

## INMATE WORK ALTERNATIVES

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Justice Brennan noted in *Trop v. Dulles*<sup>1</sup> that the four principal purposes for punishing an offender are retribution, isolation, rehabilitation, and deterrence from further crimes.<sup>2</sup> The most frequently verbalized emphasis since the reform movement of the nineteenth century has been on humanitarian reform or rehabilitation of the criminal.<sup>3</sup> Thus, prisons changed from the Dickensian workhouses to the Pennsylvania penitentiaries, where inmates were literally left in stark isolation to meditate on their sins and, hopefully, to divine a better course for their lives.<sup>4</sup> The *Auburn* system combined this approach with a program in which inmates worked during the daytime hours, returning to their silent sequestration at night.<sup>5</sup> Work was seen as a form of rehabilitation to the community norm, as well as a means for passing the otherwise idle time spent in the institution.<sup>6</sup>

In New Jersey, the *Auburn* system was followed in the State's prisons until 1911, when the Osbourne resolution,<sup>7</sup> following a

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<sup>1</sup> 356 U.S. 86 (1958).

<sup>2</sup> *Id.* at 111-12 (Brennan, J. concurring). See also G. Sykes, *The Purposes of Imprisonment*, READINGS IN CRIMINOLOGY AND PENOLOGY (2d Dressler 1972) at 578-81.

<sup>3</sup> See e.g., D. Clemmer, *Imprisonment as a Source of Criminality*, in READINGS, *supra* note 2, at 509-10.

<sup>4</sup> ROTHMAN, *THE DISCOVERY OF THE ASYLUM* at 79-108 (1972).

<sup>5</sup> *Id.* at 82-88.

<sup>6</sup> *Id.* at 86.

<sup>7</sup> Ch. 372, § 1, [1911] N.J. Laws 768.

general trend in the United States, prohibited prison administrators from hiring out inmates to private contractors.<sup>8</sup> The "state use" system<sup>9</sup> remains in effect today, and requires that:

No contract shall be made by which the labor or time of any inmate of any of the institutions within the jurisdiction of the state board, or the product or profit of his work, shall be let, contracted for, leased, farmed out, given or sold, except in accordance with the provisions of this title.<sup>10</sup>

Conversely, the "state use" industries were established for the production by inmates of goods for use by State institutions and agencies.<sup>11</sup> Once again, the reason for the change in prison labor policy was primarily humanitarian.<sup>12</sup> The reformists feared that convict laborers would be exploited and mistreated at the hands of private industrialists, who were naturally interested in the supply of labor available to them at little or no cost.<sup>13</sup> At first, the "state use" industries were a dismal failure in New Jersey, and not enough jobs were found for the inmates of the prisons,<sup>14</sup> so that existing contracts with various private industries were continued.<sup>15</sup>

<sup>8</sup> Cf. 18 U.S.C.A. § 1761 *et seq.*

<sup>9</sup> N.J. REV. STAT. 30:4-95, 97. So called because the state is required to purchase the products of inmate labor; any surplus may be sold on the general market.

<sup>10</sup> N.J. REV. STAT. 30:4-93 (1918).

<sup>11</sup> Report of the Prison Inquiry Commission to Governor Walter Edge (1918) at 210 [hereinafter 1918 Report]. See also, Riskin, *Removing Impediments to Employment of Work Release Prisoners*, 8 CRIM. L. BULL. 761, 766-67 (1973).

<sup>12</sup> Interim Report of the Commission on Vocational Education in Correctional Institutions (1971). [hereinafter Interim Report].

<sup>13</sup> See e.g., G. Killinger and P. Cromwell PENOLOGY at 295-96 (1973).

