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Peter L. Feldman

James T. Huber

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COMMENTS

PROJECT: A DESCRIPTION OF PRERELEASE IN PENNSYLVANIA*

I. Introduction

Any consideration of a particular segment of a penological system is a complex undertaking due largely to the gravity of imprisoning another human being. This complexity is compounded, at least in part, by the lack of general agreement about the proper purpose or effect of corrections.¹ The state of present penological theory illustrates the confusion as some progressives are returning to philosophies which traditionally have been regarded as conservative.² The practical effect of such diversity of theory is that a state corrections system may be attempting simultaneously to implement many, often conflicting, theories. To a degree, the Pennsylvania Bureau of Correction's rehabilitation programs manifest this problem.

This project is designed to provide a comprehensive description³ of one of those programs — prerelease. Prerelease may be defined as a series of loosely consecutive changes of an inmate's penal status which provides a resident in the corrections system increasing freedom, thereby easing his⁴ return to society.⁵ Presently, six forms of prerelease exist in Pennsylvania: work release, education release, furlough, Community Services Centers, group homes, and outresidency.⁶ This project focuses

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1. For the purposes of this study, the term "corrections" is used in its broadest sense, describing penological systems in general. This broad usage is not meant to indicate that the correctional approach is the only or even the dominant penological theory.

2. Representative of those progressives who had second thoughts about so-called liberal theories are the authors of AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE, A REPORT ON CRIME AND PUNISHMENT IN AMERICA (1971) [hereinafter cited as STRUGGLE FOR JUSTICE].

3. Analysis, as opposed to description, will be attempted only in those areas, such as legal problems, where the authors feel they have at least minimal expertise.

4. We will use the male gender throughout in referring to prisoners as this study dealt solely with male correctional institutions and Community Services Centers.

5. The applicable state administrative regulations define prerelease as "a status which may be achieved by residents of Commonwealth correctional institutions after qualifying in accordance with the criteria, procedures, and policies set forth in this Chapter," 37 PA. CODE § 95.111 (1973).

6. The different types of prerelease will be defined as they are discussed.
upon prerelease as found in three institutions — the State Correctional Institutions at Dallas, Graterford, and Rockview, and the Community Services Centers generally fed by them. The primary mode of acquiring information for this study was the interview, with emphasis placed upon the day-to-day workings of the prerelease system. The discussion begins, however, with a short exposition of penological history and of the purposes of corrections that provides a general foundation for considering Pennsylvania's prerelease program. More importantly, this discussion makes two other aspects of prerelease more comprehensible. First, as noted above, the conflicting nature of corrections' purposes has affected the programs actually implemented. Hence, an understanding of those purposes provides a partial explanation for some of the contradictions in

7. These three institutions were selected because they provide a cross-section of resident populations and corrections philosophies. Dallas represents the most traditional approach of the three. Graterford's administration is more liberal, reflecting its larger population of minority groups and the vastly different urban lifestyle of nearby Philadelphia. Rockview, while located in the rural center of the state, is adjacent to the liberal college campus of the Pennsylvania State University. Its population is comprised, partially, of the overflow from other institutions. As a result, it is an amalgam of inputs from the entire state. For a more detailed description, see notes 76-87 and accompanying text infra.

8. The Community Services Centers in this category are in Allentown, Harrisburg, Johnstown, Philadelphia (four centers operating), Scranton, and York. For descriptions of these centers, see notes 253-61 and accompanying text infra.

9. On the dates noted we interviewed the following individuals, all of whom we would like to thank for their kind cooperation: Albert R. Armstrong, Center Director in the No. 1 Philadelphia Center (September 5, 1974); Russell H. Ault, Executive Assistant at Rockview (May 23 and October 23, 1974); Jeffrey A. Beard, Counselor Supervisor at Rockview (May 23, 1974); Rick Berkheiser, Center Director in York (October 22, 1974); Dahlie D. Bingaman, Deputy Superintendent for Treatment at Rockview (May 23 and October 23, 1974); Erskind DeRamus, Deputy Commissioner at the Bureau of Correction (October 21, 1974); Joseph F. Desuta, Regional Director of the Central Region (September 11, 1974); Bettye Duff, Acting Center Director in the No. 4 Philadelphia Center (September 5, 1974); Mamie Fains, Regional Director of the Southeast Region (September 5, 1974); Michael D. Fioretti, Philadelphia attorney (October 10, 1974); Bruce Harrison, Counselor/House Manager in Johnstown (September 11, 1974); Glen R. Jeffes, Superintendent, State Correctional Institution at Dallas (May 23, 1974); L. Brian Lonergan, Regional Director of the Northeast Region (September 12, 1974); Ronald J. Marks, Superintendent, State Correctional Institution at Graterford (September 10, 1974); Joseph F. Mazurkiewicz, Superintendent, State Correctional Institution at Rockview (May 23 and October 23, 1974); John McGuire, Center Director in Scranton (September 12, 1974); James Murphy, Regional Director of the Southcentral Region (October 21, 1974); Ronald Nordstrom, Center Director in Harrisburg (October 21, 1974); Leonard Parkel, former counsel, Bureau of Correction (January 15, 1975); Phillip Sauer, Administrative Assistant to the Commissioner, Bureau of Correction (May 20, and October 21, 1974); Clarence V. Saunders, former resident (October 10, 1974); Harry G. Smith, Director, Programs Division, Bureau of Correction (October 21, 1974); and Barbara J. Witten, Chief, Research and Evaluation Section, Bureau of Correction (May 20, 1974). We would like to express our special thanks to those residents who spoke with us but who, because they wished to remain anonymous, cannot be listed here.

We will cite throughout to the name of the person who gave us particular information; in those few cases where the information is sensitive, however, we have decided simply to cite the administrative position of the individual, for example, Center Director, but not indicate the individual's name.
the system. Second, the historical background of penology has had a profound impact upon correctional thinking and upon the structures within which that thought was realized.

A. Penological History

The early European response to crime was punishment and retribution.\(^\text{10}\) Society’s response to criminal activity was designed as a substitute for revenge by the victim’s relatives and friends,\(^\text{11}\) in order to avoid the disorder inherent in individual vengeance. Through the 17th century, imprisonment was unheard of as a means of punishment,\(^\text{12}\) and it was only utilized during that period for pretrial detention.\(^\text{13}\) This approach to dealing with offenders was the Europeans’ penological legacy to the American Colonies.

The extensive use of imprisonment, therefore, was a radical penal reform when first urged by Pennsylvania’s Quakers.\(^\text{14}\) Their substitution of confinement for the widespread practice of corporal punishment arose primarily due to three factors. First, the Quakers, as a result of their religious beliefs, found the severe criminal codes distasteful.\(^\text{15}\) Second, the political climate in the Colonies was opposed to following English customs, and any alternative contrary to a practice employed in Great Britain was presumptively desirable.\(^\text{16}\) Finally, the development of the philosophy of rationalism supported the belief that people rationally chose to commit crimes, and the necessary conclusion, that people therefore could correct their antisocial behavior.\(^\text{17}\)

As a result of such attitudes and the influence of the Pennsylvania Prison Society,\(^\text{18}\) the Supreme Executive Council of the Commonwealth of Pennsylvania passed legislation in March, 1789, establishing the penitentiary system.\(^\text{19}\) The result was a system of confinement which sought

to maximize solitude and reflection. The prisons subsequently built in Pennsylvania were constructed for the purpose of effectuating these philosophies. By 1829, solitary confinement was Pennsylvania's official penal policy. The structures built during this period were highly successful in implementing this penal philosophy:

In general, the building effectively accomplished what it was intended to accomplish — the removal of offenders from the community, their isolation from each other, and the provision of an atmosphere of solitude so that work habits could be learned and moral lessons contemplated.

While the approach of other states varied regarding the employment of solitary confinement, the choice of the penal alternative of imprisonment was never questioned. There was also no dispute about the desirability of keeping offenders physically segregated from the community. The architectural structures of the prisons in every state were specifically designed to accomplish these objectives. Although this architecture has, to a great degree, outlasted the early philosophy from which it originated, it continues to mold modern approaches to corrections:

The idea of restraint as a necessary ingredient in corrections remains as a philosophic legacy of this era. And, to an extent no outsider can appreciate, corrections today is shaped also by the tangible remnants of the outmoded but durable structures in which it is housed. The barriers to communication which are literally built into prisons designed for the old "silent system" of managing prisoners, have remained as barriers to attempts to promote normal human relationships long after the rule of silence has been abandoned.

The struggle to fit new approaches to old buildings continues today. Late in the 19th century, a progressive movement arose which suggested that the dominant penological principle should be one of reformation rather than segregation of offenders. The progressives' belief was that each offender committed crimes because of a personal deficiency, and

20. Id. Philadelphia's Eastern State Penitentiary was the best example of a prison built to those philosophical specifications. H. Barnes, supra note 17, at 129; Task Force, supra note 10, at 3.
21. Id. at 9.
22. The most notable example was the New York State Prison at Auburn. After an early and unsuccessful use of complete solitary confinement, the Auburn system was developed. Inmates were segregated at night but allowed to work in groups during the day; however, silence was enforced even during working hours. H. Barnes, supra note 17, at 133-36.
25. Id. The report continued:

It is difficult to hold group counseling sessions when there are no rooms of a size between a cell and a messhall. It is difficult to have modern work release when available jobs are miles away in the nearest town. It is difficult to instill self-discipline and responsible independence in an institution dedicated by its architecture to constant authoritarian control.

Id.
they reasoned that the correction of that deficiency would "cure" the criminal. Hence, the emphasis was upon treatment.

Community prerelease programs, which were outgrowths of this movement, were designed as alternatives to imprisonment in order to facilitate reintegration of inmates into the community. Work release was one of the early manifestations of this concept. In 1913, Wisconsin enacted the Huber Law, generally considered to be the first important statute authorizing work release in the state prisons. However, the real expansion of prerelease began in the 1950's, and achieved its peak in the 1960's. Most states now have enacted some form of prerelease legislation.

The implementation of prerelease, however, remains bound by the earlier penological philosophies and the physical structures they engendered. The choice of segregated buildings for imprisonment is rooted so deeply in penological theory that imprisonment is no longer viewed as an alternative, but as the standard form of punishment. While the continued existence of prison structures is partially explicable simply by their physical durability, it also provides clear evidence that the old philosophies of punishment and retribution are still considered to be viable purposes for corrections.

B. Purposes of Corrections

The purposes for committing an offender to prison have increased over the years. Generally, corrections is assumed to have four purposes — punishment, deterrence, isolation, and rehabilitation. These different purposes are based upon different, often irreconcilable assumptions and thus lead to incompatible approaches. A short discussion of these purposes and the assumptions underlying them helps to explain later, appa-

26. Id. at 4.
27. The reformer most often mentioned as developing the early community programs was John Augustus in 1841. Id.
32. See note 25 supra.
34. W. Nagel, supra note 12, at 12–13. A fifth purpose is occasionally mentioned — reintegration. Id. at 13. This is really an expansion of rehabilitation beyond its focus upon the individual into the area of changing the community from which the offender came. Task Force, supra note 10, at 7. The theory is predicated upon the notion that the community encouraged the offender to act as he did, and therefore, any rehabilitation of him will be successful only if the causative environment is also corrected. Id. at 9. See also E. Sutherland & D. Cressey, Principles of Criminal Justice 17 (1960). Here is the reason why the offender will remain in his community. W. Nagel, supra note 12, at 13.
ently contradictory actions of the Bureau of Correction personnel as they attempt to follow conflicting philosophies of corrections.

While punishment as a purpose of corrections has been increasingly disfavored by many American penologists, the general public, as well as some members of the Supreme Court of the United States, apparently still perceive it as viable. It is not surprising, however, that retribution still guides penal philosophy in the minds of some, since it was this purpose which motivated the initial societal reaction to crime. On one hand, punishment is justified by what some contend is a natural need for revenge; on the other hand, punishment serves as a symbolic reminder to the general public that instinctual urges must be repressed. In either case, a need for punishment apparently still exists, and rational or irrational, justifiable or unjustifiable, punishment remains a purpose of corrections. Such a purpose is concededly of considerable importance with regard to a program such as prerelease which emphasizes close contact with the community. If the community considers punishment as the main objective of corrections, it would tend to view prerelease as pampering, rather than punishing, offenders.

