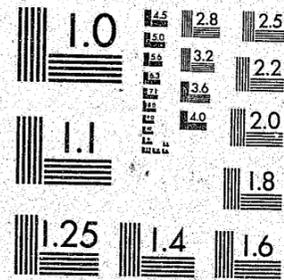


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LEGISLATIVE OPTIONS
IN RESPONSE TO
CROWDING IN TEXAS PRISONS



Staff Report of the
SENATE COMMITTEE ON STATE AFFAIRS

1981

STAFF REPORT OF THE
SENATE COMMITTEE ON STATE AFFAIRS

LEGISLATIVE OPTIONS IN RESPONSE TO CROWDING IN TEXAS PRISONS

March, 1981

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MAY 31 1983

STAFF REPORT OF THE
SENATE COMMITTEE ON STATE AFFAIRS ACQUISITIONS
LEGISLATIVE OPTIONS IN RESPONSE TO CROWDING IN TEXAS PRISONS

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STAFF REPORT OF THE
SENATE COMMITTEE ON STATE AFFAIRS:
LEGISLATIVE OPTIONS IN RESPONSE TO CROWDING IN TEXAS PRISONS

INTRODUCTION

In the past ten years, the Texas prison system has increased from 14,000 prisoners to 30,000.¹ This increase has put a significant strain on both the Texas Department of Corrections personnel and its facilities. The strain has become so great that it is questioned whether the system, as it presently stands, can adequately house, supervise, and care for prisoners.

The most important issues of this problem were raised in the decision of Ruiz v. Estelle.² Judge William Wayne Justice presided over the trial and issued an opinion pointing out five areas of concern: overcrowding, security and supervision, medical care, discipline and access to courts. This report discusses some of the alternatives available to the legislature to address the crowding problem faced by our prison system.

¹ T.D.C. estimate as of March 1, 1980.

² Memorandum Opinion, Ruiz v. Estelle Civil No. H-78-987 (S.D. Tex., filed Dec. 10, 1980).

EXECUTIVE SUMMARY

OPTIONS AVAILABLE TO THE LEGISLATURE TO
DEAL WITH OVERCROWDING IN TEXAS PRISONS:
POTENTIAL DIVERSION AND COST

1.	<u>Probation</u>	<u>Potential Numbers</u>	<u>Cost per yr.¹</u>	
a.	Intensive supervision	6,000/yr.	\$ 5.5 million	
b.	Court Residential Treatment Centers	1,200/yr. (by FY 82)	6.5 million	
c.	Halfway house/ community services	4,000/yr.	2.2 million	
d.	Pre-trial programs	1,500/yr.	.5 million	
2.	<u>Diversion²</u>	<u>Retroactive</u>	<u>Future</u>	<u>Cost</u>
a.	Drug offenders	1,454	625/yr.	8.0 million 3.5 million
b.	Mentally retarded offenders	2,655	2,000/yr.	42.5 million ³ 31.3 million ³
c.	Sex offenders	478	300/yr.	2.5 million 1.5 million
d.	Violent sex offenders	298	52/yr.	Med security prisons cost about 50% less
e.	Parole revocations	6,000/yr.		32.7 million ⁴

3. Restitution/Community Service

The average sentence is 10.6 years. If the utilization of restitution and community service cut this average in half for 30% of TDC's yearly admissions (12,000) the savings would be 54 million just in incarceration costs.⁵

- 1 The cost per year may be slightly higher than the TDC maintenance cost per year and yet compare favorably to the maintenance and capital outlay cost at TDC. Additionally offenders tend to spend fewer years in alternatives than in prison.
- 2 There will be overlap between diversion and the other categories and within the diversion categories.
- 3 55% of this cost could be picked up entirely by Medicaid, if these placements qualified under the ICF-MR program.
- 4 Compared to putting them in jail for full jail terms at approximately \$318 million.
- 5 Based on TDC's \$7.34 cost per day/per person and not including capital outlay or benefits gained from the restitution or community service.

EXECUTIVE SUMMARY

OPTIONS AVAILABLE TO THE LEGISLATURE TO
DEAL WITH OVERCROWDING IN TEXAS PRISONS

PROBATION

1. Approve funds for intensive supervision.
2. Approve funds for three additional Court Residential Treatment Centers.
3. Approve funds for TAPC contracts with halfway houses and community service programs.
4. Approve funds for training of probation officers.
5. Amend Art. 42.12 Sec. 3e(a) of Tex. Code of Crim. Pro. Ann. to give the judge the right to grant probation for any felony.
6. Amend Art. 42.121 to give the Adult Probation Commission authority to aid and co-ordinate pretrial intervention programs.
7. Provide funds for pre-trial programs.
8. Amend Chap. 17 of the Tex. Code of Crim. Pro. Ann. to allow judges to place conditions on bonds.

DIVERSION

1. Divert or appropriate funds to TAPC or TDCA for appropriately structured treatment programs for drug offenders.
2. Divert or appropriate funds to MHR to operate facilities and treatment programs for the mentally retarded offender.

3. Divert or appropriate funds to TAPC to contract for treatment programs for the nonviolent sex offender.
4. Fund a medium security treatment facility in TDC for violent sex offenders.
5. Fund TAPC and B/PP to contract with half-way houses for programs to assist probation and parole revokees.

RESTITUTION AND COMMUNITY SERVICE

1. Amend Art. 42.03 Code of Crim. Proc. to require a judge to make restitution a part of the sentence.
2. Enact a felony community service act similar to Art. 42.13 Code of Crim. Pro. which is the community service act for misdemeanants.

AVOID INCARCERATION

1. Amend Art. 42.03 Code of Crim. Pro. to make imprisonment a last resort and to mandate that judges consider alternative sanctions before incarceration.
2. Refer bills which increase the penalties for crimes to a Criminal Justice Co-ordinating Committee for an impact statement.
3. Amend the habitual offender statute so that it may be invoked only in carefully defined circumstances involving violent offenders.

PAROLE

1. Provide support staff to utilize computers as much as possible in the parole process.
2. Place a ceiling on the length of time a person can be on parole.
3. Appropriate funds to allow the Board of Pardons and Paroles to contract with community-based facilities for programs for parolees and parole violators.
4. Parole revocation hearings Could be held in the county where the alleged violation occurs.
5. Strengthen the leadership of the Board of Pardons and Paroles.
6. Establish a parole program for offenders over 65 years old.

GENERAL

1. Emphasize comprehensive, varied, community-based facilities and smaller medium or minimum security prisons over the present type of prison.
2. Establish a Criminal Justice Co-ordinating Committee to share information, train staff, co-ordinate the delivery of services to offenders and recommend changes to the legislature.

C. OPTIONS AVAILABLE TO RESPOND TO THE
OVERCROWDING ISSUE IN RUIZ v. ESTELLE

Of the issues raised by Ruiz, overcrowding deserves primary attention since it is interrelated with most of the other issues. Director Estelle testified during the trial that overcrowding affects every single operation. There are five basic approaches to addressing the problem of overcrowding. They are: (1) building more prison facilities; (2) diverting offenders into alternatives to incarceration in TDC; (3) avoiding confinement whenever possible; (4) decreasing the time spent in TDC by those sent there; and (5) utilizing emergency measures to reduce population on a one time basis.

1. BUILDING MORE PRISON FACILITIES

Prisons have traditionally been a primary response to crime. The three purposes of incarceration are punishment of the criminal, protection of the community, and creation of an environment in which rehabilitation of the criminal to productive citizenship can occur.

The cost of running TDC for the year ending Aug. 31, 1980 was over \$137 million. There were approximately 28,000 inmates during this year. That is a cost of about \$5,000 per inmate. This figure does not include loss of earnings, the cost of welfare for the inmate's family, and the loss of taxes the inmate would pay.

