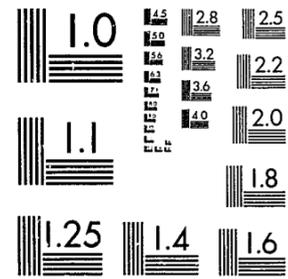


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8/5/83

GOVERNOR'S TASK FORCE ON INTELLECTUALLY HANDICAPPED CITIZENS AND THE CRIMINAL JUSTICE SYSTEM

REPORT AND RECOMMENDATIONS



GOVERNOR WILLIAM P. CLEMENTS, JR.

DECEMBER 1982

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ON
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AND THE
CRIMINAL JUSTICE SYSTEM**

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U.S. Department of Justice
National Institute of Justice

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DECEMBER 1982



WILLIAM P. CLEMENTS, JR.
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

The Honorable William P. Clements, Jr.
Governor of Texas
State Capitol Building
Austin, Texas 78711

Dear Governor Clements:

On behalf of the Task Force on Intellectually Handicapped Citizens and the Criminal Justice System, I would like to present to you our findings and recommendations. The Task Force would also like to thank you and your staff, as well as the Texas Department of Corrections and other interested parties, for their commitment to our efforts.

The Task Force has met many times over the past year to study the problems being faced by intellectually handicapped individuals as they come into contact with the criminal justice system. We feel that some definite changes need to be made during arrest, arraignment, indictment, trial, conviction and incarceration proceedings. The Task Force recommends that the Legislature take a hard look at the current system as well as our ideas for change and that they do so as quickly as possible.

The Task Force you appointed consisted of 12 individuals who are experts in their respective fields. As a committee, we worked closely together to better understand the system as it affects the intellectually handicapped. We are grateful for the opportunity to participate in this very important effort and we sincerely hope that our findings will benefit the intellectually handicapped as well as all Texans.

Sincerely,

Jon Newton, Chairman
Governor's Task Force on
Intellectually Handicapped Citizens
and the Criminal Justice System.

GOVERNOR'S TASK FORCE ON INTELLECTUALLY HANDICAPPED
CITIZENS AND THE CRIMINAL JUSTICE SYSTEM

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ACQUISITIONS

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REPORT AND RECOMMENDATIONS

SENTENCING PRACTICES

Current Condition and Rationale

Awareness: The earliest opportunity for the courts to become aware of and informed about the intellectual handicap of an offender is at the time of his/her booking into county or city jail. In this respect, the arresting officer and magistrate who advises the defendant of his/her constitutional rights should be directed by statute to initiate a background investigation of the defendant's history of mental illness and/or retardation, if any. When evidence exists to support the contention that a defendant suffers from any type of mental illness or degree of retardation, a county judge should be notified so that a disinterested expert in the mental health and retardation field could be appointed to interview and examine the defendant subsequent to booking.

Culpability: Intellectually handicapped or mentally retarded defendants should have their rights carefully protected during arrest, arraignment, indictment, trial, conviction, and incarceration proceedings as such procedures for punishment now exist in our Texas criminal justice system. These persons either do not have sufficient intellectual capacity to be responsible for knowing the difference between right and wrong or do not have the mental capacity to sufficiently comprehend the wrongfulness of their criminal conduct. Many such mentally disabled defendants function at mental ages lower than the minimum chronological age for punishment in Texas. Because of this, these persons have a distinct problem when placed in the criminal justice system along side those individuals who have no mental handicaps. While the problem of intellectually handicapped or retarded offenders is a part of the criminal justice system, it merits very careful attention from the Texas courts and the

Texas Department of Corrections. In the Criminal Justice System, offenders are held responsible for paying their debts to society because they have violated laws which they are capable of understanding. Because the intellectually handicapped individual may not be fully in control of his actions, the courts and the criminal justice system are obligated to stringently safeguard against any violations of the individual's civil rights.

