³ In the opinion of the latter court, "[r]ehabilitation must be the overriding goal of our correctional institutions,"⁵⁴ and the Dallas county jail facilities, which had not met state minimum statutory standards for suitable segregation, security, safety, sanitation and health, provided no such program.⁵⁵

"The idea that prisoners ought to support themselves is as old as the American penology,"⁵⁶ and involuntary servitude has been held to be the very essence of lawful incarceration, its validity expressly recognized in the language of the Thirteenth

⁵² 344 F. Supp. 411 (N.D. Texas 1972).

⁵³ Id. at 421.

⁵⁴ Id. at 420.

⁵⁵ The Taylor v. Sterrett opinion discusses rehabilitation within the context of a legal analysis of the constitutional challenge. The limited holding of the court, however, is that the conditions of the Dallas county jail facilities are in violation of state law which does not mention rehabilitative programs. Nonetheless in fashioning a remedy the court addressed the problem of rehabilitation at least to the extent necessary in correctional facilities which house only detainees and misdemeanants for short periods of time. The order to establish rehabilitation programs was not challenged on appeal to the circuit court and the appeal to the United States Supreme Court is still pending disposition.

⁵⁶ 309 F. Supp. at 372.

Amendment.⁵⁷ There is no constitutional violation in a mandatory system of convict labor even where harsh, tedious, solely for state benefit, and without compensation to the inmate.⁵⁸ Correctional institutions may require prison labor and may discipline refusal to work.⁵⁹

"There is no federally protected right of a state prisoner not to work while imprisoned"⁶⁰ nor a right to a particular job assignment.⁶¹ So long as decision making is not arbitrary or capricious, the court will not interfere with the exercise of administrative discretionary authority to designate the place of confinement, although the institution of confinement may effectively determine the nature of the work assignment.⁶² Similarly, the court will not interfere with particular work assignments despite the availability of

⁵⁷ Marchese v. United States, 453, F.2d 1268, 1271 (Ct.Cl. 1972); See also Fallis v. United States, 263 F. Supp. 780, 782 (M.D. Pa. 1967); U.S. Const. Amend. XIII sec. 1 (1865) provides:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

⁵⁸ 309 F. Supp. at 372.

⁵⁹ 263 F. Supp at 783; Banks v. Norton, 346 F. Supp. 917, 921 (D. Conn. 1972).

⁶⁰ Draper v. Rhay, 315 F.2d 193, 197 (9th Cir. 1963), cert. denied 375 U.S. 915, 85 S.Ct. 495, 11 L.Ed. 2d 379 (1963).

⁶¹ 346 F. Supp. at 921.

⁶² Mercer v. United States Medical Center for Federal Prisoners, 312 F. Supp. 1077 (W.D. Mo. 1970).

alternative, more effective rehabilitative programs.⁶³ Nor can a prisoner refuse a work detail because it offers neither pay nor industrial good time.⁶⁴

It has been held that a prisoner has no right to the payment of wages for labor and that "such compensation is by grace of the state."⁶⁵ The court in Harris v. Yaeger⁶⁶ found that inmate compensation allowances were not "wages in a realistic employer-employee relationship,"⁶⁷ but rather "a gratuitous payment authorized by the state," and, therefore, a prisoner has "no inherent legal right to the payment of this gratuity, nor to determine its form or amount."⁶⁸ Similarly, the court in Sigler v. Lowrie⁶⁹ refused to enjoin deductions from an inmate's wages, finding that by statute such compensation was "a matter of conditional grace subject to the warden's administrative discretion."⁷⁰ Since the state in providing for compensation in the first instance was granting inmates a favor, the legislature could attach whatever conditions it wished.⁷¹

⁶³ See Wilson v. Kelly, 294 F. Supp. 1005 (N.D.Ga. 1968), affirmed per curiam 393 U.S. 266, 89 S.Ct. 477, 21 L.Ed. 425 (1969); Wagner v. Holmes, 361 F. Supp. 895 (E.D. Ky. 1973).

⁶⁴ 346 F. Supp. at 921.

⁶⁵ Sigler v. Lowrie, 404 F.2d 659, 661 (8th Cir. 1968), cert. denied 395 U.S. 940 (1969).

⁶⁶ 291 F. Supp. 1015 (D. N.J. 1968), affirmed 410 F.2d 1376 (3d Cir. 1969), cert. denied 396 U.S. 1015 (1969).

⁶⁷ Id. at 1017.

⁶⁸ Id.

⁶⁹ 404 F.2d 659 (8th. Cir. 1968).

⁷⁰ Id.

⁷¹ Id.

Pay scales in different institutions are also a matter committed to administrative discretion, and a decrease in pay rate as a result of a transfer from one penal institution to another does not violate due process.⁷² The court in Beatham v. Manson⁷³ termed such a decrease "incidental" to the transfer and not a serious deprivation arbitrarily imposed. However, where the state has provided a statutory right to good time, deprivation of the right to liberty is implicated when disciplinary action threatens forfeiture of good time credit. Due process then requires that official action not arbitrarily abrogate that right.⁷⁴

In Sims v. Parke Davis & Co.⁷⁵ prisoners employed within a private corporation on prison grounds tried unsuccessfully to reap the benefit of either federal or state minimum wage laws. The court found that the economic reality of the situation was that plaintiffs were lawfully incarcerated prisoners laboring as required under the direction and control of prison officials. Therefore, they were not employees of the drug company within the meaning of the Federal Fair

⁷² Beatham v. Manson, 369 F. Supp. 783 (D. Conn. 1973).

⁷³ Id.

⁷⁴ 418 U.S. 579 (1974).

⁷⁵ 334 F. Supp. 774 (E.D. Mich. 1971), affirmed per curiam 453 F.2d 1259 (6th Cir. 1971), cert. denied 405 U.S. 978 (1971).

Labor Standards Act, and Congress obviously did not intend the provisions of the act to govern the discretion of prison industries administrators. Nor were prisoners employees within the meaning of the Michigan Wage Law which was designed to protect the free work force, not convicts. Since the state circumscribed the use of convict labor within prison industries statutes the court concluded that the labor of inmates and the fruits thereof belonged to the state and not to the inmates themselves.⁷⁶

A court order enjoining administrative interference with the exchange of materials which advocated and discussed the formation of a prisoners union was affirmed in Goodwin v. Oswald.⁷⁷ While the court expressed no opinion on the legality or advisability of a prisoners union, interference with communications to prisoners from a Legal Aid Society was held to infringe unnecessarily upon First Amendment rights and the right to seek and receive legal advice. In a concurring opinion, Judge Oakes stated that:

There is nothing in federal or state constitutional law...that forbids prison inmates from seeking to form, or correctional officials from electing to deal with, an organization or agency or representative group of inmates concerned with prison conditions and inmate grievances.⁷⁸

Referring to the experience at Attica, Judge Oakes suggested that permitting such a prisoner organization "might well be

⁷⁶ Id. at 791.

⁷⁷ 462 F.2d 1237 (2d Cir. 1972).

⁷⁸ Id. at 1245.

...the wisest course for correctional officials to follow."⁷⁹
While his opinion implies that internal prison security may be better maintained where a peaceful means exists for airing convict complaints, it is nonetheless obvious from his language that he is not proposing a right to unionize but appealing to the discretion of prison authorities. Judge Friendly dissented, finding that prison officials could indeed have concluded that massive communication regarding the organization of a prisoners union would pose a threat to the security of the institution, and therefore, "[r]espect for proper federal-state relations forbids that their judgement should be cast aside."⁸⁰

⁷⁹Id. at 1246.

⁸⁰Id. at 1248.