TDC projects that by 1990 its population, given current trends, will double.¹ The 1982-83 budget recommendation from the Board of Budget and Review is for \$562.1 million, a 76% increase over the 1980-81 budget.² The proposed budget includes a request for three new prisons.

In the male units only 207 cells are single cells.³ If the final order in the Ruiz decision mandates a goal of one man per cell the cost of compliance for the current population of 29,000 would require building approximately 10,000 cells at a cost of between \$25,000 and \$34,000 per cell, or approximately \$320 million.⁴

Using inmate labor, TDC can build 500 cells a year, which is not enough to keep up with the current yearly rise in population. To achieve this solution to overcrowding, TDC would have to use free world labor which would increase the cost approximately

one-third (1/3) per cell.⁵ Projections on the cost of housing inmates in TDC in 1990, given present trends, range from \$1.3 billion to \$2.2 billion.⁶

The total cost of incarceration includes more than the \$7.34 per day it costs TDC to maintain a prisoner in the system. To that figure should be added the cost of currently planned capital expenditures and the cost of meeting the mandates of Ruiz v. Estelle. Also included in the calculation should be the loss of tax dollars in welfare payments to inmates families. If we assume that there is a limit on the total amount that the state can afford to spend on our total system of corrections, a dollar spent on incarceration is a dollar not spent on other alternatives.

The Beto Unit is scheduled to be complete in 1984 and will have a capacity of 4,000. If the population were to remain static this new facility would only bring the population for the other facilities down to what it was when the Ruiz suit was instituted.

The Legislature should consider alternatives that can help achieve the three goals of corrections: punishment, protection and rehabilitation at a lower overall cost to the taxpayers of the state. With proper monitoring such alternatives could help control the rise in prison population and reintegrate the offender into the community as a functioning, law-abiding citizen.

2. ALTERNATIVES TO INCARCERATION

In Working Paper 65-09-80 A Study to Assess the Impact of Various Diversion and Population Reduction Methods released July 31, 1980, the Texas Department of Corrections states that the overcrowding problem calls for alternative solutions to regain and retain an appropriate equilibrium. This study indicates that alternatives to incarceration are initially successful at reducing prison population but then become less effective. A concerted effort of the entire criminal justice system with proper controls might be able to make alternatives effective on a long term basis.

a. PROBATION

The chief alternative to incarceration is probation. Texas has an Adult Probation Commission established under Article 42.121 of Tex. Code of Crim. Pro. Ann. (Vernon 1979) which gives technical and financial support to 107 locally autonomous adult probation departments. These local departments are directed by state district court judges and managed by chief adult probation officers. There are about 123,000 adults on probation in Texas, of that about 70,000 are under felony convictions. Probation costs the taxpayers less than \$1 per day per person because probationers pay up to \$15.00 per month in supervision fees. During state fiscal year 1979 probationers paid \$4.43 million in restitution, \$1.82 million in court costs and \$5.13 million in fines. Additionally most of those on probation were able to continue to contribute to the support of their dependents.⁷ About 91% of those on probation are successful.⁸

The Texas Adult Probation Department has funded a Court Residential Treatment Center (CRTC) run by the West Texas Regional Adult Probation Department for the last two years. The CRTC gives the court an additional sentencing tool for those cases which may present too high of a risk for traditional probation but for which the judge feels incarceration in a maximum security facility is not indicated. A total of 216 offenders were admitted to the CRTC in FY80. Follow up information available to date indicates a 15% rearrest rate for ex-residents.⁹

The CRTC served as an alternative to prison for 69 residents and as an alternative to county jail for 43 individuals. The resident population on September 12, 1980 indicated that 65% had alcohol abuse problems, 32% had drug abuse problems, 18% had behavior adjustment problems, 13% had mental problems, and 36% had immediate housing problems. 116 were unemployed upon intake of which 97 were employed when released. Based on a maximum daily capacity of 60 persons, the costs approached \$11.91 per capita/per day. Based on the dynamic population, the cost was \$3.31 per resident/per day.¹⁰

The CRTC anticipates that 300 persons will be served during FY81. About 150 of those will be diversions from TDC.

The Texas Adult Probation Commission model for the use of residential facilities calls for contracting with local facilities or identifying local leadership and support and working with it to establish a CRTC in an area.

Options: The legislature can increase the potential number of offenders who can be diverted from TDC to probation by:

1. Approving TAPC's request for intensive supervision funds. These funds would allow probation officers to supervise higher risk offenders.
2. Approving funds for additional Court Residential Treatment Centers. With sufficient funding TAPC estimates it could get 1 more CRTC operating in FY81 and 2 operating in FY82. This could potentially divert 300 from TDC in FY81 and 1200 in FY82. CRTC's are also a good tool for dealing with a probationer who faces revocation for a minor violation of probation.
3. Approving funds to allow TAPC to contract with existing half-way houses and community service programs to provide residential control for those who need it and support services.
4. Approving funds for training of probation officers to enable them to evaluate better the risk and need factors of the offenders they supervise.
5. Amending Article 42.12 Section 3e(a) of Tex. Code of Crim. Pro. Ann. (Vernon 1979) to allow the judge to grant probation when the offense is criminal homicide, rape, or robbery. Currently under this statute juries have this discretion, but judges do not.
6. Amending Article 42.121 to give the Adult Probation Commission the ability to aid and coordinate pretrial intervention programs. Since 1978 when the Attorney General of Texas rendered opinion #1283 TAPC has been limited to assisting post-trial programs. Pretrial authority would enable TAPC to

intervene early with treatment in those cases where the real problem is alcohol, drugs, or other treatable conditions and might result in more individualized sentencing or in total diversion. Appropriate funding must also be given.

7. Adding provisions to Chapter 17 of the Tex. Code of Crim. Pro. Ann. (Vernon 1979) to give judges the authority to place conditions on a bond. This would have to be carefully drawn to avoid constitutional problems, but it would seem that in consideration of the safety of the community and the likelihood of reporting to trial a judge could be given the discretion of placing the condition of reporting for treatment on someone with an obvious problem like drug or alcohol abuse.

EXPERIENCE OF OTHER STATES The Saginaw Project in Saginaw County, Michigan was a three year experiment conducted between 1967 and 1970 that illustrated the benefits that can occur from a well-planned and adequately funded community corrections programs. In this experiment, probation was the method of correction used. Probation staffs and facilities were strengthened to provide an adequate level of services through small caseloads and intensive supervision. The proportion of convicted felons put on probation was raised from 59.5% to 67.1%.

As a result of this type of highly intensified and individualized treatment, the proportion of probation failures experienced a decline from 32.2% during the three prior years, to 17.4% during the three experimental years.

Estimated savings to taxpayers over the period was almost half a million dollars, because of the reduction of costs of

institutional care, costs of welfare for prisoner's families, and parole expenditures.¹¹

Another program of interest here is the Des Moines Community Corrections program. Because of its high level of coordinated effort and success it was the first criminal justice project to be designated "exemplary" by the National Institute of Law Enforcement and Criminal Justice. Of particular interest are its pretrial release and the supervised release components.

The pretrial release component of the Des Moines program is modeled on the Vera-Manhattan Bail Reform Project. It is a typical release-on-own-recognizance program. The staff of the pretrial release component is housed in the Municipal Court Building, site of the city jail and the Des Moines Police Department. Every defendant booked into the jail is interviewed immediately after processing. (Persons charged with simple intoxication are excluded, principally because their cases are disposed of almost immediately.) The pretrial release staff interviews the defendant to determine if he meets the criteria for release on his own recognizance. The release criteria are totally objective, and a point system is used to gauge the degree to which the defendant has stable roots in the community. Points are earned for length of residence in a particular location, stability of employment, and the presence of family ties. Points are lost as a result of the frequency and the recency of prior convictions, and because of past incidents of failure to appear for trial. If a defendant scores a total of five points, the staff recommends to the court that he be released on his own recognizance.