<sup>14</sup> Prison Inquiry Commission, Preliminary Report (1917) at 11, shows that the general prison population at that time was employed as follows:

Required for operation of prison .....	296
Not available for physical work on account of mental or physical incapacity .....	90
Not available for outside work on account of character or criminal record .....	520
Nurses and sick in hospital .....	35
Women .....	16
Now available for outside work .....	288
	949
Total in prison .....	949
Total in road camps or on prison farm .....	215
	1,164
Grand total .....	1,164

<sup>15</sup> 1918 Report, *supra* note 11, at 211; Annual Report of the State Prison (1914) at 16; Preliminary Report (1917) at 100; cf. C. Stonaker, *Prison Reform in New Jersey*, PRISON LABOR, 154f (1913).

## *The Current System and Problems*

Gradually, the requirements of the institution, including maintenance, food supply, laundry services, and clothing manufacture, as well as the trustee system, have increased to the point where today they demand much of the labor inmates can provide.<sup>16</sup> Additionally, some few eligible inmates are permitted under the State's work release program to labor in the community during working hours, returning to the institution at night.<sup>17</sup> Others are enrolled in vocational training programs established on a limited basis within each institution.<sup>18</sup>

Under the "state use" system, inmates frequently complain that hours are too short, the machinery is antiquated, and too many workers are assigned to each of the tasks. As a result, the work is inefficient and frustrating. The items manufactured are often license plates or highway signs, the production of which provides little, if any, marketable skills training.<sup>19</sup>

The belief of prisoners and prison officials that inmate labor is not being put to its fullest possible use is substantiated by the fact that the work inmates perform during their tenure in the state institutions does nothing to further their rehabilitation. Recent cosmetic changes which term prisons as "correctional institutions" and guards as "correctional officers"<sup>20</sup> do not belie the fact that prisons have, for the most part, failed in their attempts to return inmates to a more useful role in society.<sup>21</sup> Indeed, both crime and recidivism rates continue to grow,<sup>22</sup> thereby feeding the widely held belief that prisons may in fact be "schools" for more serious criminal endeavors.<sup>23</sup>

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<sup>16</sup> 1973 STATE LAW ENFORCEMENT PLANNING ADMINISTRATION REPORT ON N.J., at 24-25 [hereinafter SLEPA Report] notes that in 1972 there were 767 state jobs, to which 2,991 inmates were assigned, earning \$108,710.26. At the same time 318 inmates were on work release, earning more than \$1,000,000. This is a total 1,085 out of 3,383 incarcerated in state institutions.

<sup>17</sup> N.J. STAT. ANN. 30:4-91.1 *et seq.* (1969).

<sup>18</sup> See *e.g.*, Interim Report *supra*, note 12 at 14-21. Housekeeping jobs are noted as the major type of inmate labor in R. Englan, *New Departures in Prison Labor*, THE PRISON J. at 21 (1961).

<sup>19</sup> Interim Report, *supra*, note 18, at 28-29.

<sup>20</sup> AMERICAN CORRECTIONAL ASSOCIATION, MANUAL OF CORRECTIONAL STANDARDS at 18 (1966).

<sup>21</sup> SLEPA Report, *supra* note 16, at 75; Interim Report, *supra* note 18, at 31.

<sup>22</sup> *Crime in New Jersey*, UNIFORM CRIME REPORTS at 29, 32, 34 (1971); Statement of Dean Horace De Podwin of the Rutgers University Graduate School of Business before the Assembly Institutions and Welfare Committee on Prison Reform, June 12, 1972, Interim Report, *supra* note 18, at 2.

<sup>23</sup> D. Clemmer, *Imprisonment as a Source of Criminality*, in READINGS, *supra* note 2, at 509-10.

One of the readily apparent problems with the use of state industries as rehabilitative tools is the realization by corrections officials that occupations such as sign making or institutional food preparation may be neither available nor desirable to the inmate upon his release.<sup>24</sup> It is conceded that unemployment is one of the causes of recidivism,<sup>25</sup> and that inmates face discrimination or prohibition from many occupations on their return to society.<sup>26</sup> Thus, if the continuing cycle of unemployment and recidivism is to be abated,<sup>27</sup> it is incumbent upon state institutions to train inmates for work that will be productive and useful upon their discharge.