The second correctional purpose is deterrence, both special and general. Special deterrence is "the specific deterrence of a given individual resulting from the imposition of sanctions," while general deterrence contemplates "the overall reduction in crime due to the inhibitory effect


37. Furman v. Georgia, 408 U.S. 238, 308 (1972) (Stewart, J., concurring); id. at 453 (Powell, J., dissenting). Mr. Justice Powell pointed to the fact that this position had "responsible support in the jurisprudential literature in this country . . . ." Id. at 454, citing, e.g., H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 11-12 (1968). But see discussion in Furman v. Georgia, supra at 342-43 (Marshall, J., concurring).

38. See text accompanying notes 10-11 supra.

39. K. MENNINGER, supra note 36, at 190.

40. Hermann, supra note 35, at 1454. One commentator has stated: A psychoanalytic examination of punishment suggests that it serves to assuage a sense of guilt, arising from repressed instinctual urges to violate societal prohibitions, by reinforcing those prohibitions through the ritual denunciation of the criminal actor and the expiration of his offense. Criminal punishment serves, then, as a social ritual which gives rise to a sense of community, served, in turn, by the effect of punishment in reinforcing those prohibitions on the exercise of instinctual urges which would lead to social disorder.

Id.

41. STRUGGLE FOR JUSTICE, supra note 2, at 48.

42. For differing views, see Armstrong, The Retributivist Hits Back: Hawkins, Punishment and Moral Responsibility; Mabbot, Punishment; Mundle, Punishment and Desert; Morris, Persons and Punishment; and Toby, Is Punishment Necessary? In punishment and the spirit of crime and punishment (S. Grupp ed. 1971).

43. STRUGGLE FOR JUSTICE, supra note 2, at 86.
of sanctions on an aggregate of persons."44 Although deterrence would appear to demand methods inconsistent with rehabilitation, a number of factors coalesce to minimize that difficulty. First, the deterrent impact of the penal system may be found in any prison sentence, regardless of length, or simply in the fact of arrest.45 Pennsylvania prerelease effectuates this deterrent purpose since at least one-half of the minimum sentence must be served before the offender is eligible for the program.46 Second, it is not clear that a longer sentence, which would be reduced as a result of prerelease, has any deterrent effect whatsoever. Comparatively few empirical studies of deterrence have been done, yet one analysis of completed studies concludes that severe sentences do not in fact specially deter.47 Finally, the offender very well may perceive rehabilitation as punishment,48 and if so, deterrence would be found in the threat of rehabilitation itself. Practically, therefore, the deterrence purpose may not be totally inconsistent with the treatment model.

Isolation is the third purpose of corrections. Until recently, segregation of the offender from the community for reasons of safety was accepted as a legitimate function of corrections.49 This function is clearly antithetical to the rehabilitative model which emphasizes community contact,50 since complete adherence to isolation would necessitate the end of prerelease. The irreconcilability of these functions would most clearly appear when the offender returned on prerelease to the community to face his accusers.51

Prerelease is grounded upon the final correctional purpose — rehabilitation, a goal which correction theorists almost unanimously support.52 It is, therefore, necessary to understand the assumptions behind rehabilitation in order to comprehend the description of a prerelease program.

The rehabilitative model is based upon the premise that it is the individual or the local community that must be altered, not society at large.53

45. TASK FORCE, supra note 10, at 16.
47. Antunes & Hunt, supra note 44, at 157.
48. STRUGGLE FOR JUSTICE, supra note 2, at 85.
49. W. NAGEL, supra note 12, at 12. That safety, however, is short-lived; since prison contributes to more serious crime after release, isolation may eventually result in less safety. Id.
50. TASK FORCE, supra note 10, at 9-10.
51. This community problem appears to be one of the main reasons why some judges have criticized prerelease. Sweet, 110 Judges Vote on Act 274, 61 P.S. 1052, 43 PA. B. ASSOC. Q. 502 (1972).
52. STRUGGLE FOR JUSTICE, supra note 2, at 83.
53. W. NAGEL, supra note 12, at 13; TASK FORCE, supra note 10, at 7. For those who consider their incarceration a manifestation of political repression this assumption is unacceptable. These individuals regard rehabilitation solely as a totalitarian
The treatment model also assumes the existence of the general knowledge and ability essential for adequate rehabilitation. Assuming the possibility of rehabilitation, the model further presumes that rehabilitation is morally justifiable. The final assumption underlying the rehabilitation model is that rehabilitation is not punishment.

The aim of this exposition is not to advocate the views either in support of, or against, any of these assumptions. Rather, their presentation is necessary to provide a framework within which Pennsylvania prerelease can be most intelligibly considered.

C. Pennsylvania Statutory and Administrative Background

The Pennsylvania Bureau of Correction was not authorized to employ prerelease programs in the state correctional system until 1968,

means to force them to conform their conduct and ideas to those of the ruling class. E. Wright, The Politics of Punishment, A Critical Analysis of Prisons in America 152 (1973).

It should be noted that it is the prisoner's perception of the state of society which is relevant, as it is the prisoner's cooperation which is necessary for the treatment model to function. See generally Comment, The Impact of the Politicized Prisoner on the Prison System, 4 CUMB.-SAM. L. REV. 486 (1974).

This supposition is disputed by some who claim that behavioral psychology has not reached the point where its success is probable. Amos, The Philosophy of Corrections: Revisited, 38 Fed. Prob. 43 (1974). Not only is the feasibility of rehabilitation questioned, but the traditional indicia of a successful rehabilitation have been disputed. Recidivism is the usual measure of success, but it has been argued that recidivism rates are unreliable because most crime is not detected and that, even assuming the accuracy of the rates, absence of reconviction for another crime is only one aspect of an "adjusted" person. STRUGGLE FOR JUSTICE, supra note 2, at 42-44.

This premise involves, in part, the same philosophy as that which underlies the first assumption: that sameness is good and that traditional societal values represent that good. A counterargument makes the point that rehabilitation consists largely of white, middle class captors setting white, middle class standards as the price of parole for predominately minority group prisoners. This position further posits that there can be no justification for this practice in a country which prides itself on its heterogeneity. Mitford, Prisons: The Menace of Liberal Reform, N.Y. REVIEW OF BOOKS, Mar. 9, 1972, at 31, reviewing AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE: A REPORT ON CRIME AND PUNISHMENT IN AMERICA (1971).

Struggle for Justice, supra note 2, at 85-86. From the offender's viewpoint, however, it is still a form of incarceration or, at least, a form of control. Id.

The Bureau of Correction is a branch of the Pennsylvania Department of Justice, Administrative Code of 1929 § 912, PA. STAT. ANN. tit. 71, § 302 (1964), which has the authority to supervise the correctional system in the state. Administrative Code of 1929 § 914, PA. STAT. ANN. tit. 71, § 304 (1964). At the time of this writing, however, a bill to reorganize that administrative structure is pending in the state legislature. That bill would combine the Bureau of Correction with the now separate Board of Probation and Parole. S. 983, Pa. Gen. Ass., 1975 Sess. (1975). This structural change would provide the correctional and probation personnel with greater programming flexibility. D. DUFFEE, K. WRIGHT & T. HAHER, BUREAU OF CORRECTIONS COMMUNITY TREATMENT CENTERS EVALUATION: REFUNDING EVALUATION REPORT 32 (1975) (final version) [hereinafter cited as DUFFEE].

Prisoners who were incarcerated in 1964 were eligible for a form of prerelease prior to 1968. See PA. STAT. ANN. tit. 19, § 1179.1 (1964), as amended (Supp. 1975-76).
when Act No. 173 was enacted by the state legislature. That Act vested the Bureau staff with the power to establish prerelease centers, on and off prison grounds, "at such locations throughout the Commonwealth as [the Bureau staff might] deem necessary to carry out effective prisoner prerelease programs therefrom." Although Act No. 173 entrusted the Bureau administrators with a considerable degree of discretion with respect to the selection of sites for prerelease centers, it severely constrained their ability to provide diverse programming for the inmate participants, since it only authorized work release privileges. The use of other forms of prerelease, such as the furlough, were not authorized by the Act.

The Bureau staff's implementation of the Act was also constrained as the program was not used extensively. The personnel apparently did not envision prerelease as a therapeutic program to assist the inmates' adjustment to the community but rather as a program to determine whether an inmate was ready for parole. Furthermore, although the Bureau staff was charged with the duty of establishing "rules and regulations for granting work release privileges and the administration of work release plans," very few administrative directives were formulated and those that were, were not organized in any unified or coordinated system.

In 1970, however, the state legislature passed Act No. 274, which radically altered the prerelease system in Pennsylvania. Act No. 274

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60. Pa. STAT. ANN. tit. 61, § 1051 (Supp. 1975-76). However, the Bureau administrators did have to receive the approval of the Governor prior to the establishment of a center. Id.
61. Act of July 16, 1968, § 2, [1968] Pa. Laws 352, as amended, Pa. STAT. ANN. tit. 61, § 1052 (Supp. 1975-76). For a further discussion of work release, see notes 157-69 and accompanying text infra. Moreover, the Act placed two restrictions upon the power of the Bureau personnel to grant work release privileges. First, the Bureau staff could not grant work release privileges to any inmate who had been sentenced to death or life imprisonment. Second, the sentencing court could veto the staff's decision to place an inmate on prerelease status by communicating an objection to that decision within 10 days of receipt of notice "that such privileges [were to be] granted." Act of July 16, 1968, § 2, [1968] Pa. Laws 352, as amended, Pa. STAT. ANN. tit. 61, § 1052 (Supp. 1975-76).
62. Interview with Administrative Assistant Sauer.
63. Id.
65. Interview with Former Counsel Packel; interview with Administrative Assistant Sauer. The few regulations which were formulated were prepared on an ad hoc basis in response to various problems which arose during the administration of the program.
66. The regulations were prepared in memorandum form, but there was no coordinated compilation of these memoranda. Interview with Former Counsel Packel; interview with Administrative Assistant Sauer.
removed the restriction that only work release privileges could be granted to inmates, and vested the staff with the power to grant prerelease status for the purposes of gainful employment, vocational or technical training, academic education and such other lawful purposes as the bureau shall consider necessary and appropriate for the furtherance of the inmate's individual pre-release program. . . .

The Bureau's new administrators did not hesitate to utilize fully their expanded jurisdiction, and other forms of prerelease, such as educational release, were added to work release in order to supplement the programs already offered to inmates. Furthermore, pursuant to section 3 of the new Act, the Bureau staff formulated and compiled Administrative Directive 805, which, for the first time, provided the administrators and

69. Pa. Stat. Ann. tit. 61, § 1052(b) (Supp. 1975-76) (emphasis added). Dr. Duffee and his staff noted that the new Act created a prerelease system which was more flexible than those systems which existed in most other states. Duffee, supra note 57, at 46. They stated:

An examination of Act 274 in comparison to the kind of legislation that established work release or furlough (broadly interpreted) in other states, suggests that the Bureau is considerably less constrained than many other systems may be in administering community release programs. . . . Act 274, for example, does not contain a clause requiring offenders to return to institutional grounds of Bureau supervised facilities every night, nor does it limit the purposes for which an offender may be released from institutions to centers or from centers to the community . . . .

Id. (emphasis in original).

70. Approximately 1 year prior to the enactment of Act No. 274, Allyn R. Sielaff was appointed as Commissioner of the Bureau of Correction. Sielaff strongly believed that prerelease was an important correctional treatment program and was dissatisfied with the restrictive program created by Act No. 173. He desired statutory authority to formulate a prerelease system which would offer the inmates and the Bureau staff a wide range of alternative programming. Apparently, his discontent was one factor which led to the passage of the more liberal Act. Interview with Former Counsel Packel.

71. The new Act amended Act No. 173 in two other important respects. First, it vested the Bureau with the power to release an inmate "temporarily with or without direct supervision." Pa. Stat. Ann. tit. 61, § 1052(b) (Supp. 1975-76). This language, when read in conjunction with the concluding language of the same section (see text accompanying note 69 supra), enabled the Bureau to grant furloughs and outresidency privileges to the inmates. For a further treatment of furloughs, see notes 181-97 and accompanying text infra. For a further treatment of outresidency, see notes 333-42 and accompanying text infra.