Defendants who fail to score a sufficient number of points to qualify for release on their own recognizance, but who might be qualified for supervised release, are referred to the supervised release screening staff by release on own recognizance interviewers. A member of the supervised release staff then interviews the defendant. Unlike the release on recognizance interview, however, the supervised release interview is open-ended and the decision as to whether the defendant qualifies for entry into the component is subjective.¹²

Program statistics show that offenders who are released prior to trial get shorter sentences than similar offenders who are not released.

b. DIVERSION FOR SELECTED CLASSES OF OFFENDERS: In their report on Reducing the Texas Prison Population, TDC identified four types of offenders in its population which could be diverted into alternatives. They are the drug offender, the mentally retarded offender, the nonviolent sex offender, and the driving while intoxicated offender.

TDC estimates that in their annual admissions there are 600-625 drug offenders, 2,000 mentally retarded offenders, 200-300 non-violent sex offenders, 125-150 driving while intoxicated offenders and 400-1,000 offenders who might benefit from shock probation. If diversion of these classes of offenders were applied retroactively, 1454 inmates would qualify in the status of drug possession, 2655 offenders in the mentally retarded category, 478 offenders in the category of nonviolent sex offender, 121 inmates in the driving while intoxicated category.¹³

One needs to remember that some people might fall into one or more of these categories thereby reducing the numbers, that the numbers of mentally retarded might be reduced significantly when tested individually, and that those who might not be successful in the alternative would have to be returned to prison. In spite of these events, the numbers are significant.

TDC has identified approximately 7,000 current inmates who could be diverted to other types of penalization. These people would logically be put under the jurisdiction of the Texas Adult Probation Department. If this diversion is to be successful, adequate funds need to be added to the TAPC budget to cover the

shift in responsibility. It is understood that a dollar for dollar transfer can not be made from the TDC budget because TDC is overcrowded and would only be reducing its population to the level originally intended to be housed in its units. Only when TDC could get to the point of closing a unit would a significant drop in operating costs be realized.

Additionally, TDC has identified between 3,000 to 4,000 admissions yearly who could be diverted. These could also be handled through the probation departments.

1. Drug Offenders: TDC suggests diverting drug offenders to MHMR and estimates the per day cost at \$65 a day. This is MHMR's cost of care in a mental hospital, care that is reserved for the severe, long-term mentally ill.

Presumably, most drug offenders could hold jobs at some point in their treatment, live in halfway houses, contribute to the cost of their care and get treatment for their drug problem. The use of drugs could be effectively monitored by urine analysis. The Texas Department of Community Affairs within the McAllister Act might be the most appropriate agency for handling these offenders.

Under this plan the offender would be supervised by the Adult Probation Department which would contract with community-based services for residential care and treatment. The cost of this alternative would be closer to \$15.00 a day than the \$65.00 TDC estimates.¹⁴ The \$7.76 difference between TDC's cost per day, \$7.34, and this \$15.00 estimate could be offset by the offender's contribution. It might also be possible to require the offender to pay for treatment.

Article 4476-15a, of Tex. Rev. Civ. Stat. Ann. (Vernon supp. 1979), the R.B. McAllister Drug Treatment Program Act, provides that the Texas Department of Community Affairs provide residential services for short-term and long-term treatment of drug dependent persons, and day care and outpatient services¹⁵ When the McAllister Act was passed it was only funded at a fraction of the amount necessary to implement it. If it were adequately funded, the Texas Department of Community Affairs could become a significant factor in providing diversionary facilities for those now being sent to TDC.

The Adult Probation Commission and the Department of Community Affairs could coordinate their efforts to devise a successful alternative to incarceration for the type of offender identified by TDC. If statistical procedures were refined to identify those offenders who are sentenced under another charge, like burglary, but whose drug involvement is the motivation behind the offense this category might realistically be expanded.

Since TDC's estimate of \$7.34 per day reflects only the cost of maintaining a prisoner and does not include construction cost or any of the other hidden costs of the prison system it gives at least a ball park figure of what might be diverted from TDC to TAPC for each offender diverted.

Option: The Legislature could divert or appropriate the necessary funding to locate drug offenders in appropriately structured treatment programs.

2. Mentally Retarded Offenders: TDC again estimates a \$65.00 a day cost to divert these offenders into a MHMR facility.

Since the majority of mentally retarded offenders currently fall into the mild retardation category they should not need the full state school regime. They could be housed in half-way houses, receive vocational, behavioral, and educational counseling, and eventually work to contribute to the cost of their care. MHMR estimates that this would cost about \$43.00 a day. Since this type of facility would qualify for Medicaid the Federal government would pick up 55% of the cost.¹⁶

MHMR is currently operating a program of Community Adolescent Treatment Services at Rusk Hospital. 45 adolescents in the mild or moderate range of developmental retardation with a documented history of illegal behaviors are being served in a 3 phase program. Similar services could be provided in a continuum leading to successful community living for adult offenders.

Additionally, MHMR could be given the mandate to seek foster home situations for some of these offenders.

Option: The Legislature could divert or appropriate the necessary funds for this alternative.

3. Nonviolent Sex Offenders: TDC could divert these offenders to MHMR and again estimates a \$65.00 per day cost. For the same reasons as noted above this estimate may be high.

Generally, this type of offender could be handled by the probation departments and a condition of probation could be treatment in a community-based program. For the protection of

the community, this type of offender might be required to live in a residential treatment facility until the treatment people believe he can safely serve out his probation outside such a controlled environment.

Since the sex offender most frequently has psychological problems which counterindicate the living conditions prevalent in most maximum security prisons, it might be sound to divert the violent sex offender to a special medium security unit under TDC as well, and appropriate money to allow TDC to contract with MHMR or a private group to train the TDC personnel who will work in this unit and to run a treatment program for the offender. Medium security facilities are usually less expensive to run than maximum security facilities.¹⁷ TDC could avoid the capital outlay by contracting for this facility.

4. Driving While Intoxicated Offenders: TDC's report suggests that these offenders be placed on mandatory probation with attendance at alcohol abuse programs as a condition of probation.

The Bexar County District Attorney's Office has been running a pretrial program for selected driving while intoxicated offenders. They require the offender to pay \$25.00 to attend the program. Their experience has been excellent.¹⁸

Similar pretrial programs could be encouraged and would if the Legislature amended Article 42.121 as suggested above.¹⁹ If the offender has committed a more serious driving while intoxicated offense the offender could be probated, his license could be restricted to driving to or from work during the time of

probation, and he could be required to participate in an alcohol abuse program.

If the offender in question has already been probated several times and has already completed an alcohol abuse program he could be sentenced to week end incarceration in a local facility rather than in TDC.

The cost of this program could be almost entirely offset by requiring the offender to pay for treatment.

As for the drug offender, not all the people who have alcohol at the root of their criminal activity are identified by the figure given for driving while intoxicated. If the figures could be captured, treatment for alcohol problems might be more effective and cost efficient than incarceration for assault or some other crime.

C. PAROLE AND PROBATION REVOCATION

Currently about 6,000 persons a year have their probation or parole revoked.²⁰ When the violation is minor it might be better to require these people to live in a half-way house rather than returning or sending them to TDC.

If the Legislature were to increase the responsibility of TAPC and the Board of Pardons and Paroles to the extent indicated by these numbers a certain amount of lead-in time would be required and adequate funding to guarantee success would have to accompany the mandate.

Some things would also have to be done to encourage the growth of adequate community-based facilities to handle this volume. This could be done by developing a special structure to oversee this development or by funneling monies through existing state agencies like Adult Probation, Board of Pardons and Paroles, Dept. of Community Affairs, or Dept. of Mental Health and Mental Retardation.