If training is to be useful to the inmate, it must employ modern techniques and technologically contemporary equipment. A prison training program which uses antiquated machinery or which cannot avail itself of competent outside personnel to train inmates in the use of up-to-date equipment is of little value to a prisoner returning to a constantly changing society.<sup>28</sup> Key punch machines, for instance, are continually updated, and prisons can afford neither to purchase the newer models nor to revise their programs to train inmates in the latest system.<sup>29</sup>

Women inmates must contend with particularly inadequate training programs. Currently, New Jersey has only five vocational training programs available.<sup>30</sup> These are of little value since the State prohibits felons from obtaining licenses to practice even the traditional "beauty culture" services for which these women are trained.<sup>31</sup> If the prison labor system is to undergo change to alter

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<sup>24</sup> Goldfarb and Singer, *AFTER CONVICTION* (1973) at 627:

What does rehabilitation mean? I come in as a laborer and I will go out as a laborer. They taught me to make tags. I got news for you, baby. In six months you'll have me back makin' those tags.

Recidivism often stems from lack of education and job skills according to former Governor Cahill's Second Annual Message at 12 (1972).

<sup>25</sup> D. GLASER, *THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM*. See also, Final Report of the Commission on Vocational Education in Correctional Institutions at 29 (1971) [hereinafter Final Report].

<sup>26</sup> N.J. statutes contain 49 prohibitions against licensing for various occupations.

<sup>27</sup> SLEPA Report, *supra* note 16, at 75.

<sup>28</sup> See generally, Report on the Economic Status and Rehabilitative Status of California Correctional Institutions, California Legislature at 190-20 (1969) [hereinafter California Report].

<sup>29</sup> W. NAGEL, *THE NEW RED BARN* (1973); see also, California Report, *supra* note 31, at 22.

<sup>30</sup> In addition to traditional beauty schools, there are development training programs available to Clinton women in such fields as nurse's aide, electrical assembly, quantity food service, pre-vocational and clerical occupations. DIVISION OF CORRECTIONS AND PAROLE, ANNUAL REPORT (1971-72) at 9.

<sup>31</sup> N.J. REV. STAT. 45:4A-15 (a) for instance, provides that the board of beauty culture control may refuse to issue a license on proof of the conviction of a crime involving moral turpitude.

the focus of the women's prison from the traditional view of women as homemakers and domestics, women inmates must be allowed exposure to the industries and professions reserved, until recently, for men or exceptional women.<sup>32</sup>

Another area of critical importance is the inmate pay scale. The average wage an inmate receives in New Jersey is \$1.00 per day,<sup>33</sup> compared with a proposed minimum wage of \$2.00 or more an hour for similar work outside the prison systems.<sup>34</sup> The common justification for this low wage is that the State must expend an average of \$11,000 per year per confined person.<sup>35</sup> A great percentage of this figure is assigned to functions of security; very little is allocated to actual expenses of room, board, and training.<sup>36</sup> Obviously, the incentive in the marketplace for a greater output which would lead to increased wages is, to a large extent, lacking. Labor efficiency is therefore low. The low wage coupled with the common complaint that the work is meaningless, repetitive, and requires little skill, partially explains the failure of prison work to enhance the total rehabilitative scheme. In fact, such labor may be more harmful than the "idleness" feared by the reformers who initiated the program.<sup>37</sup>

While work release programs are a decided improvement over institutional employment, defects are inherent in the system. Most inmates in state institutions are not available for work release until the expiration of their term is imminent.<sup>38</sup> Even then, the expense and inconvenience of transporting inmates from an isolated institution may make employment unfeasible.<sup>39</sup> In addition, many inmates may lose their jobs or find them impossible to hold upon release because of their distance from home and family.<sup>40</sup> Hopefully, the course of changes in corrections during the next years will see work release and training programs restructured so that

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<sup>32</sup> See, *Kahn v. Shevin*, No. 73-78, decided April 24, 1974, —U.S.—, 42 U.S.L.W. 4591, 4592, 4593; *Frontiero v. Richardson*, 411 U.S. 677, 689 n. 22 (1973).

<sup>33</sup> Final Report, *supra* note 25, at 15.