Second, the provision in section 2 of Act No. 173, which gave the sentencing judge the power to prevent an inmate from attaining prerelease status, was stricken from the text of the statute. See Pa. Stat. Ann. tit. 61, § 1052(b) (Supp. 1974). This precipitated resentment upon the part of the judges, who felt that their sentencing powers were being curtailed. See note 140 infra. As a result, the Bureau administrators formulated their own regulation which gave the judges a similar veto power. Interview with Former Counsel Packel. Compare Act No. 274 with 1974 amendment which reestablished a statutory judicial veto. Pa. Stat. Ann. tit. 61, § 1052(c) (Supp. 1975-76). For further discussion of the role of the judge in the prerelease determination, see notes 136-41 and accompanying text infra.


the participants in the prerelease program with organized guidelines for its operation.\textsuperscript{74}

When the interviews herein relied upon were conducted, Act No. 274 and Administrative Directive 805 still provided the basic framework within which the Pennsylvania prerelease program operated,\textsuperscript{75} and it is within the context of that statutory and administrative material that the following description must be read.

II. Description of Prerelease

A. Institutional Prerelease

1. Description of the Institutions

The physical appearance of the State Correctional Institutions at Dallas, Graterford, and Rockview, and their lack of proximity to any of Pennsylvania's urban areas offer strong physical evidence to support the observation that prisons are isolated from the community by their location and their structure.\textsuperscript{76} Dallas, perhaps the most inaccessible of the three, is located in Luzerne County, a substantial distance from Wilkes-Barre. Graterford is situated in Montgomery County, and is only slightly closer to Philadelphia than Dallas is to Wilkes-Barre. Rockview is located in Centre County and is closer to a large number of people only because it is adjacent to State College where the Pennsylvania State University is located. Nevertheless, the nearest urban area is Harrisburg, 100 miles to the southeast.

The physical structures of the three institutions, particularly Graterford and Rockview, are reminiscent of the massive prisons seen in old movies. Graterford is surrounded by a wall 30 feet high.\textsuperscript{77} Rockview, originally intended as a maximum security institution, has one massive cellblock around which minimum and medium security facilities were built after the institution's population was increased to include less serious

\textsuperscript{74} Interview with Former Counsel Packel.

\textsuperscript{75} An exception to this was Administrative Directive 805 which had been altered in that outresidency had been restricted. See notes 333-42 and accompanying text infra. While the interviews were taking place, Act No. 274 was being amended with regard to the role of the sentencing judge in the prerelease determination. Pa. Stat. Ann. tit. 61, § 1052 (Supp. 1975-76); see note 136 infra.

\textsuperscript{76} Dallas, Graterford, and Rockview were the only three state correctional institutions visited. Pennsylvania has five correctional institutions for male adults, one for female adults, one for youthful offenders, and one regional facility. Pennsylvania Bureau of Correction, The Changing Concept: Corrections 4 (undated pamphlet of limited circulation, on file at the Villanova Law Review) [hereinafter cited as Changing Concept]. In each case, isolation from the community is accomplished either by location or structure or both. The only correctional institution in an urban area is the State Correctional Institution at Pittsburgh, and there massive walls perform the same separation function.

\textsuperscript{77} Governor's Justice Commission, Dept. of Justice, The Comprehensive Plan to Improve the Administration of Criminal Justice in Pennsylvania 70 (1971) [hereinafter cited as Governor's Justice Commission].
offenders. Graterford is the largest correctional facility in Pennsylvania. At the time the interviews were conducted, it housed 1550 residents, most of whom came from the southeastern portion of Pennsylvania. The resident population at Dallas was 750, when we visited in May of 1974. As a result of regionalization, Dallas' residents are largely from a 16-county area in the northeastern part of the state. That population, however, is supplemented by the resident overflow from Graterford. Rockview also receives transfers from other parts of the state; its own geographical area comprehends a 36-county area in the northwestern, northcentral, and central Pennsylvania areas. At the time the interviews were conducted, Rockview housed approximately 775 residents. The institutional staff, which is supervised by a superintendent, is subordinate to the Commissioner of the Bureau of Correction, although the Deputy Commissioner is the staff's immediate supervisor. Subordinate to the Superintendent are the Deputy Superintendents, one of whom is the Deputy Superintendent for Treatment. He or she has ultimate responsibility for the Treatment Services Department of the institution, although the immediate head of that Department is the Director of Treat-

78. Id.
79. Id. at 69-70. The structural differences are probably a function of age. Dallas, opened in 1960, is the newest institution of the three. Graterford and Rockview are substantially older; the former was opened in 1924, the latter in 1912. Id.
80. Id. at 70.
81. Interview with Superintendent Marks. The institutional capacity is 2035. GOVERNOR'S JUSTICE COMMISSION, supra note 77, at 70.
83. Interview with Superintendent Jeffes. Institutional capacity is 1250. GOVERNOR'S JUSTICE COMMISSION, supra note 77, at 69.
84. Interview with Superintendent Jeffes.
85. GOVERNOR'S JUSTICE COMMISSION, supra note 77, at 70.
87. Interview with Superintendent Mazurkiewicz. Rockview's capacity is listed as 975. GOVERNOR'S JUSTICE COMMISSION, supra note 77, at 70.
88. Changing Concept, supra note 76, Table of Organization of Bureau of Correction at 17. This is relevant for prerelease purposes since no formal, organizational connection exists between the regional directors of the various Community Services Center regions and the superintendents of the different correctional institutions. The regional directors are directly responsible to the Commissioner. Id. See also note 224 and accompanying text infra. The only contact between the institutions and the Community Services system occurs through the referral process, that is, through the determination of who will be transferred from the institution to the center. See notes 205-22 and accompanying text infra. The Bureau has recognized this problem and hopes to develop a line of communications between the superintendents and the regional directors. Interview with Deputy Commissioner DeRamus.
89. Resident Handbook, supra note 86, at 5.
ment. Subject to the. Director is the Counselor Supervisor and, then, the counselors.90

The financial affairs of the institution are handled by the Bureau's Business Office from which the institution's funds come directly.91 That office computes a budget for the entire institution, but the institution determines its own priorities of use.92 While underfunding of a treatment program could be attributed to the institution's priorities, this supposition is only partially accurate. The general funding has been substantially lower than necessary, and therefore, the difficulty does not actually lie with the institution.93 As a result, new treatment programs have not been developed; to the contrary, the institutions have had difficulty continuing extant programs.94

The correctional institution, then, does not offer a particularly fertile atmosphere for the development and implementation of prerelease. It is physically and structurally isolated, underfunded, and consequently understaffed.

2. Classification of the Resident

The first step in an inmate's institutional incarceration is classification, which is performed by each individual correctional institution's Diagnostic and Classification Center. For the first 6 to 8 weeks of the resident's confinement, he is interviewed and tested for the purpose of determining his personality and character traits, and in what programs he should participate.95 The institution gathers information from various sources, including the resident's presentence report,96 and subjects the resident to a battery of tests, both medical and psychological.97 Concurrently, various individuals98 conduct interviews with the resident,

to become better acquainted with [the resident] and to help [him] understand the reasons for [his] confinement, and determine what may be done to help [him] rehabilitate [himself]. Representatives

90. Id. at 6.
91. Interview with Deputy Commissioner DeRamus.
92. Interview with Executive Assistant Ault. The budgets for the Community Services Centers come through the individual center's parent institution.
93. Interview with Deputy Superintendent for Treatment Bingaman.
94. Interview with Superintendent Marks.
95. Interview with Superintendent Jeffes. During the classification period, residents are initially classified in terms of security. At Dallas, the residents are categorized as maximum custody, close supervision, medium custody, or minimum custody. Interview with Superintendent Jeffes.
96. GOVERNOR'S JUSTICE COMMISSION, supra note 77, at 73. This process frequently presents problems since the information obtained is often incomplete. Id.
98. Interviewers include the resident's counselor, chaplain, representatives of the educational and recreational departments, vocational advisor, and anyone else involved in the resident's program. The resident's counselor is the first person to meet with the resident, usually within the first 24 hours of his arrival; the counselor is the main source of information for the resident. Resident Handbook, supra note 86, at 21-22; Interview with Superintendent Jeffes.
from various departments will also be making contact with [him] in an effort to gain as much information as possible so that an accurate evaluation may be made as to his needs.  

The most important part of the classification process for prerelease purposes is the development of a prescription for the resident by the Initial Classification Support Team. The prescription consists of a set of goals for the resident and a program to reach those goals which always includes participation by the resident in internal prison programs. At least at Rockview, the Support Team, at this time, makes a projection in regard to when the man may be ready for referral to a Community Services Center.

After the prescription is developed, the Support Team meets with the resident to discuss his case with him and to arrive at a program commitment. Although the resident’s involvement in the various programs is voluntary, the implication is clear: early release, either through prerelease or parole, is, practically speaking, contingent upon the resident’s participation in the prescription program.

The meeting with the Initial Classification Support Team marks the end of the 6-week classification period, whereupon the resident is transferred from the reception diagnostic center to the general institution. Even though by this time the institution staff has been educated as to the resident, it is not clear exactly how informed the resident is about the institution. As a result, the resident is not fully aware of the exact re-

100. The team, at least at Rockview, is composed of the resident’s counselor, center officer, vocational advisor, and clinic supervisor. Id. at 23. A similar group is utilized at Dallas and Graterford. Interview with Superintendent Jeffes; interview with Superintendent Marks.
101. For example, the prescription might include participation in alcohol or drug programs, general equivalency diploma classes, group therapy, or any combination thereof. Interview with Superintendent Marks.
102. Interview with Deputy Superintendent for Treatment Bingaman. The resident, however, is not told what the projected date for his referral is. Id.
104. Interview with Superintendent Jeffes. The Resident Handbook encourages resident involvement in programs and states:  

We are hopeful that a meaningful and workable treatment plan may be formulated in order to return you as soon as possible to the community in such a manner that you will be more able to adapt successfully in your community. This will also be accomplished more rapidly as you involve yourself meaningfully in those programs which are indicated.  

Resident Handbook, supra note 86, at 23–24. The resident is informed that completion of his program will result in a good chance of his attaining prerelease status. Interview with Deputy Superintendent for Treatment Bingaman.
105. Prerelease is obtained if the counselor determines that the resident is cooperating by program participation and good conduct. See text accompanying notes 127–28 infra.

A resident also must have minimum custody status before prerelease will be awarded. Resident Handbook, supra note 86, at 720.
106. Interview with Superintendent Jeffes.
requirements necessary to qualify him for prerelease status. The extent of the information available to a resident varies from institution to institu-
tion, but in all three institutions, as a result of the classification process, the resident only knows: 1) that there is a treatment program which the institution staff suggests he follow, and 2) that his cooperation in that treatment program might result in his prerelease. 107

Bureau personnel maintain that all residents are given copies of the administrative criteria for prerelease. 108 This procedure occurs at some state institutions, but with the exception of the Rockview prison, it is apparently not routinely followed at the institutions we visited. 110 At Rockview each resident is given a packet of information which contains the administrative and institutional criteria for prerelease, 111 and a description of the prerelease program. 112 The so-called Resident Handbook, however, makes it clear that "[w]hether a person received prerelease status is a staff decision based upon the resident's treatment needs; it is not automatically granted to persons who meet the requirements." 113 Herein lies the other difficulty in regard to resident knowledge: the prerelease determination is, essentially, a treatment decision based upon the counselor's perceptions and opinions. 114 As a result, compliance with the written criteria only entitles a resident to be considered for prerelease; it does not guarantee that the resident will be granted prerelease privileges. Hence, the actual criteria for receiving prerelease are never known by the resident. Indeed, the most the resident ever knows is when to file the prerelease application in order to maximize his chances of success.

107. Interview with Deputy Commissioner DeRamus; interviews with Superin-
tendents Mazurkiewicz and Jeffes. A former resident of Graterford indicated that all of his knowledge came as a result of questioning his counselor. Information was then passed by word of mouth from resident to resident. Interview with a resident.