Defense: Persons intellectually handicapped or mentally retarded have been and will continue to be indicted, convicted, and incarcerated without regard to their handicaps unless greater effort is made to identify and make provisions for persons having such difficulties. Currently, individuals are being examined to determine their competency to stand trial according to the definition in the Code of Criminal Procedures of the State of Texas. This can result in a medical conclusion based upon a legal foundation. A defendant, although determined "competent" to stand trial, i.e., "legally competent", can be in reality "medically" (from the physician's viewpoint) intellectually handicapped or mentally retarded, and thus, subject to conviction, sentencing, and incarceration under our present statutory system.

Post-Adjudication: Upon adjudication of the defendant's case, wherein the defendant is found guilty and a judgment is entered, the judgment should reflect and be accompanied by a Certificate of Medical Examination for Intellectually Handicapped/Mental Retardation. It should be prepared by a disinterested expert, experienced and qualified in mental health and retardation, when there is evidence to support a finding of intellectual handicap or retardation even though the defendant's conduct has not been excused or justified by law.

RECOMMENDATIONS:

There are various Articles in the Code of Criminal Procedure of the State of Texas which already take into consideration, to some extent, cases wherein a defendant is mentally ill and/or mentally retarded, such as 46.01, 46.02, and 46.03. However, despite the existing laws which safeguard the rights of intellectually handicapped citizens, it is apparent that a more inclusive and extensive re-examination of the existing laws must be conducted. Interactions between the existing population of the intellectually handicapped inmates in the Texas Department of Corrections (13%-14%), TDC officials, and fellow inmates who are physically and mentally stronger show that current laws should be reevaluated to prevent the indictment, conviction, and sentencing to TDC of those incapable of conforming their conduct to the requirements of the law. There exists a case history of an individual with an extreme mental deficiency who was incarcerated in TDC. This individual could not find his way to the dining hall and had to be led there everyday for meals.

Hopefully, such a situation will never be repeated.

PROBLEMS IN PRISON

Current Condition and Rationale

PROBLEMS ENCOUNTERED BY THE MENTALLY RETARDED INMATE: Since there is currently no special unit of assignment for the mentally retarded inmate, he/she is placed within the general prison population. For this reason, it is a difficult task to adequately determine the types of problems encountered by the mentally retarded inmate. A recent survey (Winter, 1981) conducted within the Texas Department of Corrections, surveying all unit psychologists, social service counselors, institutional parole officers, special education teachers, and medical assistants, requested personnel impressions concerning problems of the mentally retarded inmate. A number of problem areas were perceived:

Coping With the System - The mentally retarded inmate often experiences difficulty in learning the inmate rules and regulations, in learning the daily routine, and has problems adjusting to change. Since little individual orientation is given the mentally retarded inmate, he frequently does not know what is expected of him and consequently may unknowingly violate Texas Department of Corrections rules and regulations.

Interaction With T.D.C. Personnel - Since the mentally retarded inmate frequently exhibits poor communication skills and correctional officers are not trained to identify and work with these individuals, misunderstandings and friction frequently develop between the two.

Interaction With Other Inmates - The mentally retarded inmate is frequently manipulated and occasionally victimized by inmates of normal intelligence. They experience difficulty in forming meaningful relationships with other inmates and often mimic poor role models.

Correspondence - Many mentally retarded inmates experience difficulty reading and writing and therefore have difficulty with their legal and personal correspondence.

Medical - Mentally retarded inmates may not know the procedures for "sick call" when they have medical problems. They may not be capable of following medical treatment plans and, if medication is prescribed, the mentally handicapped inmates may forget to pick it up.

Personal Possessions - The personal possessions of the mentally handicapped inmate are often stolen. He is frequently unable to utilize his commissary privileges because of his lack of understanding and/or victimization.

Disciplinary - Since an inmate's condition of mental retardation may not be known to unit personnel, he may not receive substitute counsel at disciplinary hearings. Suspicion exists that a mentally retarded inmate may be falsely convicted of disciplinary infractions due to this oversight. In addition, there is concern that the mentally handicapped inmate may be used as a scapegoat by other inmates, leading to a false conviction.