D. SUBSIDY PROGRAMS: Some states have encouraged communities to develop alternatives to incarceration through subsidy programs. Minnesota's Community Corrections Act has four key elements: a financial incentive to counties to develop local correctional facilities; a financial disincentive against committing nonviolent adults to state institutions; a local decision-making structure to insure better coordination of the various components of the criminal justice system and a local planning process that results in comprehensive plans for the delivery of correctional services.

Several counties in Texas, notably Bexar County, have established commissions or councils to coordinate their justice and correction policies.

California gives a grant to a county for every convicted offender who they place in a community-based correctional program rather than a state penitentiary. If a county which averaged 25 inmates in state prisons for every 100,000 people in the county, cuts down to 15 by using community-based programs, it can receive up to \$4,000 each for the ten offenders not sent to the state facility.²¹

To work, subsidy programs must require that the subsidy be used to develop, maintain, and expand community-based corrections and they must be rigidly tied to a decrease in the rate of commitment to state facilities.

Early experience in Minnesota showed success in reducing commitments to state institutions, in developing local correctional programs, and in bettering the organization and coordination of the local criminal justice system.²² California

experienced initial success in reducing the prison population. The success has leveled off. Officials believe this occurred because the subsidy was not rigidly tied to failure to send offenders to the state facility and because other forces in the criminal justice scheme worked at crosspurposes.²³

E. FUNNELING THROUGH STATE AGENCIES: TAPC now has limited funds available to contract with private halfway houses. An increase in funding for this purpose would stimulate the growth of such facilities. If TDCA was provided with greater funding they could stimulate the growth of community-based facilities under the R.B. McAllister Act.

MHMR could provide adequate facilities and supervision for the mentally retarded offender with greater funding.

The legislature is currently considering Senate Bill 125 by Farabee and HB 365 by Geistweidt, which would, among other things, provide for funding of half-way houses through the Board of Pardons and Paroles.

Whether subsidy or funneling is chosen there would seem to be a need for coordination. The Special Committee on the Delivery of Human Services has called for the establishment of a Coordinating Committee for Criminal Justice. They would include persons representing the Criminal Justice Division, Office of the Governor; Board of Corrections; Adult Probation Commission; Board of Pardons and Paroles; Coordinating Council of Prosecuting Attorneys; Texas Judicial Council; Commission on Jail Standards; Department of Public Safety; Defense Lawyers' Coordinating Council; Presiding Judge of the Court of Criminal Appeals; and any other officer, state agency, or group designated by the Governor.²⁴

This could be an improvement if Texas begins a concerted effort to develop alternatives to incarceration. The direction for such a policy and the funding could be coordinated by such a

committee. The committee could be led by an executive head appointed by the Legislature with statutory authority to compel its mandates. Its duties could include sharing information, training staff, coordinating the delivery of services to offenders, and recommending legislative changes.

F. RESTITUTION AND COMMUNITY SERVICE

In addition to the alternatives mentioned above, the legislature could signal more strongly to the judiciary that they are interested in seeing offenders provide restitution and community service.

A recent review of legislative changes, programs, and research related to restitution identified 54 restitution programs in the United States and its territories, of which 35 are nonresidential and 19 are residential.²⁵

Some states view restitution less as an alternative to other penalties than as an adjunct to them. Restitution would surely make the increased use of probation or shorter jail sentences more palatable to the public.

Colorado specifies that restitution may be ordered in conjunction with such sentences as incarceration in a local jail, a fine, probation, imprisonment or parole. In Oklahoma a restitution order is to be made in conjunction with probation and will be made a condition of a suspended sentence. In Tennessee, a Restitution Centers Act authorized the establishment of residential restitution centers so that convicted felons sentenced to the corrections department can reimburse the victims for the value of the property taken or damaged.²⁶

Texas could achieve similar goals by amending Art. 42.03 of the Code of Criminal Procedure to require a judge to consider restitution as part of his sentence and to suggest the wide range of sentences of which it might be a part.

Currently over 66% of the people incarcerated in TDC are sentenced for some theft offense.²⁷ Significantly more prison space would be available if judges employed some of the sentencing options indicated above for these offenders, particularly those whose offense involved no violence. Restitution is an important alternative for rectifying the harm done by these offenders. It is generally a more satisfying solution for the victim as well.²⁸

Restitution might also play a part in shortening sentences for those the court feels must be incarcerated in TDC. If TDC were required to pay a basic wage of \$1.00 an hour a judge could order an inmate to pay a certain amount of restitution out of that money and combine his restitution order with a shorter sentence or with a reservation to consider shock probation at the end of a given period. The amount it would cost TDC in wage payment could be made up in savings due to shorter sentences.

In using restitution it is important that judges use care to avoid an equal protection problem.

Community service is another option which can be combined with probation, incarceration in a local jail, a fine, placement in a halfway house, imprisonment or parole.

Persons in Georgia's community-based Probation Diversion Centers are required to complete 50 hours of work in the community, in addition to paying restitution and program costs from their wages. Six hours of community service is considered the equivalent of a day in jail.

In a year's period during 1978-79, the 243 program referrals performed 9,065 hours of service, instead of spending 1,418 days in jail. In financial terms, at a daily jail residence cost of \$18.50, \$26,233 was saved by this alternative, in addition to the \$27,193 value of the work performed for a total of \$53,426 of benefit to the county, while outlay for the program was \$32,019.²⁹

Texas has a community service probation act for misdemeanants, Texas Code of Crim. Pro. Ann. (Vernon 1979) Art. 42.13. A similar act could be written for felons.

G. NONRESIDENTIAL, STATE-RUN WORK FACILITIES

A new suggested alternative to the present prison system is nonresidential, state-run work facilities (NRWF).³⁰ This is basically the opposite of work furlough. Offenders would be sentenced to work in a state-run work facility while they reside at home or in a halfway house.

Under this plan offenders could be paid the prevailing wage but a portion could be withheld for restitution to the victim. If new crimes were committed while under sentence the residential release could be revoked, and the offender would have to serve the remainder of the sentence in the traditional institutionalized manner. For minor violations of work rules an offender could be subject to a loss of "good time".

The N.R.W.F. sidesteps the most costly and criticized component of prison, the residential, while still restricting the freedom of the offender for the major portion of the day. TDC has the industrial components necessary to this type of plan, though the distance between TDC units and centers of population would present a difficulty.

The N.R.W.F. sentence could be considered for nonviolent offenders. It is less costly and serves the reintegrative process better than the traditional prison sentence. Its crucial advantage when compared to work furlough is that it could be implemented on a large scale.

CONCLUSION

Alternatives to incarceration have to be carefully monitored to insure that they do in fact draw from the population that would otherwise go to state prisons. If they do not, they fail to effect the desired goals of population reduction and cost-effectiveness. The subsidy plan outlined above is a successful method if tied directly to a performance factor, i.e. a failure to send people to the state facility.

If strategies like fining or week end sentencing reduce the population in local jails, these jails could begin housing some people who may now be sent to TDC. Likely categories are those awaiting appeal, those awaiting revocation hearings, those who have minor violations of probation or parole, and nonviolent first offenders. Local authorities could be subsidized for keeping these people. If the subsidy is lower than the cost of keeping them in TDC a savings will be realized. Additionally, the necessity for capital outlay will be avoided, or, at least, forestalled.

3. AVOIDING CONFINEMENT

Decreasing the number of people who will come in contact with the criminal justice system at a point where incarceration is a possibility needs the cooperation of the whole criminal justice system, a singlemindedness of purpose, and education of the general population. If all the actors are not keyed in to the goal, what is saved in one area will be lost by increases in another. California's experience shows this clearly.³¹ If there is not an understanding of goals, attempts to decriminalize or reduce the consequences of criminality are perceived as being soft on crime rather than as being a reasoned response to increased crime rates and the increased cost of incarceration.