108. Interview with Deputy Commissioner DeRamus.

109. Interview with a resident. In those institutions where the directives are actually given, they are not explained or, if explained, no definitive interpretation is given. Id.

110. Neither Superintendent Jeffes, nor Superintendent Marks indicated that this policy was complied with at their respective institutions. Interviews with Superin-
tendents Jeffes and Marks.

111. The administrative criteria are, of course, one-half the minimum sentence 
and the resident must serve at least 9 months in the institution. 37 Pa. Code § 95.114(a) 
(1973). The institutional criteria are an "A" rating and minimum supervision status. 
Resident Handbook, supra note 86, at 720.

112. Resident Handbook, supra note 86, at 720, 780; interview with Superintendent 
Mazurkiewicz.

home furlough. "The furlough is not to be looked upon as something earned; it is 
neither a right nor a privilege but must be considered in the context of a resident's 
total treatment program." Id. For a discussion of prerelease as a right, see notes 
365–91 and accompanying text infra.

3. Counseling

The responsibility of providing guidance to a resident rests primarily upon one counselor,115 assisted by a support team. Thus, when the counselor, along with the support team, makes the recommendation necessary for a resident to obtain prerelease,116 his vote is the most crucial since he has the most intimate knowledge of the resident’s treatment success.117

The support team concept, now utilized by all three institutions, is relatively new.118 The support team is designed to “facilitate a rapid, integrated and coordinated transition toward [the resident’s] entrance into the general population and toward the formulation of individual treatment needs.”119 The team, usually composed of the individual’s counselor, housing officer, work supervisor, and, possibly, an outside sponsor,120 is also responsible for the continuing development of the prescription program.

4. Application for Prerelease121

A resident may apply for prerelease122 after serving one-half of his minimum sentence, and at least 9 months in a correctional institution.123

115. The counselor’s burden is substantial because he or she maintains a caseload of between 75 and 100 residents.
117. 37 PA. CODE § 95.120(a) (1973). Practically, a counselor’s decision not to recommend prerelease is final; instances of a counselor’s superior recommending prerelease over the objection of the resident’s counselor are rare or even nonexistent. See note 133 and accompanying text infra.
118. Resident Handbook, supra note 86, at 205; interviews with Superintendents Mazurkiewicz, Jeffes, and Marks.
120. Id. It is worthwhile to note the differences in composition between this team and the Initial Classification Support Team at note 100 supra.
121. Community Services Center referral will be considered separately since it involves some application procedures beyond those involved in the other forms of prerelease. See notes 205–22 and accompanying text infra. The general procedures described here, however, also apply to center referral.
122. Interview with Superintendent Jeffes.
123. 37 PA. CODE § 95.114(a) (1973).

These minimum criteria have been criticized. First, they effectively preclude from participation in prerelease all offenders in the correctional system who have short sentences, particularly those whose sentences make them potentially eligible for parole after 9 months. Interview with Chief Witten. Second, the criteria preclude from prerelease individuals who are, for treatment purposes, ready for prerelease, but who have not served either one-half the minimum sentence or 9 months. Interview with Superintendent Mazurkiewicz. Third, the 9-month requirement cannot be satisfied by the time an inmate has served in a county facility, though county time, including time spent awaiting trial, is credited toward one-half of the minimum sentence. 37 PA. CODE § 95.116(c) (1973); Interview with Chief Witten. Fourth, a judge who disagrees with the use of prerelease regardless of the circumstances, can make it very difficult for a resident to obtain prerelease simply by setting very long minimums. Fifth, in terms of providing treatment, the administrative criteria allow a counselor to avoid dealing individually with the resident; he or she can simply point to the
In a separate application for each prerelease program, the resident states the reasons why he feels he should be awarded prerelease status; he then submits the application, through the counselor, to the support team. The counselor’s responsibilities include receiving the application, checking the resident’s compliance with the criteria, and collecting relevant information to be used by the support team in its determination of the inmate’s eligibility for prerelease.

administrative deficiency and deny the man’s request. Interview with Superintendent Mazurkiewicz.

Theoretically, there are two approaches by which exceptions to these objectionable legal criteria could be made; however, time considerations make the exceptions ineffective. Where the resident's opportunity for prerelease is impeded by a resident having too long a minimum sentence imposed upon him, application can be made to the judge for an exception which, if granted, allows the case to be submitted to the Deputy Superintendent for approval. If the minimum sentence is long because the judge intended it to be, the chance of his or her agreeing to an exception is obviously slim.

The second possible exception to either the one-half minimum sentence or the 9-month requirement is a waiver of the requirement by the Board of Pardons. Where a resident seeks to challenge the minimum sentence, and the Board agrees with the resident, the Board is required to overrule the judge. Before taking this step, however, the Board would probably require substantial specification of treatment to support its action. Since, a fortiori, the resident involved has not served one-half the minimum sentence, the availability of sufficient specification is unlikely. Illustrative of this difficulty is the fact that the Board of Pardons has never overruled a judge in such a situation. Interview with Chief Witten. A challenge to the 9-month requirement presents even greater difficulties because, assuming exceptions are possible, every resident must go through the 1- to 3-month classification stage. At least a month of paper work is required after the assessment, and then another month is required to obtain the judge's approval. Hence, assuming all goes smoothly, a resident might only be released 1 or 2 months early. Practically, then, exceptions to the administrative criteria rarely occur. Id.

Some Bureau personnel feel that the following changes are necessary, particularly in regard to residents who have shorter sentences. First, individuals with very short minimums should not be institutionalized at all; provision should be made for them to be sent directly to a Community Services Center. Second, providing the resident served one-half of his minimum sentence, the 3-month assessment period should be a sufficient institutional stay, thus making prerelease available to individuals with a 6-month minimum sentence. Finally, county time should be credited toward the 9-month requirement. Interview with Chief Witten.

126. The counselor has a number of functions to perform:
(1) He shall accept and review the application of the resident; if necessary, the caseworker may help the resident initiate this process. He shall also be responsible for having the housing officer and work supervisor and educational supervisor complete those portions of the application for which they are accountable. . .
(2) He shall request that the record officer verify all the necessary information with respect to the sentence and detainer status of the resident which determines the eligibility of the resident as set forth in §§ 95.113–95.119 of this Title (relating to minimum criteria for prerelease status; time of filing; protection of community; eligibility; medical clearance; conduct and purpose; federal and county sentences).
(3) He shall review all information available in the presentence investigation report, judge’s sentencing notes, classification and reclassification summary records, including cumulative adjustments record. Specifically, the caseworker should review: previous offense and incarceration history; work, family, educational and...
After all the information is gathered, the support team decides whether they will recommend that prerelease be granted. There are essentially two tangible criteria upon which this decision is based — minimum custody status, and resident participation in the prescribed internal programs. The most important requirement, however, is intangible — the resident's successful progress toward rehabilitation. This progress is, of course, based upon the perceptions of the support team, particularly those of the counselor. The counselor is legally the initiating agent for the recommendation, but favorable action on the application can result only if all members of the support team concur. If the resident's application is rejected, the reasons for the denial may not be given to the inmate at all, although the possibility remains of a later, successful application.

If prerelease is recommended, the case goes to the counselor supervisor who reviews the decision. If he agrees, the case is sent to the Director of Treatment and then to the Deputy Superintendent for Treatment. If the application is denied at any level, officials of the next level do not see it except in rare cases where the counselor or the resident appeals. The counselor's recommendation of approval is generally followed by the Deputy Superintendent for Treatment and if so, the final necessary level of approval is the Superintendent. While the

religious history, marital history and status; past and present life style in its social context, and history of mental health disorders. . . .

(4) He shall be responsible for reviewing with the appropriate staff those parts of the program and treatment evaluations which relate to the prerelease program for which the resident is being considered. . . .

(5) All the information shall be reviewed and verified with the applicant during the prerelease counseling interview. Particular attention should be given to the purpose and objectives of the prerelease program for which the resident is being considered. . . .

37 PA. CODE § 95.121(a) (1973).
127. 37 PA. CODE § 95.118(a) (1973); Resident Handbook, supra note 86, at 720; interview with Superintendent Jeffes.
128. 37 PA. CODE § 95.118(a) (1973); interview with Superintendent Marks.
129. 37 PA. CODE § 95.113(a) (1973). The administrative regulations state: Other serious considerations, such as the staff's evaluation of the progress of the individual toward treatment goals, the relevancy of the particular prerelease program to the treatment plan of the individual, and the backlog of eligible residents awaiting participation in a limited program shall be weighed carefully.

Id.

130. Interview with a resident.
131. Such a denial often results in the resident being required to comply with certain conditions in order to be approved; examples of such conditions are participation in another furlough or additional psychological testing. Interview with Deputy Superintendent for Treatment Bingaman.
132. Resident appeal is considered at notes 144–51 and accompanying text infra.
133. Counselor recommendations for approval at Rockview, for example, are accepted in approximately 90 percent of the cases. The greatest percentage of reversals consist of the younger counselors' decisions, because they have not yet developed a sense of what will be approved. Interview with Deputy Superintendent for Treatment Bingaman.
134. Interview with Superintendent Mazurkiewicz.
Superintendent, like the rest of the staff, considers treatment objectives, his concerns also include an evaluation of a possible adverse community reaction to the individual's release. 135

If the Superintendent accepts the favorable recommendation, a letter requesting approval is sent to the committing judge whose approval is required both by the statute and by administrative directive. 136 This procedure is fairly standard at all three institutions; 137 a letter is written to the sentencing judge in which the argument for prerelease is made. 138 If the judge expressly agrees or does not reply within 20 days of receipt of the letter, 139 it is assumed that he or she approves and prerelease is

135. Interview with Superintendent Jeffes. For community reactions generally, see notes 198-204 & 262-64 and accompanying text infra.

136. See Pa. Stat. Ann. tit. 61, § 1052(c) (Supp. 1975-76); 37 Pa. Code § 95.126(b) (1973) (work and education release); id. § 95.127(b) (furlough); id. § 95.128(b) (community treatment services). In the case of a furlough, however, the requirement of obtaining approval from the sentencing judge can be circumvented by granting the furlough to a different jurisdiction. Interview with Superintendent Mazurkiewicz. It is difficult to find administrative authorization for this practice as the directives require approval by the sentencing judge. See 37 Pa. Code § 95.127(b) (1973). The amended statute is identical in this regard. Pa. Stat. Ann. tit. 61, § 1052(c) (Supp. 1975-76).

It should be noted, however, that the statutory amendment was not in effect at the time the interviews were conducted. Practically, however, the amendment adds little to the administrative requirements. Compare Pa. Stat. Ann. tit. 61, § 1052 (Supp. 1975-76) with 37 Pa. Code §§ 95.126(b), 95.127(b), 95.128(b) (1973). The only change is the provision that prerelease may now be granted after service of the minimum sentence with only notice to the judge required. Pa. Stat. Ann. tit. 61, § 1052(c) (Supp. 1975-76). The administrative directives had seemed to require approval of the judge before prerelease could be granted at any time. 37 Pa. Code §§ 95.126(b) (1), 95.127(b) (1), 95.128(b) (1) (1973).

The only other area requiring discussion deals with appeals to the Board of Pardons. The directives required that the prerelease application "be referred by the Superintendent to the Deputy Commissioner of Correction for his review" prior to any submission to the Board of Pardons. 37 Pa. Code §§ 95.126(b) (3) (iii), 95.127(b) (3) (iii), 95.128(b) (3) (iii) (1973). The amendment to the statute provides for appeal to the Board if "the judge does not withdraw his objection, or the bureau does not withdraw its proposal for transfer, or the judge and the bureau do not agree on an alternate proposal for transfer . . . ." Pa. Stat. Ann. tit. 61, § 1052(c) (Supp. 1975-76). Whether this language will allow direct appeals by a Superintendent or whether an application must still first be submitted to the Deputy Commissioner prior to appeal is open to question.

137. The procedures generally conform to the administrative directives, as well as to the amended statute.

138. The letter includes a discussion of 1) the individual's crime, 2) his sentence, 3) some of the circumstances involved in those, 4) what he has done while at the institution, 5) the rationale for instituting the prerelease phase of his program, and 6) the proposed long-range plan for the man. Interview with Chief Witten.