Program Participation - Most units have various vocational, academic, and recreational programs for which the mentally retarded inmate qualifies. However, due to his inability to read or write, he may not be aware that the programs exist. If he is aware of their existence, he may not know the procedures for enrollment. If enrolled, he may be dropped from the programs due to any one of the aforementioned problems.

Work Assignment - Mentally retarded inmates often spend a disproportionate period of time at the least desirable job assignments on a unit.

Release Plans - Mentally retarded inmates seem to experience difficulty in formulating release plans and are often considered to be poor risks for parole. Therefore, mentally retarded inmates tend to serve longer sentences than their counterparts of normal intelligence.

PROBLEMS ENCOUNTERED BY THE TEXAS DEPARTMENT OF CORRECTIONS: Of the number of problems encountered by the Texas Department of Corrections, the most pressing concerns are those of identification and classification.

Identification - Mentally retarded offenders are processed with all other incoming inmates at the Diagnostic Unit. A group intelligence test is administered to all inmates who enter the system. The inmates' attitude, poor motivation, and the crowded test conditions all make it difficult to achieve accurate test scores.

Classification - The main purpose is to classify each inmate for security purposes and to identify vocational, educational, psychiatric and medical needs so that he may be assigned to appropriate rehabilitative programs. The classification of the mentally retarded inmate's needs in these areas is a difficult process.

Programming - The Windham Independent School District is currently providing both vocational and academic educational opportunities for the mentally retarded inmate. Other areas of attention need to be directed to improving job skills and work habits, enhancing the inmate's self concept, increasing the inmate's acceptance of realistic expectations, modifying inappropriate behavior, and assisting adjustment to the prison environment.

Assignment - The successful treatment, education and rehabilitation of the mentally retarded inmate requires early identification and continuing attention to the problems which he/she faces within the prison environment.

A major decision that must be made concerns unit assignment. Currently, there are two alternative approaches: (1) the special unit approach, and (2) the general population (mainstreaming) approach. There are pros and cons to each of these approaches.

Special Unit Approach - In a special unit specifically designed for mentally retarded inmates, the administration and management would be more efficient (and likely less costly) than if assignments were spread over the 19 units. Security officers could more easily be trained to deal with this special population. This unit would be fairly small (perhaps no more than 1000 inmates) and therefore the inmates could receive more individualized assistance and would probably be able to engage in some form of meaningful employment on the unit. A special disciplinary process could be established to insure adequate representation and substitute counsel for those mentally retarded inmates who face possible punishment, loss of good time or other early release privileges. Fewer mental health personnel would be needed for the entire system, if all the inmates requiring special counseling were located in the same unit.

In reference to the negative aspects of the special unit approach, problems could possibly be encountered by mixing recidivists with first time offenders, mixing inmates of different age groups, and mixing inmates of widely varying criminal backgrounds. This would make the normal classification process difficult to implement on the unit. The inmate could possibly suffer as a result of the label (either official or unofficial) received by being placed on a "special unit". In summary, the special unit could possibly create an environment that does not resemble the free world where the inmate will ultimately return.

General Population Approach - A general population approach to the assignment of mentally retarded offenders would be more in line with the normalization concept that is generally accepted within the field of mental retardation today. This concept urges that the mentally retarded individual should be allowed to experience life in as normal and least restrictive an environment as his intellectual capabilities will allow. Most mentally retarded inmates are at the upper levels of intellectually handicapped range and are capable of independent living in the community with appropriate training, and therefore should be capable of doing so within the prison setting. Also, they would not be exposed to the stigma of being singled out for assignment to a special unit.

Regarding the negative aspects of this approach, the possibility of being victimized by inmates of normal intelligence is greater. The security forces on the various units may not be as aware of or sympathetic to the problems of the intellectually handicapped and therefore the possibility of misunderstandings in day-to-day communications will probably be greater. The training of security officers in this area as well as the overall administration could possibly be more difficult when spread over the entire system.