<sup>34</sup> The current minimum wage is \$2.10 for every employee whose employer's goods are engaged in commerce or are produced for use in goods engaged in commerce. 29 U.S.C.A. 206 (a) (1) (1938) as amended 29 U.S.C.A. 206 (a) (1) (1963).

<sup>35</sup> State of New Jersey, Dept. of Institutions and Agencies, Budget, 1973; Progress Towards Objectives (1971-72).

<sup>36</sup> N.J. Budget, *supra* note 35, at 239.

<sup>37</sup> D. Mac Namara, *Prison Labor and Employment*, CRIME IN AMERICA (Black, ed. 1961) at 61.

<sup>38</sup> Interim Report, *supra* note 18, at 75.

<sup>39</sup> Final Report, *supra* note 25, at 22. See Root, *Work Release Legislation*, 36 FED. PROB. 38, 41 (1971).

<sup>40</sup> See e.g., In re Richard Williams, N.J. Bd. of Rev., Div. of Employment Security, B.R.-72380, D&E. decided Mar. 9, 1970 at 3.

meaningful vocational training will take place in the community. Nevertheless, it is important to note that work release alone cannot solve the problem of recidivism.

Other problems far more substantial than job location face the inmate upon his release. Typically, the inmate leaves the institution with no cash or a minimal allowance from the probation department and is faced with the immediate task of finding work.<sup>41</sup> Since in all probability they are not eligible for unemployment compensation,<sup>42</sup> they often join their dependents on welfare rolls before returning to crime.<sup>43</sup> This phenomenon is compounded by the fact that they have little opportunity within the institution to learn to handle their financial affairs as ordinary citizens. As a result of this cycle of poverty, they are unable to pay judgments against them or to compensate the victims of their former criminal activities.<sup>44</sup> In short, it is readily apparent that the prison in-

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<sup>41</sup> Interim Report, *supra* note 18, at 75.

<sup>42</sup> In re Richard Williams, N.J. Bd. of Rev., Div. of Employment Security, B.R.-72380 D&E, March 9, 1970 at 3.

<sup>43</sup> On January 1, 1973, according to a sample taken by the Welfare Department of 1% of the state AFDC caseload, 3.2% of the total cases, or 3,864 families, were eligible for welfare because the father was incarcerated either in a state or a county institution. At the same time, there were 5,350 men incarcerated in state institutions (Youth and Trenton complexes) and 3,811 men and women imprisoned in county institutions. (This latter figure is based upon an 8% projected increase from a population of 3,529 as of November, 1970. It includes women, but in such a small percentage that the numbers are at least useful.) The ratio of inmates in state institutions to inmates in county institutions is 5350/9161. Extrapolating, this would yield a figure of 2,255 male inmates, or 42.1% in adult institutions who were fathers of families listing incarceration as the reason for welfare eligibility. Statistics are from James Palladino of the Department of Welfare, Trenton, and Joseph Maisto, population statistician Correctional Information Service, Division of Corrections and Parole. These figures were obtained in phone conversations on May 2, 1974.

The estimate is rough at best and may be a great deal too low since (1) women were included in the county institution statistics, (2) there is no estimate of a difference in type of institutionalization with dependents on welfare, (3) some women may support families not on AFDC because of their imprisonment, (4) not all families on AFDC would necessarily list incarceration as a reason for claiming eligibility.

<sup>44</sup> In California, for instance, the total inmate contribution to the state's indemnity fund was:

1968-69	\$5,700.
1969-70	5,079.
1970-71	1,414.

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Total      \$12,193.

The total paid to victims of violent crimes in the same time period was \$1,300,000. The reason given for the low payment total by inmates was their almost universal indigency. Phone conversation of Peter Cantusi, Washington, D.C. March 1972, with Richard Godegart, California State Board of Control Office.