139. Superintendent Marks of Graterford does not assume that lack of response constitutes consent. He requires some actual approval from the judge, even if only by telephone. Graterford's practice is an exception to the general rule, interview with Superintendent Marks, and is contrary to the administrative directives which provide for approval. 37 Pa. Code §§ 95.126(b) (2), 95.127(b) (2), 95.128(b) (2) (1973).
granted. If the judge expressly disapproves, a second letter is sent, and should the judge still balk, personal contact is made. Failing approval through personal contact, the Superintendent has to decide whether the staff feels strongly enough about the case to take the question to the Board of Pardons which has the power to authorize prerelease notwithstanding a judge’s objection. Superintendents, however, rarely take a case to the Board of Pardons because the probability of success is small and the appeal may aggravate the judge. Hence, as a practical matter, if the judge objects to prerelease, it is not granted.

If the judge refuses the application, or if one of the institutional decisionmakers denies prerelease, the resident has no effective means of appeal. In all three institutions, the resident’s initial recourse in such a situation is to send a request slip to the Superintendent asking that the objection be appealed or the decision reversed. Apparently, at least at Rockview, residents do not often utilize the request slip procedure but

140. Disapproval by the sentencing judge has not been rare, since many judges feel that the partial release of offenders by corrections personnel is a usurpation of their sentencing function and they are thus particularly concerned with furloughs and outresidency; their criticisms do not extend to the use of Community Services Centers, work release, or education release. Sweet, supra note 51, at 515–16. The judges criticize the programs as summary abrogations of their considered opinions, and maintain that the residents are released with virtually no supervision. Id. at 512–16.

These criticisms were made prior to the implementation of the administrative directives and the statutory amendment which now require the sentencing judge’s consent before prerelease is granted. Pa. Stat. Ann. tit. 61, § 1052 (Supp. 1975–76); 37 Pa. Code §§ 95.126(b), 95.127(b), 95.128(b) (1973). Presumably these administrative and statutory changes alleviate some of the judicial hostility toward certain prerelease programs. This is apparently the case at Rockview. Interview with Superintendent Mazurkiewicz. The Superintendent at Graterford, however, indicated that most judges are still not particularly supportive. Interview with Superintendent Marks. The Superintendents were of the opinion that certain hard-line judges, who will never agree to various forms of prerelease, will always remain. Interviews with Superintendents Jeffes, Marks, and Mazurkiewicz.

Letters advocating prerelease are also sent to the respective district attorneys. It is unusual for a district attorney to agree to the suggested prerelease, but such approval is generally not necessary and disapproval rarely affects the granting of prerelease. Interview with Superintendent Mazurkiewicz.

141. It is at this juncture that compromises are negotiated; for instance, the judge might agree to prerelease provided that it is to another county. Interview with Chief Witten.


143. The Dallas superintendent had only appealed to the Board of Pardons once. Interview with Superintendent Jeffes. The Rockview personnel had taken nine cases to the Board; prerelease was awarded over the judge’s objection in four of those. Interview with Deputy Superintendent for Treatment Bingaman.

144. One institution reported that there have been instances when counselors have argued against their superior’s denial of an application for prerelease, but that those situations were rare. Interview with Deputy Superintendent for Treatment Bingaman.

145. Interview with Superintendent Jeffes, Marks, and Mazurkiewicz.

146. Interview with Superintendent Mazurkiewicz.
this is of little consequence because only in cases of obvious, extreme abuse of the counselor's discretion is a reversal probable.\footnote{151}

The resident's only other means of challenging a denial of prerelease lies in sending letters to people outside of the institution. The most common recipient of such letters is the Commissioner.\footnote{148} Upon receipt of such a letter, the Commissioner's office contacts the institution to determine the reasons behind the denial. However, the report of the Commissioner's office to the resident generally contains only that information which the resident has already received from the Support Team.\footnote{149} The appeal to the Bureau staff is apparently as meaningless as the appeal procedure provided within the institution.\footnote{150} Hence, as a practical matter, if there is a denial at any level, there is little chance of reversal and revival of the application.\footnote{151}

5. Institutional Prerelease Programs

Essentially, prerelease is a series of steps designed to give the resident progressively greater increments of freedom.\footnote{152} The administrative directive states that "a variety of prerelease programs were planned and designed to provide a continuum of opportunity for exercising self-control and demonstrating responsibility as individual needs dictate."\footnote{153} A resident generally participates successively in work and/or education release, furlough, a Community Services Center, possibly a group home, and, in its currently curtailed form, outresidency. A frequent exception to this progression is the granting of furlough which is a high-risk form of prerelease wherein the resident is entirely free of control or supervision usually for 3 days.\footnote{154} As a result, a resident who qualifies for a furlough in terms of treatment, but who is still a security risk, might not be given a furlough until after he has entered a Community Services Center.\footnote{155} The general rule, however, is that at least one furlough is granted prior to the resident's entering a center.\footnote{156} Hence, the different forms of prerelease will be considered in the chronological order in which a resident is most likely to participate in them.

\footnote{147} Interview with Superintendent Jeffes. He said that he did not override decisions because to do so would be to question the staff member's professional competency, thereby leaving himself open to criticism. \textit{Id}.

\footnote{148} The Bureau considers a letter sent to the Commissioner's office as a formal appeal. Interview with Deputy Commissioner DeRamus.

\footnote{149} \textit{Id}.

\footnote{150} For a discussion of the stages at which a due process hearing might be necessary, see notes 392-337 and accompanying text infra.

\footnote{151} It is possible, however, that a later application may be successful. Interview with a resident.

\footnote{152} Some superintendents disagree with this proposition. Interview with Superintendent Marks; interview with Deputy Superintendent for Treatment Bingaman.

\footnote{153} 37 P.A. CODE § 95.112(a) (1973) (emphasis added).

\footnote{154} Interview with Chief Witten.

\footnote{155} Interview with Superintendent for Treatment Bingaman.

\footnote{156} Interview with Deputy Superintendent for Treatment Bingaman.
a. **Work Release**

Both nationally and in Pennsylvania, work release is the oldest form of prerelease.\(^{157}\) A Pennsylvania administrative directive has defined work release as follows:

A program operated out of regional or Commonwealth correctional institutions which enables a resident to leave the correctional facility and work in the community. The resident is required to return to the correctional institution at a designated time after the work day.\(^{158}\)

Of the three institutions studied, only Graterford has an extensive work release program. Rockview has two men in a very small program,\(^{159}\) while Dallas, at the time of the interviews, had no work release at all.

The absence of a number of factors necessary to a large-scale, successful work release program explains the lack of work release programs at Dallas and Rockview. Work release first requires relative proximity to a community, whereas these institutions are situated in isolated locations.\(^{160}\) Dallas, in particular, is so distant from a population center that transportation difficulties are prohibitive.\(^{161}\) Additionally, Dallas is located in the center of a conservative, rural environment. Since many of Dallas' residents are the overflow from Graterford, generally urban, minority-group members, and since the purpose of work release is reintegration of the residents into their home communities, the white, rural community near Wilkes-Barre fails to satisfy this primary goal of prerelease.\(^{162}\) Work release, secondly, requires adequate job opportunities; the present economic slump is particularly hard on offenders, who are always the last to be hired and the first to be laid off.\(^{163}\) Third, the effective administration of the program demands a structure outside of the institution where the residents can live, in order to minimize the possibility that contraband would be smuggled into the institution and thus to avoid the inconvenience of daily

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157. See text accompanying notes 28-29 & 61 supra.
158. 37 PA. Code § 95.111 (1973). Work release must be distinguished from prison industries programs which entail working in or immediately around the institution. See generally PA. STAT. ANN. tit. 61, §§ 141-44 (1964).
159. The men work as barbers at a local nursing home. Interview with Superintendent Mazurkiewicz.
160. See note 76 and accompanying text supra.
161. Interview with Superintendent Jeffes.
162. It is unfortunate that the character of a geographical area is allowed to dictate a policy which denies work release for any of the residents. A more logical approach would seem to be development of a program giving the eligible residents the choice of working in the local community.
163. Interview with Deputy Commissioner DeRamus; interview with Superintendent Mazurkiewicz. One suggestion for easing this problem is to have the state employ residents in state jobs which are vacant. The job foremen could provide the necessary reports to the institution staff. Interview with a resident.
searches. Such a structure, however, requires more staff, and therefore more money.164

Graterford's program, in which approximately 60 men participate, is designed to circumvent most of these problems. All of the participants live outside the institution in a trailer camp where a corrections officer provides 24-hour supervision. Adherence to the strict camp rules and regulations is mandatory,166 and any violation of these rules results in the resident's removal from the program. The institution staff makes on-the-job spot checks, maintains contact with the employers, and collects the resident's wages.168

In sum, work release has not been extensively implemented because most institutions, unlike Graterford, have found it difficult to organize. As a result, only a very small percentage of the residents in the correctional system receive the benefits of the program. Fortunately, the Bureau of Corrections intends to expand work release in the future by establishing regional correctional facilities167 which would make the program available to a greater number of residents and at the same time emphasize community contact. The only existing regional facility is located at Greensburg, where 60 percent of the residents are in the work release program.169 It appears that this sort of facility, with its work release orientation, is the harbinger of the future.169

b. Education Release

Education release is identical to work release except that it "enables a resident to leave the correctional facility and participate in education programs, vocational-technical programs, or both."170 Like work release, it requires the participant to return to the institution at night. Although each of the three institutions has established some form of education release, none of the programs reaches very many residents.

164. Interview with Superintendent Mazurkiewicz.
165. The residents are told when they can leave, where they can go, and what route they must take. All of this is monitored by spot checks. The local police participate in this supervision, and they are kept well informed as to who is in the area, what they look like, and where they are working. Interview with Superintendent Marks.
166. This collection of wages serves a dual function: managing the resident's money for him, and checking the resident's work attendance by the amount of the paycheck.
167. In 1965, the Pennsylvania legislature authorized the development of regional correctional facilities "for the treatment and rehabilitation of prisoners." PA. STAT. ANN. tit. 61, §§ 460.1 et seq. (Supp. 1975-76). The facilities, smaller than traditional correctional institutions are designed for treatment more than for security and will be populated by short-term offenders. Their objective is to keep the offender close to his community, allowing him to maintain community contacts. See Changing Concept, supra note 76, at 11. Expansion of this regional approach is intended, as new facilities are planned at Mercer, which is near Erie, and at Moosic, which is between Wilkes-Barre and Scranton. Id.
168. Interview with Deputy Commissioner DeRamus.
169. Supra note 76.
Rockview engages in the most extensive program. It originated as a federally funded project called Newgate whereby the Government paid the tuition for residents to attend the Pennsylvania State University while living at the institution. In June, 1974, the federal money was exhausted, but the program, now called Newview, has been continued with state funds.171

The purpose of project Newview is "to provide college level training programs for residents of Pennsylvania State Correctional Institutions in preparation for professional, para-professional and technical careers as part of a comprehensive vocational and personal rehabilitation program."172 The criteria for accepting a candidate into the program are his "intelligence quotient, functioning grade level, secondary school or general education development diploma, length of time remaining on minimum sentence and readiness to accept the academic demands and self-discipline required by the program."173

The Rockview program has two stages. In the first stage, the person lives and studies in the institution with the instructors coming to teach there. If the resident successfully completes this initial stage, and if money and space are available, he begins the second stage by moving to a farmhouse located on the grounds of the institution.174 The resident is taken to the University for classes, and brought back at the end of the day. The men are not watched while at the University, although an institution representative is on campus in case the resident encounters any difficulties.175 During the evening, the farmhouse is supervised by a staff member who remains until the men go to sleep; he then makes intermittent checks during the night.

Education release at Graterford is much the same as that at Rockview, except on a smaller scale. At the time the interviews for this paper were conducted there were four residents on education release, all attending Philadelphia Community College.176 The Bureau bears the cost of the program, but the residents are required to work during their free time in order to earn money for school expenses.177

171. Interview with Superintendent Mazurkiewicz. The funds now come from the Pennsylvania Department of Education. Id.
172. Resident Handbook, supra note 86, at 310. The project provides for degree, associate degree, and certificate programs. Id.
173. Id.
174. The farmhouse only holds 10 individuals. If those spaces are filled, the possibility exists that a resident could complete the first 2 years and be unable to continue because of the limited facilities.