RECOMMENDATIONS:

The Texas Department of Corrections Should:

1. Formulate plans for a separate unit for the assignment of mentally retarded offenders. Although the normalization (mainstreaming) concept is generally accepted within the mental retardation field today, the special problems encountered in a correctional institution necessitate housing mentally retarded inmates within a separate unit.

2. Institute a casemanager/counselor program for the mentally retarded inmate. This individual would perform duties such as assisting the inmate in learning the correct procedures for obtaining and keeping a desirable job on the unit, provide vocational counseling regarding appropriate work habits both inside and outside the prison setting, establish behavior modification programs where necessary, and generally assist the inmate in dealing with the day-to-day adjustment to prison life and transition into society. A unit psychologist should be available if more intensive counseling is indicated.

3. Take action as authorized by House Bill 9 of the Special Session of the Texas Legislature which permits mentally retarded inmates to be transferred to public or private agencies for specialized care and treatment.

The Legislature Should:

Designate specific funds for the construction of a special unit for the mentally retarded offender. An acceptable alternative would be to modify an existing T.D.C. unit solely for the housing of the mentally retarded inmate.

IDENTIFICATION

Current Condition and Rationale

Definition of Mental Retardation: The American Association on Mental Deficiency defines mental retardation as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." This definition necessitates assessment of both intellectual functioning and adaptive behavior before an individual can be labeled mentally retarded. Significantly sub-average intellectual functioning is frequently defined as scoring two standard deviations below the mean on a standardized individual intelligence test. Translated into an intelligence quotient, this would be an I.Q. score below 70 on the Weschler scale. The level of adaptive behavior should also be assessed using standardized procedures.

Identification Process: The current procedure at the Texas Department of Corrections is to administer a group intelligence test to all inmates at the Diagnostic Unit shortly after the inmates enter the system. Although group administered intelligence tests may be used as initial screening devices, they are not reliable indicators for classifying a given individual as mentally retarded. The American Association on Mental Deficiency states that "under no circumstances should an individual be classified as mentally retarded in intellectual functioning on the basis of a group test...;group tests may produce low scores for any number of reasons, none of which are evident in the test pages." The inmate's attitude, poor motivation and the crowded test conditions all make it difficult to achieve accurate test scores. Recently, the Texas Department of Corrections has initiated a retesting program using

individually administered I.Q. tests for those individuals scoring below 70 on the group test. By using screening interviewers to interview each inmate entering the system, inmates suspected of being intellectually handicapped are transferred to the Goree Unit, where a more extensive and individualized diagnostic process can occur.

At the present time, a reliable standardized procedure for identifying deficits in adaptive behavior at the Texas Department of Corrections does not exist. In assessing adaptive behavior, at least two facets of behavior are usually measured. The first is the degree to which the individual is able to function, protect and maintain himself independently; second is the degree to which he satisfactorily meets the culturally imposed demands of personal and social responsibility. Individuals must always be evaluated in terms of how they meet the standards of personal independence and social responsibilities consistent with their particular chronological age group. Unfortunately, there are few available instruments which objectively measure adaptive behavior that specifically apply to prison populations. Therefore, the Texas Department of Corrections should develop its own assessment procedure to measure adaptive behavior.

Mentally Retarded Inmate Profile: He will have an I.Q. score falling within the mild range of mental retardation or within the borderline area. He probably has only minimal job skills and probably cannot read or write, and frequently relies on others to make his decisions. He probably has experienced a great deal of failure throughout his life and has a very poor self-concept. Consequently, he may feel a great need to be accepted by others and therefore may be easily led astray. He is generally aware of his intellectual deficiencies and is troubled by his limitations. He may expend

a great deal of energy in attempting to mask or cover up his condition. His desires and aspirations are generally the same as those of others his age (independence, security, employment, family, home, etc.), but his expectations may be unrealistic. He is probably tired of being singled out as being "different".