Mr. Jahnke, Chairman of the New Jersey Violent Crimes Compensation Board, says that no one to date has paid this State fund through the subrogation clause, again since inmates are usually indigent. Phone conversation of May 1974.

dustries are less than adequate in promoting "socially useful" values or in contributing to the general production of goods and services.<sup>45</sup>

### *Alternative: Community Corrections*

The present system, which includes imprisonment in large correctional institutions followed by release on parole or probation, is far from effective. Fortunately, the trend has been toward decarceration of offenders, individualized treatment in small community centers, and meaningful training without separation from the "real world".<sup>46</sup> While this movement should be encouraged, a realistic assessment of corrections must recognize that the present system cannot be easily be abolished. Reformers of the present system should attempt to neutralize its worst features, thereby promoting the ostensible goal of correction, while admitting that an ideal system of corrections is not immediately foreseeable.

An important step in this neutralization process is the expansion of the inmate labor program both while in prison and after discharge. This can be facilitated, in part, by bringing private industry to the institution.

### *A Proposal for Private Industry Contracts in Correctional Institutions*

The main theme of our proposal is that private industries contract for inmate employment within the institution, that they hire and train inmates during their prison term, and that they guarantee job placement upon release. The individual considerations set forth are not meant in any way to detract from these primary purposes and should only be regarded in the context of *possibilities* of specific attributes of such a program.<sup>47</sup>

### *Policy Considerations*

#### *(a) Corporate participation*

The industry applying for a contract to operate a plant within a correctional institution might consider the following reasons in favor of beginning such a program: (1) the institutional program might train persons for jobs that the industry otherwise has

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<sup>45</sup> California Report, *supra* note 28 at pg. 4. See also, N. SINGER, THE VALUE OF ADULT INMATE MANPOWER, AMERICAN BAR ASSOCIATION (1973).

<sup>46</sup> See, e.g. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS (1967) at 38-44.

<sup>47</sup> It should be noted that the State of New Jersey is used for purposes of exposition only, these recommendations should be applicable in any large-scale correctional system.

difficulty in filling; (2) a product would be manufactured in the plant; (3) the program would demonstrate community involvement on the part of the industry, a valuable public relations tool.

(b) *Institutional participation*

The correctional institution deciding to allow inmates to be employed by private industries within the institution might do so (1) because it is an effective additional means of keeping inmates productively occupied and (2) because it includes and should increase post-release hiring, thereby reducing the possibility of recidivism.

*Initial Considerations in Adopting the Proposal*

Before undertaking an intra-institutional contract, both the state and the potential industry-employer should consider a number of factors.

(a) *Financial solvency*

It is essential that the program have the capability of functioning for a long enough time to benefit the participating inmates and to permit an evaluation of its contribution to the institution and the industry.<sup>48</sup> Substantial industry investment is involved: outfitting the prison plant, providing materials, supervision and security personnel, as well as paying wages, are all costs with which the industry must deal. In return, however, the institution can offer a work force and facilities for the plant, as well as eliminate cafeteria and transportation problems.<sup>49</sup>

(b) *Provision of inmate employment*

The applying industry should agree to operate in accordance with the policy of inmate hiring in the intra-institutional plant. Obviously some outside employees will be necessary to train the inmates and to function in other managerial and supervisory capacities. Similarly, the industries must have some say as to which inmates they wish to hire. However, they should recognize that they are participating in such a project for reasons which transcend transitional profit and loss statements. They may, of course, use the program to test their on-the-job training programs and to meet employment needs that are difficult to fill elsewhere. Upward mobility by inmates within the program should be included in the

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<sup>48</sup> Yearly or bi-annual reports could be furnished to the Department of Institutions and Agencies for analysis. Of course, it might only be useful for showing a decrease in recidivism rates, should there be one, after a reasonably long period of time.

<sup>49</sup> Inmates in work release or similar programs require less custodial personnel than do those confined within the cells.



context of training programs and advancement schedules that are available to employees in the free community.