Recently state funds have been insufficient and as a result, only six people are presently in the program. The institutional staff, in an effort to circumvent this problem, has been advising eligible inmates who have GI benefits to use those benefits to pay for tuition. Interview with Deputy Superintendent for Treatment Bingaman.
175. Id.
176. Negotiations are in progress to develop release programs in conjunction with Cheney State College and Montgomery County Community College. Superintendent Marks said that he would also like to develop a training program with a vocational school in the future. Interview with Superintendent Marks.
177. Id.
Dallas’ education program is also limited. Three residents are taken to an educational television station every day, and the only other program available at Dallas is a once-a-week welding class offered at a school in the area.

While the importance of education to the successful rehabilitation of offenders is enormous, it can readily be seen that education release programs are extremely limited, affecting only a few residents. The resident population has an average grade completion level of 8.58; upon testing, the average achievement grade is the equivalent of a sixth grade education, and only 10 percent of the residents achieve at the high school level.

In light of these educational needs, it is clear that present programs are strikingly deficient.

c. Furlough

Next to outresidency, furlough is probably the most controversial prerelease program. If a resident achieves prerelease status and a furlough is found to serve a treatment need, he is released into the community with no constraints for any period of time up to 7 days. While some Bureau material indicates that furlough is the first stage of prerelease, at one institution the inherent risks involved in that program have resulted in its use only after a successful period of work or education release has been completed. Despite this risk, its use has been extensive, since its inception in December of 1970, the total number of furloughs may have reached 10,000.

Furlough achieves its stated objectives of reintegration and rehabilitation in several ways. First, it permits the family unit to be sustained. Second, it provides the resident with an opportunity to prepare for leaving the institution, for instance, by allowing time for the resident to make

178. This program would be characterized as work release but for the fact that the three participants receive no compensation for their services at the station.
179. Interview with Superintendent Jeffes. Education release has been plagued by the same problem as work release — the community has been very unresponsive to any of the program’s programs. Id.
181. See Sweet, supra note 51, at 516.
182. An administrative directive defined temporary home furlough as:
The authorized leave of a resident from a Commonwealth Correctional institution for a period not to exceed seven days for the purpose of furthering the rehabilitative programs of a resident.
183. See text accompanying notes 154–55 supra.
184. Comment, supra note 82, at 289. The Temple study evaluated the success of the furlough program during 1973 and concluded that furloughs are granted in a manner much too mechanical, with excessive emphasis placed upon reward. The author suggested that the number of furloughs be reduced in order to facilitate thorough prefurlough interviewing, and to revitalize interest in the rehabilitative aspect of furlough. Id. at 315–16.
185. Interview with Superintendent Jeffes.
186. But see Comment, supra note 82, at 315.
applications for employment or school. Finally, furlough serves as an outlet for relief from the myriad of institutional tensions that inevitably arise within the residents.\textsuperscript{187}

The actual implementation of the statutory furlough program is remarkably similar in each of the institutions. Upon application by the resident, the institution contacts the local Community Services Center which investigates the home to which the resident desires to be furloughed.\textsuperscript{188} This investigation is undertaken to ensure the suitability of the home, the desire of the resident’s family to have him back, and their understanding of the responsibility involved. Equally important, however, is the local center’s check of the community’s probable response to the resident’s return;\textsuperscript{189} particularly relevant are the reactions of the local police and the feelings of the victim of the original crime.\textsuperscript{190} The results of the investigation are reported to the counselor who utilizes that information in determining the fitness of the resident for furlough.\textsuperscript{191}

If the furlough is granted, the resident is generally released for a 3- or 4-day weekend,\textsuperscript{192} the costs of which are borne by the resident.\textsuperscript{193} Upon the resident’s return, his counselor is required to discuss the furlough with him and to log any comments.\textsuperscript{194} If the resident successfully completes one furlough, others will probably be granted to him with some regularity.\textsuperscript{195}

Furloughs are also used as part of a referral procedure whereby a resident visits a Community Services Center for a weekend, thus giving the Center an opportunity to evaluate on a trial basis a resident who has applied to enter the program.\textsuperscript{196} Simultaneously, such weekend visits provide the resident with an opportunity to see if he would enjoy living at the center. This use of furloughs, although obviously contingent upon the center having bed space to accommodate a resident for a weekend, appears to be expanding.\textsuperscript{197}

\textsuperscript{187} Comment, supra note 82, at 290; interview with Superintendent Jeffes.

\textsuperscript{188} The home investigations were initiated in response to instances where residents had absconded in the early years of the furlough program. Interview with Chief Witten.

\textsuperscript{189} Interview with Deputy Superintendent for Treatment Bingaman.

\textsuperscript{190} In the past, the home investigations have upon occasion revealed that a vindictive victim awaited the inmate’s return. Interview with Chief Witten.

\textsuperscript{191} Id.

\textsuperscript{192} Resident Handbook, supra note 86, at 720; interview with Superintendent Jeffes.

\textsuperscript{193} Costs can be prohibitive for some impoverished residents who, for example, live in Philadelphia but are incarcerated at Dallas. Interview with Superintendent Jeffes.

\textsuperscript{194} 37 Pa. Code § 95.127(c)(5) (1973).

\textsuperscript{195} At Dallas, furloughs are probably granted every 90 days. Interview with Superintendent Jeffes. The Graterford staff grants furloughs twice a month for men who have already attained education or work release status. Interview with Superintendent Marks.

\textsuperscript{196} See notes 230-38 and accompanying text infra.

\textsuperscript{197} Interview with Superintendent Mazurkiewicz.
6. Community Reaction

The single most important factor in the success of prerelease is community support and involvement. Contradistinctively, the rural community’s conception of a penological system is one which emphasizes isolation and punishment. While the Bureau has recently changed its isolationist philosophy to one emphasizing reintegration, the community has never been reeducated and no attempt has been made to introduce the community to the new ideas and goals. Further, a number of the new programs were implemented, at best, without community input, or at worst, clandestinely. As a result, prerelease began in an extremely hostile environment. 198

In an attempt to avoid this enmity, a new approach has been adopted which seeks to enter into a chosen locality with a program proposal to obtain the community’s views and, hopefully, its support. 199 Problems remain, however, because the more conservative areas accept change very slowly. The difficulties increase when racial bias and urban-rural animosities are added to the equation. The community reaction to the three institutions is a function of all of these factors.

The most adverse reaction exists at Dallas. Superintendent Jeffes characterized the community as the biggest obstacle to extensive release programs; the political structure, in particular, has been unresponsive to any of Dallas’ programs. Part of the problem is that the programs have not been in existence long enough to generate support. As a result of this lack of community backing, residents who represent any sort of security risk are not considered for any form of prerelease. 200

Graterford experienced trouble with the community in the initial stages of the program. Their present philosophy, however, mirrors the Bureau’s approach; the institution eases into programs, encouraging community input at all levels. In accord with this policy, certain concessions have been made by the institution to gain community support, including restrictions upon the movement of work release participants. For instance, the men may not leave the job site during lunch. Some local supervision has also been integrated into the program structure — the local police are provided with the identities and locations of all of the men on prerelease. As a result, local response has improved, area industry has done its best to hire Graterford residents, 201 and the work release program is slowly expanding. 202

The fact that the most favorable community response exists at Rockview may be traced to two factors. First, the university community sur-

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198. For a discussion of related legal problems, see notes 438-47 and accompanying text infra.
199. Interview with Deputy Commissioner DeRamus.
200. Interview with Superintendent Jeffes.
201. Some area employers even have arranged to transport the residents to and from their jobs. Interview with Superintendent Marks.
202. Id.
rounding the institution is generally more liberal than the communities located near the other two institutions, and second, Superintendent Mazurkiewicz affirmatively attempts to bring the community into the institution. Consequently, local support increases as the community gains greater understanding of what the programs intend to accomplish.203

The institutions, then, are slowly gaining community acceptance by educating the populace concerning the program aims. While the institution is responsible for part of this educational task, the Bureau of Correction must increase its efforts in this area. In light of the apparent success prerelease has had,204 that added effort would appear to be extremely worthwhile.

7. Institutional Referral

The usual application procedures for prerelease substantially differ for a Community Services applicant.205 First, the administrative directive is much more explicit in regard to which residents should be given preference. Second, the normal two-step approval process, by the institution staff and the judge, becomes a three-step procedure. The third approval must come from the Director of the region where the Community Services Center to which the resident applied is situated.206

The administrative directive specifies the following guidelines for the institution’s consideration as it selects participants for the Community Services Center program:207 the resident should be sent to the region in which he lived prior to incarceration; no resident should be excluded from consideration due to a lack of suitable residence or employment, nor should the existence of detainers exclude a resident from eligibility; special consideration is to be given to residents approaching completion of their maximum sentences, to those individuals approaching completion of their minimum sentences, and to residents whose dependents are in financial need; the resident must have evidenced a continuous growth in internal institutional programs; a successful furlough record is desirable but not required; and, finally, the individual’s treatment needs must be considered

203. Interview with Superintendent Mazurkiewicz. Community reaction has apparently become so positive that the administration has had trouble limiting institutional tours to a manageable number. Id.
204. See note 448 and accompanying text infra.
205. Community Services is a community-situated residence for offenders, staffed by corrections counselors and house managers on a 24-hour, seven-day-a-week basis. This program provide[s] community living facilities for those former residents of regional and State correctional institutions who no longer require intensive custody. The community treatment center programs are individualized such that a resident is enabled to enter into employment, educational pursuits, vocational-technical training, or specialized services as the needs dictate.
206. Id. § 95.128(c).
207. Id. § 95.128(c).
with a view toward optimizing opportunities for the greatest number of residents.\textsuperscript{208}

While the institutions apparently do consider these factors in their determinations, the weight placed upon any individual factor varies. While the official policy is to send the individual to his home region, if that is not possible, an alternative region is utilized.\textsuperscript{209} The institutions give strong preference to men who are reaching their maximums.\textsuperscript{210} The crucial factor in the treatment aspect of the referral decision appears to be a consideration of resident participation in internal programs, since both the institutions and the centers emphasize that requirement.\textsuperscript{211} In regard to furloughs, the staff generally looks for at least one successful furlough to have been completed prior to referral. At Graterford, however, where the resident represents a security risk, the advantages of the furlough are sacrificed and the more supervised Community Services Center\textsuperscript{212} is the first form of prerelease granted. The center personnel, in particular, prefer a man who is nearing completion of his minimum sentence rather than a man who has a longer wait. Otherwise, one man fills a bed which could be used by a number of men who have shorter periods until completion of their minimum sentence.\textsuperscript{213}

After the institution has considered the above factors and has received the judge’s approval, all of the information about the resident is

\textsuperscript{208} Id.

\textsuperscript{209} Interview with Superintendent Mazurkiewicz. Not all of the regions are supportive of, or consistent in, the use of alternative regions. In one instance, a Philadelphia man was sent to Scranton because the Philadelphia Community Services Centers were full. When another man from a different region then applied to Scranton, the Scranton staff refused to accept him, citing the home region provision. \textit{Id.} Such a denial seems contrary to the administrative policy which makes home region a factor, but not a determinative one.

\textsuperscript{210} The institutions complain, however, that some Community Services Centers will still refuse those cases which they consider a high risk. It is difficult to understand how the center staff who feel this way justify their position. Their reason for refusing the man is that the security risk is too great. The result of this refusal is that, in a short time, the man is returned directly to the community without the benefit of the Community Services Center decompression. Assuming that the risk to society is lessened by a stay in the center, the ultimate result of their denial is to increase the risk to society. The same argument applies, in a slightly lesser degree, to the man who is approaching completion of his minimum sentence and who is likely to be paroled. Because this man’s release is not total, the illogic of the center staff’s refusal is not as evident. Nevertheless, parole is much less structured than residence at a center and, to that extent, the risk to the public is greater if the man is not channeled through the Community Services system. The only explanation for such a refusal by a regional director is a too narrow focus upon immediate risk at the center rather than a broader view which weighs the risk at the center against the ultimate danger to society if the resident is not accepted. At least one superintendent feels that, as the man approaches complete release, the center should be obligated to accept him. \textit{Id.}

\textsuperscript{211} Interviews with Superintendents Jeffes, Marks, and Mazurkiewicz.