It is clear that TDC has no control over the number of people sent to them for incarceration. The responsibility for who is called criminal in Texas and for the length of time they are put in the custody and care of the state rests with the judges, legislators and ultimately, the citizens.

In reporting to the California Legislature, the Joint Rules Committee³² set up a strategy for reducing the California prison population which included (1) decriminalizing, or reclassifying certain penal offenses to punish them civilly; (2) establishing neighborhood justice centers where disputes could be settled before they get classified as crimes; (3) using Pretrial Diversion programs; (4) utilizing alternatives to pretrial confinement like citations instead of arrest, release on recognizance, or in the custody of a third party, or 10% cash bond; (5) changing the sentencing part of the trial to require

that the state show why incarceration would be desirable in a given case and requiring the judge to consider alternatives like probation, fines, restitution, forfeiture, community service, intermittent incarceration and term imprisonment in institutions other than a state institution of maximum security.

Many of these strategies could be successfully used in Texas to control prison population.

a. RECLASSIFICATION

A small impact on prison population might be made by reclassifying certain crimes like bigamy, criminal nonsupport, unauthorized use of a vehicle, credit card abuse, hindering secured creditors, and public intoxication.

b. COMMUNITY ARBITRATION/NEIGHBORHOOD JUSTICE CENTERS

Under current Community Arbitration programs misdemeanants are issued a citation which records the offense and schedules a hearing to arbitrate the case. The hearing (usually before an attorney arbitrator) consists of a finding of facts. If the misdemeanant admits to committing the offense and consents to arbitration, the arbitrator makes an informal adjustment, sentencing the person to a prescribed number of hours of community work and/or restitution, counseling, or an educational program. The case is left "open" to be closed in 90 days upon a positive report from the field site supervisor. A Maryland program dealing with juveniles showed a recidivism rate of 9.8% compared to 14.3% for the traditional route.³³

The Institute for Social Analysis recently evaluated three neighborhood justice centers:³⁴ one in Atlanta, one in Kansas City and one in Los Angeles. It concluded, among other things, that the centers are capable of handling a wide variety of minor interpersonal disputes, including interpersonal/criminal cases as well as civil/consumer cases.³⁵

The study concluded that in an overall sense the centers have been successful and meet a public need with indices of

performance and satisfaction that are extraordinary, but that the observable impact on court caseloads has been negligible.³⁶ By disposing of interpersonal/criminal cases efficiently and early the centers may prevent these from escalating into felonies.

c. PRETRIAL DIVERSION

Pretrial diversion allows first-time offenders to participate in programs designed to solve the underlying problems leading to crime. It helps to break up the backlog in the courts as well as giving an offender the chance to turn himself around before going the whole prosecution/ sentencing route.

The District Attorney's office in Bexar County was operating Project Detour for four years for first offender misdemeanor, theft or theftlike offenses, such as shoplifting. It started as a 90 day program for offenders. Project staff would report to the DA on the offender's performance every 45 days. The last report would usually recommend dismissal based on having done well in the program. The program has been discontinued because of a lack of funds. The estimated recidivism rate was 6% and the cost was \$5.00 per person.³⁷

d. SENTENCING

Texas sentencing laws provide that someone convicted of a 1st degree felony may be incarcerated for life or for not more than 99 years or less than 5; 2nd degree felony not more than 20 or less than 2; 3rd degree felony not more than 10 or less than 2. The maximum ranges provided for are higher than those viewed as useful by many authorities and the range invites disparity in sentencing.³⁸

In cases where long sentences are necessary for the protection of the public they should be encouraged. Most penologists and parole boards, however, believe that in 90% of the cases in which long sentences are issued they are not justified.³⁹ In its Model Sentencing Act the American Bar Association concluded its study of sentences with the recommendation that five years was an adequate sentence for most offenders.⁴⁰

The Advisory Committee of the Bar Association has accordingly concluded that the authorized sentence for most felonies should be in the five-year range. There may be some cases, it is conceded, where the term should perhaps be raised to ten years. Armed robbery may be one case. And finally there may be some very few offenses, murder was the only example on which the Advisory Committee could unanimously agree, where the authorized sentence should exceed ten years.⁴¹

In its study, Adult Probation and Community Corrections in Texas: A Master Plan, 1977, the Texas Center for the Judiciary recommended that a practical study of felony and misdemeanor sentencing be undertaken. It further recommended that if jury sentencing is to continue the Legislature should make possible judicial imposition of special probationary conditions strictly for constructive, rehabilitative purposes when a jury recommends probation.⁴²

Option: The Legislature could amend Article 42.03 of the Code of Criminal Procedure to mandate judges to look at alternative sanctions before deciding on incarceration.

The Legislature could require an impact statement for legislative proposals to increase sentences for criminal violations. Such a statement could include information on how many prisoners are currently in prison for the particular crime and the projected number of additional prisoners sentenced for that offense over the next five year period, and the increased cost to the state because of the increased penalty.

Legislation could be enacted making it possible to invoke the habitual offender status only in carefully defined circumstances involving violent offenders. As of October 31, 1980, 566 people were in TDC as habitual offenders. Of those, 130 could be classified as violent offenders.⁴³

CONCLUSION

It is difficult to predict the effect of these techniques on prison population. At the moment approximately 600 people a month are sent to TDC by the courts of Texas. If the suggested changes were 15% effective they would keep 100 people a month from becoming a burden to taxpayers.

Changes in the sentencing laws could also decrease the time spent in TDC once a person is convicted. More options for decreasing that time follow.

4. SHORTENING THE TERM OF CONFINEMENT

a. Parole The principal means of decreasing the time spent in TDC by persons sentenced there is parole. Parole is an effective incentive to good behavior if the offender understands the working of the parole system.

Parole has been called the single greatest tool for reducing prison population.⁴⁴ Previous committees have called for streamlining the procedure and increasing the number of decision makers so as to process a greater number of potential paroles.

Several legislative committees have made recommendations for increasing the efficiency and effectiveness of the parole system. In 1977, the Hobby-Clayton Committee said that the state could save \$10 million a year and possibly avoid construction of a new prison if the parole process were sped up.⁴⁵ Other committees have recommended major restructuring of the Board of Pardons and Paroles.⁴⁶

In 1977 the Board of Pardons and Paroles published a Ten Year Action Plan designed to project it into the 80's. For the most part this plan is not being implemented. Strengthening the parole process through intensive supervision and utilization of community residential facilities could protect the community, even if the parolee in the 80's is a higher risk person than previously, and it could increase the parolee's chance of being successful in his reintegration.

Besides being an effective correctional tool, parole is an economical alternative to the incarceration of offenders. An average of 12,995 persons on parole in 1978, for example, earned

an estimated \$78 million in wages on which they paid taxes.⁴⁷ Their earnings also reduced the amounts paid out in welfare payments to their families. Keeping these people in prison would have cost the state \$34 million compared to the \$7 million spent to supervise them.⁴⁸

One of the threads consistently reappearing in earlier recommendations to improve the Board of Pardons and Paroles was that they need to develop Parole Selection Criteria and communicate these to the inmate and others involved in the process. The Board of Pardons and Paroles has opted to approach this by analyzing Parole Panel decisions and making their implicit criteria explicit. A research project entitled "Parole Panel Policy Initial Review"⁴⁹ examined a 50% sample of the 9/79 case pull and a 100% sample of the 3/80 case pull to determine if parole decisions are made in such a consistent pattern as to constitute an implicit policy. The answer was yes, and the results were pulled together into what is called the Significant Factor Score.⁵⁰ By using this score, based on previous panel decisions, the probability of being denied parole at initial review can be projected.⁵¹ At the moment the Significant Factor Score is being used as an aid in determining disposition. More reliance on this score could result in increasing the efficiency of the parole process.