There is no reason, however, why inmates with white collar employment backgrounds, or those who might profitably be trained for such occupations,<sup>50</sup> could not fill some managerial positions, especially if these potential inmate employees will be in the program for a substantial period of time. The system could further upgrade the entire character of released prisoners, changing them from unskilled, unemployable persons to skillful workers with the prospect of continued advancement in their industry.<sup>51</sup>

If a private industry program is to be meaningful, the employer must have a capacity to absorb a significant number of the inmates upon release. For this reason, the program may intentionally be kept small, so that provision of necessary equipment and materials will not inordinately strain prison or corporate budgets and the corporation will not have to *make* work for prisoners on their release.

(c) *Materials, supervision, equipment*

As stated earlier, it is important that machinery be kept up-to-date and in good working condition. Inmate training becomes dysfunctional when the released individual is skilled in the operation of machinery irrelevant to his industry. Additionally, improvement in working conditions promotes better morale and a better finished product.

(d) *Employment on release*

Perhaps the most important function of the system is its preparation of the inmate for release. The released inmate faces employment problems far greater than persons with similar educational and employment histories who have no criminal record.<sup>52</sup> Despite the long term benefits to society and industry if recidivism can be checked, employers are understandably reluctant to hire persons who have been labeled "unreliable" or "untrustworthy" and who have no marketable skills.<sup>53</sup> Persons involved in work release often

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<sup>50</sup> According to aptitude tests, nationally 3.3% of the prison population were engaged in professional and technical occupations; 4.2% were engaged in managerial and ownership positions, 8.5% were clerical and sales workers. N. Singer, *The Value of Adult Inmate Manpower*, AMERICAN BAR ASSOCIATION at 4 (1973). [hereinafter *Inmate Manpower*].

<sup>51</sup> *Id.* at 6. "About 47% of all inmates fall into the lower right cells of the Table (the three lowest skills categories, with less than 4 years of high school)."

<sup>52</sup> See, e.g. *Crime in New Jersey*, UNIFORM CRIME REPORTS at 29, 32, 34 (1971); Statement of Dean Horace De Podwin of the Rutgers Graduate School of Business before the Assembly Institutions and Welfare Committee on Prison Reform, June 12, 1972, at 117; INTERIM REPORT OF THE COMMISSION ON VOCATIONAL REHABILITATION IN CORRECTION INSTITUTIONS, at 2 (1971).

<sup>53</sup> See, e.g. REMOVING OFFENDER EMPLOYMENT RESTRICTIONS, AMERICAN BAR ASSOCIATION, at 2 (1973).

find that their jobs are no longer available upon their release from the institution, even if they have satisfactorily performed in the program.<sup>54</sup> Some inmates must terminate employment at their release simply because they reside a great distance from the prison where they participated in the program.<sup>55</sup> There is no reason why a participating industry should lose a valuable trained employee upon his release; indeed, this transience is one of the reasons advanced for *not* investing money in current work-release programs. The continued provision of employment opportunities to those inmates performing satisfactorily in a private industry plant would, to a large extent, eliminate an "excuse" for repeated criminal behavior on the part of these inmates, especially in those industries large enough to maintain several plant locations, one of which might be closer than the prison to the inmate's home community.

An employer must have some voice in the selection of inmates he will employ after their release. The employment guarantee should no more unduly restrict the employer's right to select his employees than prevent a good inmate worker from continuing in his employment upon his release. As a matter of policy, it is suggested that former inmates not be offered less than their salaries while in the institution, and that they be employed in at least as responsible a position when they join the free community. This would serve substantially to ameliorate the current aura of futility attached to prison related employment.

(e) *Agreement of union*

State correctional agencies will have to make the program attractive to organized labor. What status should be granted a prisoner working for a minimum wage on more than a short-term basis? There are several alternatives which might be considered. For example, the inmates involved could form a local branch of the union to provide arbitration, negotiation, and representation services similar to those available in outside unions.<sup>56</sup> Union opposition to employment of outside labor might be partially

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<sup>54</sup> Inmate Manpower, *supra* note 50.

<sup>55</sup> The current practice is to find these inmates ineligible if work release jobs are still available. In re Richard Williams New Jersey Board of Review, Division of Employment Security, BR-72380 D&E, decided March 9, 1970. This is although the work release program at Rahway, for instance "attempts (a) to find employment for a man while he is still incarcerated, which he can retain after release from prison". REPORT OF THE WORK RELEASE PROGRAM at 1 (1974).