\textsuperscript{212} \textit{See} text accompanying notes 154-55 \textit{infra}.

\textsuperscript{213} For a more detailed discussion, \textit{see} notes 244-47 and accompanying text \textit{infra}.
collected into a referral package and sent to the Regional Director for his or her considerations. The package\(^{214}\) includes: a classification summary, which is a document prepared during the initial stages of classification summarizing all educational, social, psychological, and vocational data, including the resident’s criminal record; a sheet which lists the resident’s activities at the institution, his diagnosed needs, and the staff’s prognosis of his ability to cope in the community; and finally, actual communications with the judge.\(^{215}\)

The referral process has resulted in some friction between the institutions and the centers.\(^{216}\) One problem results from the fact that the different centers require different referral information; hence, the institutions are unable to put together a fungible package.\(^{217}\) The judge-related materials are particularly bothersome in this regard. For instance, some regions only accept an express approval from the judge so that if the in-

214. The directive requires the transmittal of the following:

(i) A comprehensive letter of introduction as set forth in subsection (h) of this section shall be prepared by the caseworker describing the resident and detailing the rationale for his referral for community-based programming at this time. Important issues which should be covered are such areas as follows:
  (A) Current family status.
  (B) Vocational skills, training plans, and the like.
  (C) Need for psychiatric counseling.
  (D) Need for special programming, such as drug therapy and the like.
  (E) Current financial status, including institution account and outstanding court cost, and the like.
  (F) Strength and weaknesses to be emphasized in treatment.
  (G) A thorough evaluation by the caseworker of what in the present personal or emotional situation of the resident makes him a desirable candidate for community treatment.
  (H) Services at this time.

(ii) A copy of the completed application for community treatment services referral. Reference should be made to \(\S\) 95.121 of this Title (relating to responsibility of the caseworker).

(iii) A copy of the complete Initial Classification Summary (JBC 1-A), with additional community sensitivity subsection. Reference should be made to \(\S\) 95.120 of this Title (relating to caseworker). A recent glossy photograph of the individual shall be attached.

(iv) Copies of all correspondence with the sentencing court.

(v) A copy of the completed Reclassification Summary (JBC-13), where applicable. Reference should be made to \(\S\) 95.121(f) of this Title (relating to responsibility of the caseworker).

(vi) A copy of the presentence investigation and sentencing notes, when available.

(vii) Any other information which is available to the institutional treatment staff which might aid in developing a more effective community treatment plan for the individual.


215. Interview with Superintendent Mazurkiewicz.

216. For the complaints of the Community Services personnel, see text accompanying notes 230–33 & 249–50 infra.

217. This problem is more severe at Rockview which services the whole state, and which is, therefore, more likely to deal with varying regional philosophies.

Interview with Deputy Superintendent for Treatment Bingaman.
stitution had merely assumed judicial approval was given after the 20-day period had ended, the requirement of express approval would effectively block the referral.218 A second difficulty arises from different regions' application of different criteria for accepting residents into their program, so that residents with identical qualifications who have made equal progress might be variously accepted or rejected for Community Services simply because the respective regions emphasize different factors. The resident's frustration under these circumstances is predictable. The ideal approach, therefore, from the institutions' standpoint, would be to give standard referrals without regional variations.219

Another problem results from the basic difference of opinions between the institutions and the centers as to which factors should be emphasized in the referral decision and, even more fundamentally, who should make that decision. Some centers, overemphasizing the potential risk involved with men who have committed certain types of crimes, refuse to accept "high risk" men even when there are empty beds. Greater emphasis, in Superintendent Mazurkiewicz's opinion, should be placed upon institutional adjustment and treatment progress; further, the Community Services personnel, in his opinion, should defer to the institutional staff on referral questions, for they are better equipped and informed to gauge a resident's progress. This approach would lend more consistency to the referral decision and avoid the problem of having only one of two equally adjusted men being accepted because of different regional criteria.220

Finally, there exist philosophical differences regarding the center's role in alleviation of overcrowding. Unlike the institutions, the centers may be full, but, with the exception of those in Philadelphia, they are not overflowing. Mazurkiewicz feels that the centers have an obligation to act as an outlet for the rapidly increasing institutional pressures, an obligation which, he contends, extends to the development of all local resources, including expansion of the centers and establishment of group homes.221 In any case, he feels the regions must move away from their present cautious approach and assume a great deal more responsibility in removing men from the institutions.222

218. Id.

219. Interview with Superintendent Mazurkiewicz.

220. Id.

221. Group homes have been used in some regions to relieve the pressures resulting from the curtailment of outresidency. For a more detailed discussion, see notes 343-55 and accompanying text infra.

222. Interview with Superintendent Mazurkiewicz. Although it is admittedly far from its goal, the Bureau's objective is that every man should participate in some form of prerelease. Interview with Deputy Commissioner DeRamus. In any case, the existence of many beds and the failure of some centers, most notably Scranton, to expand, are inexcusable. Interview with Superintendent Mazurkiewicz.
B. Community Services Prerelease

1. Organizational Description

Community Services consists of 14 community centers organized into 6 regions, each supervised by a Regional Director. Although the directors are subject to rules issued by the Commissioner or Deputy Commissioner of the Bureau of Corrections, there is no one official in the Bureau who has the specific job of coordinating a unified approach to Community Services. As a result, the Regional Directors generally have organizational autonomy in their respective regions. Therefore, though each Community Services region operates within the same guidelines, varying administrative and philosophical approaches are utilized.

Once the institution staff has referred an inmate to Community Services, it is the latter’s responsibility to make the final decision regarding acceptance of the resident. This decision, like so many others made by Community Services personnel, is not determined in the same manner throughout the system — the dissimilarity is directly attributable to the lack of an integrated administrative structure in Community Services.

223. The regions are apportioned upon a geographic basis.

<table>
<thead>
<tr>
<th>Region</th>
<th>Location</th>
<th>Regional Office</th>
<th>Location of Centers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region I</td>
<td>Southeast</td>
<td>Philadelphia</td>
<td>Philadelphia (4)</td>
</tr>
<tr>
<td>Region II</td>
<td>Northeast</td>
<td>Scranton</td>
<td>Scranton and Allentown</td>
</tr>
<tr>
<td>Region III</td>
<td>Southcentral</td>
<td>York</td>
<td>York and Harrisburg</td>
</tr>
<tr>
<td>Region IV</td>
<td>Central</td>
<td>Johnstown</td>
<td>Johnstown</td>
</tr>
<tr>
<td>Region V</td>
<td>Southwest</td>
<td>Pittsburgh</td>
<td>Pittsburgh (3)</td>
</tr>
<tr>
<td>Region VI</td>
<td>Northwest</td>
<td>Erie</td>
<td>Erie and Sharon</td>
</tr>
</tbody>
</table>

This project focuses upon the centers in Regions I through IV.

224. Although Deputy Commissioner DeRamus has the duty of overseeing the operation of Community Services, he also has other functions to perform. Community Services personnel said that, as a result, he is “spread too thin” to effectively unify the program. In the past, one person was given, as his sole responsibility, the task of supervising Community Services. When that person left the Bureau, however, his position apparently was not filled. We were unable to ascertain if the majority of the Bureau personnel felt that the position should be reinstated. However, one team of researchers who recently evaluated Community Services, opined that the present system was unsatisfactory. They concluded that it was unlikely that the daily routine of Center administration can be adequately handled under the present arrangement, since the Executive Deputy and the Commissioner have eight other division heads reporting directly to them. Eliminating the [Community Services] director position makes the width of the control span a nearly unmanageable fourteen, rather than the more manageable (if still too broad) span of nine.

Duffee, supra note 57, at 48.

225. Interview with Chief Witten; interviews with Regional Directors Desuta, Fains, and Lonergan.

226. Most of the Community Services personnel believe that autonomy is necessary for the proper operation of the program. They state that the loss of this flexibility would make it overly difficult for the various staffs to deal with the differing problems that exist. Interview with Regional Directors Desuta, Fains, and Lonergan.
2. Referral Decision

As noted, the referral decision is made differently in the various Community Services regions. An immediately apparent dissimilarity concerns who decides whether the referred inmate is accepted into the program. Two basic patterns exist. In some regions, the decision is made at a regional level — the man is accepted into the region and not into a particular center. Where that approach is followed, the Regional Director and the center personnel make the decision together. In other regions, however, the referral decision is made solely by the staff of the particular center involved. The importance of this dissimilarity extends beyond mere variations in procedural structure, for it indicates that the differences which exist between the regions are compounded, in some instances, by intraregional distinctions.

The referral decision procedure also differs in the type of information used by the decisionmakers. Although all regions utilize the referral package, some require that additional information be received before any decision can be rendered. In some instances, this requirement stems from a belief by some Community Services personnel that the referral package does not include sufficient disclosure of the past history of the man involved. These staff members, feeling a need to know more about the man's family life and associates prior to incarceration, complain that the referral package often overly stresses the man's institutional adjustment without giving the staff adequate insight into the way the inmate might behave when he returns to society. Other Community Services people who do not feel that the referral package is inadequate in this regard, request only further psychiatric testing material. The divergence in the type of information requested by Community Services personnel evidently reflects the different philosophies within which the various regions operate.

Other referral decisionmaking dissimilarities also exist. The Johnstown Community Services Center usually does not render a referral de-

227. DUFFEE, supra note 57, at 54.
228. The Southeast and Northeast Regions generally fit within this category. Interviews with Regional Directors Fains and Lonergan. Interview with Center Director Armstrong. The center personnel who are involved are the respective directors and counselors. Interview with Center Director Armstrong.
229. DUFFEE, supra note 57, at 54. Of the regions visited, only the Southcentral Region fit exactly within this category. Interview with Regional Director Murphy; interview with Center Director Nordstrom.
230. For a description of what the referral package includes, see notes 214-15 and accompanying text supra.
231. These informational disparities cause problems for the institutional staff. See notes 216-19 and accompanying text supra.
232. Interview with Regional Director Murphy; interview with Center Director Nordstrom.
233. See notes 241-43 and accompanying text infra.
cision until the staff meets twice with the applicant.235 A member of the staff initially visits and interviews the inmate at the institution. Subsequently, the staff furloughs the man to the center for a weekend to see how he interacts with their staff and residents.236 Other regions are not nearly as insistent upon this procedure,237 and at least one center director expressed a dislike for this method.238 The degree of personal contact between the staff in these other centers and the inmate prior to the decision about his referral generally depends upon the inmate's desire to meet with the center personnel. Often the inmate, on furlough to his home, visits the center to meet with the people he hopes to join on a more regular basis.239 However, when certain rare240 problems regarding the referral do appear, the personnel do visit the institution and meet with the inmate.

The last major distinction in the decisionmaking methods utilized by the various Community Services personnel lies in the criteria employed to judge the acceptability of the referred inmate. To some degree, diversity is unavoidable since, inevitably, inmates from differing geographic locations are not the same. The reason for this distinction in the type of inmate chosen, however, goes beyond mere geography. Rather, it is a manifestation of the dissimilar philosophies as to whom Community Services should seek to aid.241 The problems in attempting to describe these philosophic vari-

235. Interview with Johnstown Center staff member.
236. Id.
237. Occasionally, personnel at other Community Services Centers do request that the referral inmate be furloughed to their center. This is clearly exceptional, however, and is rarely used by any center personnel except those at Johnstown. Interview with Regional Director Murphy; interview with Center Directors Berkheiser and Nordstrom.

Certain barriers impede further utilization of this Johnstown procedure. One important hindrance is the lack of bedspace at the centers. At Johnstown, a room is reserved for these weekend furloughs, while in other centers, the staff apparently does not feel that this is maximum utilization of a bed. Interview with Center Director Duff.

238. Director McGuire of the Scranton Center stated that he would rather have the referred inmate go on a furlough to the inmate's home, in order to see how he behaves in that environment, than have the inmate furloughed to a center. Interview with Center Director McGuire.
239. This is a common occurrence in all the regions visited. Interviews with Regional Directors Lonergan and Murphy; interviews with Center Directors Berkheiser and McGuire.
240. This procedure is also practiced in all the regions. Interviews with Regional Directors Pains, Lonergan and Murphy; interviews with Center Directors Berkheiser and McGuire.
241. Interview with Chief Witten; interview with Center Director Armstrong.