RECOMMENDATIONS:

The Texas Department of Corrections Should:

1. Adhere to the definition of mental retardation proposed by the American Association on Mental Deficiency (AAMD), which defines mental retardation as "Significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior..."
2. Construct an assessment procedure designed to measure an inmate's level of adaptive behavioral functioning in prison. Although measurement instruments for assessing adaptive behavior of the mentally retarded exist, there is doubt as to their applicability for a prison population. Most published screening devices are designed and validated for an institutionalized, mentally retarded population such as exists in the State Schools. It is therefore recommended that the Texas Department of Corrections develop its own procedures for assessing adaptive behavioral performance in the prison setting.
3. Develop a procedure to assess an inmate's level of social functioning prior to incarceration. For those inmates identified as having subaverage general intellectual functioning, the Texas Department of Corrections should attempt to obtain more comprehensive social histories. When such social histories are not available from agencies in the original county of residence,

then an attempt should be made to gather this information from other reliable sources.

4. Use group administered intelligence tests only as initial screening devices. The final diagnosis of mental retardation should be based on an individually administered intelligence test (such as the Wechsler Adult Intelligence Scale - Revised), indepth review of the inmates' prior social history, and an assessment of the inmates' level of behavioral functioning within the prison setting.

5. Devise techniques for differentiating the violent from the non-violent mentally retarded inmate. Such information should be used in subsequent placement determinations of the mentally retarded inmate.

6. Consult with professionals concerning specific mentally retarded cases that may require more specialized rehabilitative efforts.

The Texas Department of Mental Health/Mental Retardation Should:

Work in cooperation with the Texas Department of Corrections in devising screening techniques to be used within the prison system. Currently, the Texas Department of Mental Health/Mental Retardation has a system of Diagnostic and Evaluation Teams throughout the State of Texas involved in the evaluation of mental retardation.

The Governor Should:

Direct the Texas Department of Mental Health/Mental Retardation to cooperate with the Texas Department of Corrections in devising adequate screening techniques to identify the mentally retarded offender.

TRANSITION INTO SOCIETY

Current Condition and Rationale

Release Plans: The mentally retarded offender often experiences difficulty in formulating release plans and is frequently considered a poor risk for parole. Therefore, the mentally retarded offender tends to serve longer sentences and receives less attention than his/her counterpart of normal intelligence. The Windham Independent School District currently provides both vocational and academic educational opportunities for the mentally retarded inmate, but programs aimed specifically at assisting him/her to successfully reintegrate into society are nonexistent.

Training Programs: Training programs specifically designed to assist the mentally retarded inmate to successfully reenter society are a growing necessity. A comprehensive training program for the mentally retarded inmate which would allow for him/her to assume a certain amount of self-esteem and self-worth, as well as become a contributing member of society, is a goal to prevent the mentally retarded offender from becoming a perpetual ward of the State of Texas.

Post-Release Facilities: Counseling and supervision of the mentally retarded offender should continue after his release from the Texas Department of Corrections. A regional half-way house, or a similar institution, is an acceptable medium for providing such post-release assistance.

Funding: At the present time, it has been established that existing private agencies, half-way houses, etc., are finding it increasingly difficult to adequately provide facilities and programs specifically designed

for the mentally retarded offender. United Way allocations and private funding are no longer adequate sources for these facilities.

RECOMMENDATIONS:

The Texas Department of Corrections Should:

1. Develop a comprehensive training program for the mentally retarded offender which would allow for his/her successful transition into society.
2. Upgrade the vocational training process of mentally retarded inmates within the Texas Department of Corrections, with special emphasis on development of employment skills that are of a repetitious and assembly-line nature.
3. Develop a careful screening and testing process whereby the employment skills of the mentally retarded inmate can be accurately assessed. Upon release, it is recommended that general referral of the inmate be made with existing agencies (i.e., Project Amicus in Austin) in assisting the mentally retarded offender to find and retain employment.
4. Work closely with existing agencies and half-way houses throughout the state in providing separate and distinct facilities for the mentally retarded offender.