<sup>56</sup> See, e.g. Cohen, *Labor Unions for Prison Inmates*, 21 BUFFALO L. REV. 643 (1972); Root, *Work Release Legislation*, 36 FED. PROB. 38 (1972). An alternative is an internal grievance committee. See United Prisoner's Union, Constitution.

dispelled by pointing out that the intra-institutional plant will need outside staffing, that members would pay union dues, and that the program is good both in terms of long range reduction of crime and overall public relations.

A union contract could establish, in addition to terms endemic to labor agreements, such as parties, duration, situs of work, goods to be produced, and wages to be paid, assurances of adherence to the general policy behind the whole intra-institutional program. This would guarantee against a return to the abuses of the old convict labor system.

### *Determinants of Inmate Eligibility*

Criteria for determining which inmates should participate in the program may be numerous, and a profile of the most successful inmate employees will prove most useful. Success will of course depend upon the individual industry and individual laborer, but an employer might wish to consider the following:

(a) *Length of time to be spent in the program*

To be successful in a work alternatives program, the inmate must participate for a long enough period of time to make his employment profitable both to himself and to the employing industry. This time period may include time within the institution, time on work release, and time after release.

(b) *Classification*

The participating inmates should be part of the general prison population and should not be considered so substantial a security risk to personnel or property in the program as to outweigh the benefits derived from participation. This judgment of suitability should, in all likelihood, be made by the institution.

Guaranteeing a fairly low security risk to both participant and property is important in minimizing the number of security personnel required for the institutional plant (and thus lowering costs), as well as enhancing the appeal the program might have to private industries. The criminal record of an inmate might be considered in this context.

(c) *Ability to adhere to rules*

If the rules applying to the work alternative program are available in writing for participating inmates, and eligibility for the program is conditioned upon reading and agreeing to these rules, inmates can be removed from eligibility without the appearance of arbitrariness if the rules are broken. Care should be taken to limit the number of rules as much as possible and they should be written

in language understandable to the average inmate. Rules will be more acceptable if inmates take some part in their formulation.<sup>57</sup> Rules governing the program should be uniform throughout the state system to prevent charges of extreme leniency or unfairness.

(d) *Vocational aptitude*

Some inmates unfortunately are not suitable for participation in work training programs because of lack of vocational aptitude. It would be less costly and more beneficial to both employer and employee to have this class of inmates participating in another type of employment. Considerations would include the types of jobs and employment record of the inmate prior to incarceration.

*Release of the inmate: continued employment*

Since a guarantee of employment assures that the employing industry's investment in training and salary will not be wasted, and provides a continuity in programming that is noticeably lacking in the remainder of the corrections system,<sup>58</sup> this area takes on primary significance in assessing the potential success of a work alternative program. While the problem of continued employment after release warrants a full length analysis of its own, there are some significant considerations which should be noted.

Obviously, the initial selection of an industry is a major factor in the success of the program, both in and out of the prisons. An employer who has plants located either throughout the State or near the major metropolitan areas would be able to offer jobs to larger numbers of former prisoners within a reasonable distance of their homes. While the prospect of continued employment with an attractive wage might induce the inmate to relocate in an area closer to the plant site, it is nevertheless important that an inmate's desire to return to his original home after release not be thwarted.

Equally important to the success of the program and its value to inmates is the commitment of the selected industry to the ultimate success of the work alternative program. Efforts should be made during the initial stages of negotiations to see that the

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<sup>57</sup> See, e.g. *State v. Kunz*, 55 N.J. 128, 136 (1969) :

As a matter of policy that disclosure of the (presentence) report ought to be required because such a practice will increase the fairness of the system, because it will increase the appearance of fairness....

Quoting from the AMERICAN BAR ASSOCIATION ADVISORY COMMITTEE ON SENTENCING AND REVIEW, *SENTENCING ALTERNATIVES AND PROCEDURES* at 224 (1967).