For example, if a person's Significant Factor Score falls between 4-0 he has an 80% chance of being paroled on initial review. For this group, the Legislature could enact a presumption in favor of parole. This would mean that these

people would automatically be paroled unless the Board found a clear danger in granting parole. New Jersey has adopted a presumption of parole.

At the other end, if a person's score falls between 24 and 8 they have an 89% chance of being denied parole on initial review. It would be more efficient to eliminate full consideration by the Board for this group. The process would make more sense to the inmates if the Significant Factor Score was communicated to them and if those in the 24-8 category understood that because of the relevant factors, usually the nature of the offense and past criminal pattern, they would automatically be put off until what would now be their second review. This could be done through a parole caseworker to insure the advantages of face-to-face contact without necessitating involvement of the Board. This caseworker could also safeguard against overlooking the exceptional case which deserved review by the Board.

The Board could then spend more time and care in weighing the factors of the persons falling in the 7-5 range who now have a 64% chance of denial. A presumption of parole might also be utilized for this category but the extensiveness of the review might be greater than for the 0-4 group. The Significant Factor Score might also be utilized to identify people for extended work release as discussed below.

It is true that if the Significant Factor Score is institutionalized Board policy would tend to freeze. At this moment in time this could be desirable because it would allow identification of the criteria being used; in the future it might

become undesirable. At such a point the Board of Pardons and Paroles could experiment with alternative utilizations of the factors involved.

The Significant Factor Score can be used to great benefit and can be adjusted when Board policy changes or problems facing the criminal justice system change.

The Board of Pardons and Paroles will begin using a new computer system in 1981. If used to its optimum this system should greatly increase the Board's efficiency.

Options: If the Legislature provides the necessary support staff the Board of Pardons and Paroles could make full use of the new computer capability.

The Legislature could place a ceiling on the length of time a person is on parole. As it is now, a person paroled earlier supposedly because he is a lower risk stays on parole longer than another person paroled later in his sentence. The Senate Committee on Delivery of Human Services recommends that a parolee be released after two successful years on parole.⁵²

The parole officer and the court involved could make use of an increased number of community-based facilities if they were available for those who face revocation of parole for minor violations. The Legislature could appropriate adequate funds to ensure that such facilities are available.

Additionally, as recommended by the Senate Committee on the Delivery of Human Services, the Legislature could require that the parole revocation hearings be held in the county where the alleged violation occurred.⁵³

b. PAROLE FOR OFFENDERS OVER 65

The Senate Special Committee on the Delivery of Human Services in Texas has also recommended that TDC identify and recommend to the Board of Pardons and Paroles selected inmates over 65 who should be placed in a pilot project programmed to assist them in obtaining parole.⁵⁴ There are between 700-800 inmates 65 or over in TDC.

c. MANDATORY SUPERVISION

The Sixty-fifth Legislature amended Article 42.12 of the Tex. Code of Crim. Pro. Ann. (Vernon 1979) to require that all persons discharged from TDC be released to Mandatory Supervision. This was done to help these people reintegrate into the community. It is important that newly released persons get this type of aid, but the reach of the supervision could be restricted without harm.

The length of time a releasee is on Mandatory Supervision could be cut either statutorily to a maximum of twelve months or discretion could be given to the parole officer to discharge the person from mandatory supervision after six months if they have successfully met the terms of parole. The goals of mandatory supervision should be arrived at by the releasee and the parole officer and formalized in a contract.

The Board of Pardons and Paroles now has the authority to release a person who hasn't been paroled to mandatory supervision when they have 180 calendar days or less remaining on their sentence.⁵⁵ If this were calculated from the minimum release date rather than the maximum discharge date it would occur six months earlier and serve to reduce the population.

d. SHOCK PROBATION

In its Working Paper on Reducing the Texas Prison Population TDC suggests an increased use of shock probation indicating that 3,000 inmates might possibly qualify. Shock probation is a rehabilitative technique by which a defendant is given a brief taste of prison and then placed on probation. It is authorized by Art. 42.12, Section 3c(a) of the Tex. Code of Crim. Pro. Ann. (Vernon 1979). TDC estimates that as many as 3,000 offenders currently incarcerated could be put on shock probation. They do not indicate which types of offenders would be targeted.

Generally, it is believed that shock probation might be effective with young offenders, driving while intoxicated cases, and unsophisticated first offenders. Since Texas shock probation laws have been in effect less than three years, there is little information concerning its effectiveness.

According to a study of shock probation done by TAPC, it costs approximately \$1300 to put one felon in TDC for 120 days and probate him for 610 days and approximately \$5500 to keep the same felon in TDC for 2 years.⁵⁶ Further, these cost estimates do not take into consideration such indirect cost savings as: (1) taxes paid by probationers, (2) family support paid by taxpayers, and (3) restitution to victims, payment of court costs, fines and fees paid by probationers.

e. PRERELEASE PROGRAMS

TDC operates a limited prerelease program at its Jester I unit. The program's effectiveness could be increased if it gave the inmate contact with the community to which he is about to return.

North Carolina has a prerelease and after-care program in which all inmates within 13 months of the expiration of their sentence are interviewed for voluntary participation in one or more program components. Of the most interest here is the pre-release training program. Inmates are housed in minimum custody prisons, attend coeducational four week programs at prerelease centers away from the prison. They are counseled in areas of self understanding, vocational and educational plans, family life, the community, and finances. They make a plan with their counselor for the best available job and residence and are considered by the Parole Commission for reentry parole. Reentry parole consists of 12 months of supervision.

This program saved North Carolina \$4 million in incarceration costs in 1977. It had a 17.92% recidivism rate.⁵⁷

If such a program were adapted to Texas it could reduce the prison population and help the releasee adjust to the free world. By strengthening the releasee's chance of making it we would also cut future prison population.

identified by the Board of Pardons and Paroles as scoring below 8 on the Significant Factor Score.

South Carolina has had good success with an extended work release program for first or second time offenders who have been sentenced for nondangerous, nonviolent crimes. They live at home with their families or others and work at jobs for the last six months of their sentence.⁶⁰

5. EMERGENCY RELEASE MEASURES

Other states facing compliance with court orders have utilized a variety of approaches to make a one time reduction in state prison populations.

Notable among these is the Michigan Prison Overcrowding Emergency Powers Act.⁶¹ This proposed act would provide that whenever prison population exceeds the rated design capacity for 30 continuous days the Corrections Commission requests that the Governor declare a state of emergency. All minimum sentences are reduced by 90 days. If this doesn't get prison population to 95% of the rated design within 90 days the Corrections Commission can refuse to accept offenders except that (1) offenders sentenced for 6 years or more will be accepted and; (2) offenders sentenced for violent or assaultive crimes, sex crimes, escapes or possession of a controlled substance or weapons will be accepted.

If this doesn't bring the prison population to 95% of capacity within a year another 90 day reduction of minimum sentences occurs.

When the population reaches 95% of rated capacity the Governor rescinds the state of emergency.