The Legislature Should:

1. Provide for state operation and implementation of regional halfway houses and other similar accredited institutions which would assist the mentally retarded offender. These facilities should provide programs to include general adjustment counseling, living skills training, vocational training, transportation to and from work, and alternate leisure time activities.

2. Ensure that the regional half-way houses be located in the major areas of the state: Dallas, Houston, West Texas, and the Rio Grande Valley, with special attention given to upgrading and funding of half-way houses in less populated areas.

The Governor Should:

- Direct the various Mental Health and Mental Retardation (MHMR) agencies to cooperate with the Texas Department of Corrections in the placement of released mentally retarded offenders.

THE STATE OF TEXAS
EXECUTIVE DEPARTMENT
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS
December 15, 1981

EXECUTIVE ORDER
WPC-40

ESTABLISHING THE GOVERNOR'S TASK
FORCE ON INTELLECTUALLY HANDI-
CAPPED CITIZENS AND THE CRIMINAL-
JUSTICE SYSTEM

WHEREAS, the Texas Department of Corrections (TDC) is presently attempting to meet the needs of a broad spectrum of incarcerated adult offenders; and

WHEREAS, among this varied inmate population are an estimated 2,000 inmates who are functioning within the ranges of mental retardation and probably a greater number of inmates possess only borderline intellectual capabilities; and

WHEREAS, the results of a recent survey of TDC personnel indicate that these particular inmates frequently experience significant problems adjusting and functioning within TDC's present institutional setting; and

WHEREAS, it appears that the alternatives to incarceration and the probation and parole supervision offered to these particular citizens may be inadequate; and

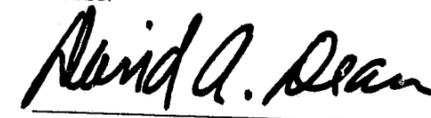
WHEREAS, it is suspected that citizens who fall in the above category of inmates, may often be sentenced inappropriately, experience repeated failures, and have recidivistic contacts with the criminal justice system; and

WHEREAS, the determination of needs for this particular citizen population and the development of an equitable response to such needs lie beyond the present prison setting.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby create and establish the Governor's Task Force on Intellectually Handicapped Citizens and the Criminal Justice System, hereinafter referred to as TASK FORCE.

The TASK FORCE will consist of not more than 20 members appointed by the Governor who shall serve for one year terms and at the pleasure of the Governor. The Governor shall designate a Chairman and Vice-Chairman from the membership who shall serve in those positions at the pleasure of the Governor.

ATTEST:



DAVID A. DEAN
Secretary of State

The TASK FORCE is charged with the following responsibilities:

- a. Examine in detail the needs of intellectually handicapped inmates in adjusting and functioning within the institutional setting of the Texas Department of Corrections.
- b. Examine in detail the alternatives to incarceration, and the probation and parole supervision which can be offered to this category of citizens.
- c. Recommend how and at what stage of contact with the criminal justice system this category of citizen can best be identified.
- d. Recommend to the Governor necessary legislation or action by the Governor's Office which will promote the purpose of the TASK FORCE.
- e. Perform other duties as may be requested by the Governor.

As soon as possible, the TASK FORCE shall make a complete written report of its activities, findings, and recommendations to the Governor.

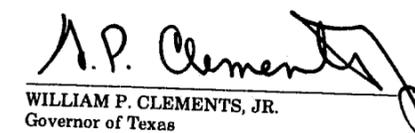
The TASK FORCE shall meet regularly at the call of the Chairman. A majority of the membership shall constitute a quorum. The Chairman shall, with the consultation of the Governor, establish the agenda for TASK FORCE meetings.

The members of the TASK FORCE shall serve without compensation and without reimbursement for their travel and expenses.

All agencies of State and local governments are hereby directed to cooperate with and assist the TASK FORCE in the performance of its duties.

This Executive Order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Given under my hand this 15th day of December, 1981.



WILLIAM P. CLEMENTS, JR.
Governor of Texas

APPENDIX

END