<sup>58</sup> Probation officers, for instance, change between presentence counselling, advice while incarcerated and field work on release. See, *FINAL REPORT OF THE COMMISSION ON VOCATIONAL REHABILITATION IN CORRECTIONAL INSTITUTIONS* at 23-25 (1972).

corporation involved fully understands the obligations of the program and that their participation is not just a transitory public relations gimmick which will become neglected when it loses its publicity value.

As previously noted, this program cannot be considered a panacea to the countless ills of the correctional system. The myriad of problems now faced by penologists have been germinating for decades and a simple solution is not possible. Rather, the proposed work alternatives program are intended to be of great assistance during the transitional period from large scale isolated institutions to smaller community centered correctional facilities. Inherent in this proposal is the realization that large scale institutions will be with us for some time to come. Recognizing this, we believe a work alternatives program, if fairly and efficiently administered, can help to maximize the rehabilitative effect of existing institutions.

Obstacles to implementation of these proposals should not be underestimated. Opposition in both the business and labor communities must be expected and dealt with. It is not our intent to dispel all criticism but to encourage more widespread debate of realistic work alternatives for the inmates of correctional institutions.

#### MODEL LEGISLATION

The problems of recidivism and the waste of vital human resources are not amenable to easy solution. It is incumbent upon the State's penologists and legislators to explore any reasonable alternatives and implement those that are most feasible.

In line with the foregoing considerations, we propose that N. J. R. S. 30:4-93 be amended and supplemented to read substantially as follows:

AN ACT concerning Institutional Labor and amending and supplementing R. S. 30:4-93.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

R. S. 30:4-93 is amended and supplemented to read as follows: 30:4-93.

a. No contract shall be made by which the labor or time of any inmate of any of the institutions within the jurisdiction of the State board, or the product or profit of his work, shall be let, contracted for, leased, farmed out, given or sold, except in accordance with the provisions of this title.

b. Any corporation or other industry licensed to do business in the State of New Jersey (hereinafter referred to as "the industry") may make application to the State board for a permit to contract with a State correctional institution under the provisions of this act.

(1) To be granted a permit and a subsequent contract to establish an industry within a correctional institution, an industry must demonstrate to the satisfaction of the State board:

- (a) that the industry is financially solvent;
- (b) that the industry will provide employment for inmates while confined in the institution;
- (c) that the industry will provide supervision, materials, training, and modern equipment for such inmates;
- (d) that the industry will hire qualified inmates upon their release with rates of pay and other conditions of employment not less than those paid or provided for work of a similar nature in the locality in which the work is being performed;
- (e) that the representatives of labor union organizations presently under contract with the industry have been consulted.

(2) Any industry wishing a contract shall submit a request to the State which shall either grant or deny the request.

(3) If a request is approved by the State board, a contract may be made between the State of New Jersey and the industry applying for a contract.

(4) The contract shall include, but shall not be limited to, the conditions required for permit approval. No provision of the contract shall be in derogation of the power of the State board.

(5) If there is established in a State correctional institution an industry as provided by this section, an inmate incarcerated in the institution may be considered eligible for the employment offered by the industry provided that such inmate:

- (a) will be confined to the institution for a period of time sufficient in the judgment of the institution's officers to profit from participation in such a program;
- (b) is not confined apart from the general prison population nor considered to be a substantial security risk to property or the other participants in the program, which determination shall be made by the institution's classification personnel;
- (c) agrees to abide by the regulations that may be established by the State board or the institution.

(6) Compensation shall be paid to inmates participating in this program, in the amount determined under this chapter, less the deductions as set forth in this chapter.

(7) Upon leaving the institution, or upon the granting of work release furloughs, the industry may, in its discretion, hire qualified inmates, with rates of pay and other conditions of employment not less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

(8) At any time that the inmate's performance should prove unsatisfactory in the judgment of industry supervisory personnel, the inmate's employment under this program may be terminated, according to such regulations and procedures as may be established by the State board.