Rated design capacity is that capacity in institutional prison beds that provides for constitutionally acceptable conditions of prisoner confinement.

a. Early Release

Another strategy is to release all who have had one parole hearing, unless there is clear evidence of danger presented, as Maryland has done.⁶² A variation of this was used in Kentucky

to allow those scheduled for parole to be released 30-40 days earlier, if they have a job and a home address can be verified.⁶³

b. Maximize Good Time

To reduce its prison population Illinois increased the amount of good time given to one day off for each day served without incident.⁶⁴

Texas already has a liberal good time statute and gives two days credit for every three days served to Class I inmates. And one for three for Class II inmates, with a bonus of one additional day for every three served if the inmate is a trustee. In its working paper, TDC suggests that two days for each day served be awarded to inmates in the four State Approved Trusty classifications beginning from the date they entered the system. This would result in an increase in the number of inmates eligible for parole consideration from 6,306 to 12,894. Additionally 154 inmates would be eligible for release to Mandatory Supervision.⁶⁵

c. Commutation

In their Working Paper TDC also suggests sentence commutation in connection with the Mandatory Supervision Statute. Under the Mandatory Supervision Statute the Board of Pardons and Paroles can release inmates to mandatory supervision 180 days prior to their scheduled release date. If a 90 day commutation were applied to sentences of inmates who entered TDC prior to 1978, approximately 600 inmates would be eligible for discharge.⁶⁶

CONCLUSION

In many ways the measures suggested in the last section are merely a way of playing with numbers and categories to affect a reduction of sentences. They would not be palatable except in an emergency.

A coordinated use of all the options discussed herein should be considered. But even more important than solving the current crisis is developing diversified criminal justice approach which gives the state more alternatives than it currently has. We have important correctional tools in probation, work furlough, and parole. The Legislature has the options available to develop an extensive network of community correctional facilities and services in a coordinated way under centralized leadership. It should carefully consider the costs and benefits that such options can produce.

APPENDIX

COMMUNITY CORRECTIONS IN VARIOUS STATES*

Community correction programs are usually administered in one of three ways.

1. Individual counties run the programs.
2. Two or more units of government, usually counties, form multi-jurisdictional governmental administrations to run the programs.
3. The state runs the programs.

All of the models have inherent strengths and weaknesses, but geography, population and resources are prime considerations in choosing any one model.

Financing is usually from state general revenue funds or on a charge back incentive basis. In the latter case, the state grants funds to participating units of government to keep offenders in the community. Communities sending offenders to prison who could be kept in the community are charged for the full or a portion of the cost for keeping the inmate in the state prison system.

The following is a brief summary of community corrections in various states:

California: California originally utilized probation subsidies as incentives for probation departments to keep more offenders under

* This summary was prepared by the National Conference of State Legislators and appeared in 3 CJ Monitor (Dec. 1980)

their supervision. The money was used by affected agencies. If the counties exceeded a certain commitment rate, monies were cut off. Certain crimes were exempt from the commitment calculation. The current subvention program has the same goal as the subsidy program but works with a slightly different formula. The increased conviction rate has increased the number of commitments and the state has insufficient available bed space. A program that would involve more state-county cooperation as opposed to the state's monitoring of county commitments, is now being considered.

Colorado: Nonviolent felons may be sentenced directly to either residential or nonresidential programs or facilities. In the last year, Colorado had a total of 708 felons participating in community corrections. Facilities may be run by the state or by private contractors with the state.

Connecticut: Connecticut has a network reintegration program set up through private contractors. Five months is an average length of stay. Families of offenders who find themselves without support are also eligible for aid and counseling. Twenty-two agencies have contracts with the Connecticut Department of Corrections. Part of their charge is to provide community education as well as direct services. The Criminal Justice Educational Center coordinates such activities and tries to bring together the citizen, legislator and professional to achieve solutions.

Florida: Florida utilizes extensive work release programs near the end of a sentence. There is a new trend to sentence some

offenders directly to work release programs. Funds are appropriated by the Department of Corrections according to the needs of each of the five regions. Working offenders contribute a sliding scale percentage of their income to their room and board.

Georgia: Both probationers and parolees utilize the services of community restitution centers when possible restitution is a factor under consideration. Close to \$1.6 million in restitution was collected in Fiscal Year 1979. The Department of Offender Rehabilitation (DOR) counties now receive over \$4.1 million for housing state inmates in a variety of facilities.

Hawaii: Halfway houses which serve as pre-trial and pre-sentence diversion centers, transitional pre-release centers and minimum security correctional centers are utilized for work release, vocational, and educational programs. Some inmates may get an extended furlough, live at home, but report to a correctional center supervisor. Financing is from the general fund distributed to specific agencies.

Illinois: Illinois is in the process of extensive community services planning. Community correctional work release centers are operated by both the state and private sources. About seven and one-half million dollars was appropriated in 1979 under the Welfare and Rehabilitation Services Planning Act.

Indiana: Pre-release, work release and restitution centers are funded according to the needs of the program, not on a strict per diem basis. The average stay in work release is 3 months with a turnover of 1600 per year. Minimum security inmates are given

short unsupervised furloughs. There is a charge to counties who incarcerate inmates eligible for community corrections. Close to \$7 million was appropriated for community corrections in 1979. Iowa: Multi-county divisions have facilities and programs for alternatives to incarceration. A case management system sets goals for each client. Problems, such as low education level or alcoholism, which interface with criminal activity, are dealt with. All the geographic regions in Iowa participate. There has been community acceptance based on a pragmatic acknowledgement of prison costs and of the benefits received from community corrections.

Kansas: Less serious felons are sent to community corrections. There is a charge back to the agencies that send those offenders to prison. Counties have the option to join or not to join in the community corrections program. Programs are targeted for juvenile and adult offenders. It is held that the prison will confine primarily violent, predatory and dangerous inmates who are a threat to physical safety.

Kentucky: A "gradual release" approach is used to reintegrate the paroled offender back into the community. Volunteers and job referral centers are used to achieve successful reintegration.

Maryland: Community Adult Rehabilitation Centers (CARC) house those convicted of crimes, but who do not present a danger to the community. The Montgomery County Work Release/Pre-Release Program is recognized as an exemplary project. Working on the premise that most inmates do return to the community, the Work Release/Pre-Release Program accepts almost anyone prior to

parole. Inmates are under intensive supervision but are given extensive reintegration help. Anyone who "flunks" the program loses parole eligibility. The program's motto is "freedom through responsibility."

Minnesota: The Minnesota Community Corrections Act, passed in 1973, is the model for many other programs. It assumes that (1) most offenders do not require incarceration and (2) incarceration decreases the chance of success upon release. County participation is voluntary, with over 70% of the population now included. Serious offenders are still incarcerated. The goals of community corrections are to (1) protect the public, (2) save money and (3) encourage appropriate treatment of offenders.

Michigan: Michigan operates both work release and furlough programs before parole eligibility. Housing may be in the YMCA, private homes or hotel rooms. Costs are less than half of incarceration. Inmates in such programs pay taxes, contribute to their own support and that of dependents, and save money for their release.

New Jersey: New Jersey operates a number of programs in the general category of work release, educational release and furlough. The New Jersey Correctional Master Plan "calls for alternatives to incarceration that will lead to more successful reintegration of the offender into society." Per diem institution costs average out to about \$32. Community corrections costs vary between \$12.00 and \$26.00 per day.

New York: Long term temporary release and short term temporary release programs are operational in New York. The total number of participants in both programs in the years 1978 and 1979 was 10,245. The highest percentage of absconders in one year was 1.29% and the highest percentage of new arrests in one year was 0.6%. New York also operates furlough programs for some inmates within a year of release to strengthen family ties.

Ohio: Some felony offenders in Ohio are fined; some are given short county jail sentences, and about half are placed on probation. Montgomery County operates a structured community release program for non-violent felons who would otherwise go to a state institution. A secure setting is provided along with educational and vocational programs. The county subsidy programs are expected to reduce the number of prison commitments without increased risk to the community. Nine of the 88 counties are presently participating. Generally, working offenders contribute 15% of their gross income towards their room and board.

Oklahoma: Fifteen percent of Oklahoma's population are now in community centers. Motels, apartments, a school and a hospital are among the structures purchased or leased and remodeled. Residents are offered work, education and counseling programs. Men must be within six months of probable release and women within one year. Residents must be non-violent, non-escape risks, and have a good institutional record. There are currently 9 centers in the state.

Oregon: Less serious felons are eligible for community corrections. If a participating county sends such a felon to

prison, it must pay back to the state a portion of its community corrections grant money. Community correction funds can be used to provide services in the county jails, but not for repair, construction or renovation. Under certain circumstances, state probation personnel may become county employees. Whether or not they do, the county has authority over work assignments and performance appraisals. The special needs and attitudes of the communities are reflected in the varied county plans.

Pennsylvania: The Pre-Release Act in Pennsylvania authorizes temporary home furloughs, work release, and educational release. Inmates can utilize halfway houses for work or school. Most participants are within 6 months of parole.

Virginia: In 1980, the General Assembly enacted the Community Diversion Incentive Act. Participating localities may receive up to \$4,000 for each adult offender diverted from incarceration which now costs nearly \$12,000 per year. Non-violent offenders who meet specific criteria are eligible for diversion. Diagnostic evaluation will be made of each client who will be expected to pay restitution, if applicable, participate in community services, and get and keep a job. The Chief Circuit Judge must approve the diversion in writing.

Washington: Conventional probation and intensive supervision are utilized in Washington to manage adult felons in the community at no greater risk and much less cost. Marginal offenders and probation and parole violators may go into intensive supervision after careful screening. Institutionalization is at least 15 times as costly as supervision. Eligibility is determined, in

part, by the level of risk the offender presents to the community. Violent acts are examined in context and such offenders are not necessarily ruled out. The ability of the offender to respond to programs and of the community to provide the necessary programs are also considered. If certain elements of a community are especially fearful of or hostile to a specific offender, approval will be denied. At present 450 men and women are in intensive supervision.

Wisconsin: The Bureau of Community Corrections supervises adults and youthful offenders in community centers and those on probation and parole. The drug, alcohol and vocational services are under private contract. About a dozen halfway houses are also under private contract.

The following observations can be made:

1. Community corrections programs can be designed to serve misdemeanants, felons, or both.
2. They may serve adults or adults and juveniles.
3. They may be run by the state, the county, a local unit of government, or by private contractors.
4. A person may be sentenced directly to community corrections or sentenced to community corrections as a condition of probation or pre-parole release.
5. Programs may divert offenders before conviction, before incarceration, or provide supervised early release.
6. Restitution is a common component of programs.
7. Programs bring money into participating communities and employed offenders directly and indirectly contribute financially to the community.

8. Incarceration generally does not affect the crime rate, but the effect of community corrections on incarceration rate depends on the population growth, population at risk, unemployment, inflation, and a host of other variables.
9. Programs can be improperly used to "widen the net," i.e., to extend control over people who do not really need it.
10. Most communities have not been educated to the fact that over 90% of the offenders will return at some time.
11. The program or services tend to be blamed if a participant recidivates, but the success of the prevention measures is difficult to assess.

FOOTNOTES

- 1 TDC "Tentative 10 Year Projections".
- 2 Legislative Budget Board, TDC Budget Budget Proposal (Nov. 1980)
- 3 TDC "Bed Count", Aug. 18, 1980.
- 4 Ron Lindsey, LBB, "Budget Analysis for TDC." Exhibit 5.
- 5 Id.
- 6 Interview with Ron Lindsey, Oct. 10, 1980.
- 7 Interview with Jim McDonough, Texas Adult Probation Comm. Sept. 16, 1980.
- 8 Id.
- 9 Id.
- 10 Interview with Don Stiles, Texas Adult Probation Comm. Sept. 22, 1980.
- 11 "Marshalling Citizen Power to Modernize Corrections," Corrections Magazine (June 1979) at 7.
- 12 David Boorka, Community-based Corrections in Des Moines (1976) at 1.
- 13 "Working Paper, No. 65-09-80A, (Sept. 1980) See Summary of Findings.
- 14 Telephone interview with Spencer McClure (MHMR), Oct. 13, 1980.
- 15 see Section 20.6[1] and [2].
- 16 Supra, McClure.
- 17 Advisory Council of Judges of the National Council on Crime and Delinquency, Model Sentencing Act, (1963) Comment to section 9 at 29.
- 18 Telephone interview with Ted Arevalo (Asst. D.A.) Sept. 22, 1980.
- 19 see p. 10.

FOOTNOTES (cont.)

- 20 Memorandum on Governor's Parole Study by Div. of Research and Planning, Governor's Office, Sept. 5, 1980.
- 21 "Marshalling Citizen Power," supra at 8.
- 22 National Council on Crime and Delinquency, Sourcebook on Alternatives to Prison in California at 34.
- 23 Interview with Milton Rector (National Council on Crime and Delinquency) Sept. 29, 1980.
- 24 The Potential in the Patchwork (Nov. 1980) at 66.
- 25 Supra Sourcebook at 67.
- 26 Id. at 65.
- 27 TDC computer print-out Aug. 31, 1980.
- 28 Over 80% of the respondents to a recent Texas Crime Poll done by Sam Houston State University identified restitution as an important component in helping to return offenders to the community.
- 29 Supra, Sourcebook at 79.
- 30 Steve Balkin, 64 Judicature 154.
- 31 Interview with Rector, supra.
- 32 Supra, Sourcebook. See also Report of the Task Force on Prison Overcrowding, Maryland (1979) for a similar set of recommendations.
- 33 Report of the Governor's Task Force on Prison Overcrowding, Maryland (1979) App. K at 79.
- 34 David Sheppard, "National Evaluation of the Neighborhood Justice Center Field Test," 3 Pretrial Services Annual J. 193-209.
- 35 Id. at 207.
- 36 Id. at 209.
- 37 Supra, Arevalo.
- 38 Amer. Bar Assoc., Standards Relating to Sentencing Alternatives and Procedures (Sept. 1968) at 61.
- 39 Id. at 59.

- 40 Id. at 60.
- 41 Id. at 61.
- 42 Vol. I at 36.
- 43 TDC computer print-out, October 31, 1980.
- 44 Joint Advisory Committee on Government Operations, 65th Legislature of Texas, Report on Corrections (1977 Hobby-Clayton Report) at 11.
- 45 Id. at 12.
- 46 See The Final Report of the Joint Committee on Prison Reform of the Texas Legislature (Dec. 1974), House Study Group Overcrowding in Texas Prisons I (1979) and Special Committee for Delivery of Human Services, supra.
- 47 Special Committee on Delivery of Human Services, supra at 25.
- 48 Id.
- 49 Research and Planning Div. Texas Board of Pardons and Parole (1/80).
- 50 Scores range from twenty-four to zero. Points are given prior incarceration; prior paroles; prior parole revocations; probations revoked for the current offense; number of offenses; use of weapon; bodily injury or value over \$10,000; prior arrests; prior jails; number of institutional disciplinarys.
- 51 A similar though more elaborate approach has been used by the U.S. Parole Commission. It is called the Salient Factor by Score.
- 52 Supra at 26.
- 53 Id.
- 54 Id.
- 55 Tex. Code of Crim. Pro. Ann. (Vernon 1979 art. 42.12).
- 56 Joe Kozuh, 1980 TAPC Shock Probation Survey at 1.
- 57 Council of State Gov'ts., Innovations: A Review of Innovative Criminal Justice Programs (March 1980) at 13.
- 58 Tex. Rev. Civ. Stat. Ann. (Vernon 1970).

- 59 Agenda for Regular Meeting of Texas Board of Corrections,
(Sept. 8, 1980) Exhibit A.
- 60 Sourcebook, supra at 42.
- 61 Joint Legislative/Executive Task Force, Michigan Proposed
Prison Overcrowding Emergency Powers Act (1980).
- 62 National Council on Crime and Delinquency, Memorandum on
Release Mechanisms (June 1980).
- 63 Id.
- 64 Id.
- 65 at 27.
- 66 at 25.

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