Ms. Witten explained, however, that the different conceptions are not totally a manifestation of variant philosophies. Part of the difference results from the relative availability of resources in the various communities. Hence, in one area, the Community Services personnel might accept alcoholics because an alcoholic outpatient clinic operates in that community. Another community might not have such a clinic, making the Center staff hesitant to accept a man who needs such a resource.

However, the various philosophical approaches are of crucial importance. The Bureau officials have taken notice of this and are presently seeking to revise the Community Services directive in an attempt to define, more precisely, the type of inmate that Community Services should accept. The officials hope thereby to promote
ances are insurmountable, largely due to the inability of the Community Services personnel to describe accurately all the essential factors which are involved in the discretionary decision to bring a man into the program. But the disparity exists, and the institution personnel at Rockview helped to substantiate this fact.

Although differences in the criteria which various Community Services personnel utilize exist, so also do certain similarities. The length of time remaining to be served by a referred inmate before he is eligible for parole is viewed by almost all as an influential factor in the referral decision. The importance of this element merits has increased since January, 1974, when outresidency, the final stage in Community Services where the participants live in their own homes, was discontinued. The elimination of outresidency obviously curtails the ability of Community Services personnel to service more men than their center can house. In an effort to circumvent this reduction in capacity, and in order to continue to aid as many men as possible, the centers now accept only those inmates whose imminent eligibility for parole facilitates a rapid turnover of residents. The referral procedure utilized by almost all of the regions consequently has undergone substantial change.

The majority of the Community Services personnel believe that the quality of the cases referred is generally satisfactory. The minority, who are dissatisfied with referrals from the institutions, observe that many cases are referred too early because of enormous caseloads and pressures towards a more unified approach to Community Services. Interview with Deputy Commissioner DeRamus; interview with Chief Witten.

242. A number of Community Services people did provide some indication of the type of person they seek. Regional Director Fains indicated that she and her staff searched for a person who had adjusted to prison life, and had also attempted to prepare himself for reintegration into the community by involvement in an institutional work program. Interview with Regional Director Fains. The Center Director at York said that he and his staff did not look at any particular factors but rather looked at the “total man” to see if the referred inmate was acceptable. Interview with Center Director Berkheiser.

Unfortunately, these descriptions are not very explanatory, especially in light of the observation made by Dr. Duffee and his staff that “[i]nitial comparison of characteristics of those rejected on the record does not immediately reveal explicit reasons for rejection, compared to the characteristics of those accepted.” DUFFEE, supra note 57, at 54-55 (emphasis in original).

243. See text accompanying note 220 supra.

244. An inmate is eligible for parole when he has served his minimum sentence. PA. STAT. ANN., tit. 61, § 331.21 (1964).

245. The effectiveness of Community Services as a treatment tool is diminished if a participant is forced to live in the structured setting of a center for a long period of time. Interview with Regional Director Fains.

246. Interviews with Regional Directors Desuta, Fains, and Lonergan; interviews with Center Directors Armstrong, Duff, and McGuire.

247. Only one Center Director expressed a contrary view. Mr. Berkheiser, Director of the York Center, stated that he continues to accept referrals in the same manner as he did prior to the curtailment of outresidency. Interview with Center Director Berkheiser.
placed upon the institutions to make referrals. Second, these Community Services people feel that the institutional staff is insufficiently concerned with the inmate's past. Whether these criticisms are valid or not, at least one group of researchers of Community Services thinks that the referrals are poor, observing that

the intake and initial programming functions at each center must be affected by the poor quality of the assessment process within the institutions since they must accept or reject from the pool of referrals from institutions and must make much of their decision based on information that is of poor quality to begin with.

The former Director of Research at the Bureau also expresses disappointment with the institutional referral process.

3. Community Services Centers

a. Description

Once an applicant is accepted into Community Services, he will most likely reside in a Community Services Center. A discussion of the resident's life in a Community Services Center is best introduced by a physical description of the various centers.

The structures of the centers are as varied as the settings in which they are located. The Johnstown Center, for instance, is situated on the fifth floor of a hotel in the downtown portion of that city. In Philadelphia, one center is located in a restored tenement, while another is found in a Salvation Army Red Shield Residence. The Scranton Center is in the most peculiar setting, a converted funeral parlor. The internal appearance of the centers indicates that they are generally well-kept and comfortable, although none could be considered opulent.

Three factors, however, coalesce to cause a disparity in the homelike ambience of the various centers. First, the physical structure of certain centers is more conducive than others to such an atmosphere. Second, a number of centers have been more fortunate in obtaining furniture and recreational facilities from the outside community. Finally, since the

249. Interview with Regional Director Murphy; interview with Center Director Nordstrom.
250. Interview with Regional Director Murphy; interview with Center Director Nordstrom. Compare this view with the institutional personnel's view that the Community Services personnel place too much emphasis upon the man's past and not enough upon institutional adjustment. See text accompanying note 220 supra. There is obviously a need for communication about this matter.
251. DufFe, supra note 57, at 57.
252. Id. at 55-56, wherein the former Director's conclusions regarding referral are listed.
253. Community Services has three types of residency; center residency, group home residency, and outresidency. 37 Pa. Code § 95.111 (1973). Center residency is the usual arrangement. For further discussion of group home residency, see notes 320-21 (supra) and accompanying text infra. For further discussion of outresidency, see notes 333-42 and accompanying text infra.
quality of a homelike atmosphere is inversely proportional to the number of residents in a given center, a less institutional environment exists at those centers with fewer residents. A comparison between the Scranton Center and Philadelphia Center No. 4 serves to highlight these points.

The Scranton Center appears to be the most pleasant of those which we examined. The physical structure of the building is well-suited for its present purpose: all offices are located in unobtrusive places and there are two large, wood-paneled sitting rooms. The center contains a pool table, comfortable couches and chairs. Furthermore, only a few residents are housed at the Center so that there is no feeling of overcrowding.

Although it appears comfortable and offers its residents more personal privacy than does its Scranton counterpart,254 the Philadelphia Center does not promote the same ambience present at Scranton. The institutional impression conveyed by the Philadelphia Center results, in part, from the fact that the entire first floor of the Center is occupied by offices.255 An impression further exacerbated by the overcrowding at the Philadelphia Center.256

The differing types of neighborhoods around the centers also contribute to the disparity in therapeutic environments. The Philadelphia Center possesses the worst geographic location because it is situated in an area which has been depicted as "a haven for anything illegal,"257 "extremely run-down" and composed of "transient apartment dwellers."258 On the other hand, other centers have been fortunate enough to locate in surroundings more conducive to rehabilitation. Philadelphia Center No. 3 is located in a middle-class neighborhood with a low crime rate.259 The Centers in Scranton and Johnstown are both situated in the downtown sections of their respective cities, and although neither neighborhood is residential, neither area appears run-down. The Director of the York Center has described the location of his center in a "semibusiness-semiresidential area"260 with a low crime rate as perfect.261

A new arrival at a Community Services Center must not only adapt to his physical surroundings, he must also adjust to the people he will encounter while living at the center, specifically, the other center residents and the people in the general community. At the time of the interviews, most of the center residents and staff enjoyed a good relationship with

254. In Scranton the residents sleep in dormitory-like rooms while in the Philadelphia Center, the men have only one roommate.
255. Director Duff bemoaned this fact. Interview with Center Director Duff.
256. Mr. Armstrong, Center Director of Philadelphia No. 1, noting the lack of a "therapeutic" environment in Philadelphia No. 4, states that the problem is largely attributable to the small amount of money that the Center, and Community Services as a whole, receives from the Bureau. Interview with Center Director Armstrong.
257. Acting Center Director Duff, cited in DUFFEE, supra note 57, at 72.
258. Former Regional Director Franklin Barrett, cited in DUFFEE, supra note 57, at 72.
259. Id. at 74.
260. Id. at 66.
their respective communities. This good will is the result of public relations work performed by the Community Services personnel, which was necessary to dispel the general public's misconceptions about Community Services. Such public relations work continues even in the established centers, cultivating supportive relationships with local police forces, the general community and private resource agencies, such as the Jaycees.

The number of residents the inmates meet varies considerably from center to center. At the time of the interviews, five residents lived in the Scranton Center; the Johnstown Center housed twice that many, and Philadelphia No. 4 housed three times the Scranton population. Regardless of the size of the resident population, every center has only one director, two counselors, and five or six house managers. It is apparent that

262. Interviews with Regional Directors Desuta, Lonergan, and Murphy; interviews with Center Directors Berkeheiser, McGuire, and Nordstrom.

263. Most Community Services staff members state that once the police are made aware of the importance of the structured Community Services' reintegration mechanism they respond positively. Interviews with Regional Directors Desuta and Murphy; interviews with Center Directors Duff and Nordstrom. In fact, a number of Community Services personnel related different incidents in which the police had given residents preferential treatment because they knew the person was a center resident. In Harrisburg, one resident was even given a police escort through a traffic jam so that he would not be late for his center curfew. Interview with Regional Director Murphy. In York, the Center Director indicated that the local police are helpful and have given him information about certain residents so that he might effectuate modification in the men's behavior. Interview with Center Director Berkeheiser. No staff member complains that the police harass the residents.

264. Not all center neighbors are receptive. The Scranton Center is located next to a Christian Mission. From October 1972, when the Center opened, until mid-1974, it existed peacefully with its neighbor and there were no incidents. For some reason, unknown to the staff, in the summer of 1974, the Mission erected a two-story cinder block "spite wall." The wall was built about 6 inches from the Center windows, blocking light and air from entering the Center. Interview with Regional Director Lonergan.

This problem in Scranton was minor compared with the dilemma which beset the No. 3 Philadelphia Center. Although Philadelphia No. 3 was due to open in May, 1973, it still had not done so in September, 1974. The delay was due to intense community resentment which erupted into a zoning dispute. Regional Director Fains explained that the Community Services people had entered the neighborhood "too clandestinely" and failed to promote a friendly relationship with the community leaders. Interview with Regional Director Fains. See also DUFFEE, supra note 57, at 74-75.

265. There are a number of reasons for the differences in resident populations. One obvious reason is that certain centers have more space in which to house residents. Another important factor is the differing philosophies of the center staffs. Some personnel, especially those in the Southeast region, extend their counselor-resident ratio more than the personnel in other centers. Interview with Regional Director Lonergan; interview with Center Director McGuire.

266. The main function of the house manager is to provide basic supervision on a 24-hour basis, pursuant to the administrative directive. 37 Pa. Code § 95.111 (1973). The staff positions are generally filled by men; however, there are exceptions. In the Southeast Region the Regional Director and the Center Director of Philadelphia No. 4 are both women. In the Harrisburg and York Centers, women are employed as house managers. The Director of the Harrisburg Center told us that the selection of a woman as a house manager in his Center was a conscious choice, since he feels that "the motherly role" is better suited to the Regional Director Nordstrom.
the uniform staff size causes a great deal of acrimony throughout Community Services. The staff in the centers with the large resident populations are dissatisfied with the Bureau's inflexible hiring policy, and complain that the Bureau has failed to hire the extra staff necessary to lower their caseloads. 267 Interestingly, some personnel from centers with smaller resident populations argue that the problem is created by the more populous center's overextending themselves by accepting too many referrals, rather than by the Board's hiring policy. 268

There is validity to the views of both sides. The staff in the more populous centers may have overextended their capabilities, but since such Centers service a larger inmate population, 269 the pressures to expand are obviously great. 270 This added burden is recognized by the leadership in the Bureau. Deputy Commissioner Erskind DeRamus hopes that the Centers in the metropolitan areas will soon receive sufficient numbers of counselors to adequately serve the large number of inmates who are referred to those areas. 271

b. Rules and Regulations

The staff members supervise the resident's life while he participates in Community Services. The new resident finds that he has entered a world replete with constant evaluation, a place where correct responses are rewarded by extensions of leisure time, and wrong behavior can result in his return to the institution. He is made acutely aware of this fact almost immediately upon arrival, when he is presented with a list of center rules. After he has familiarized himself with this material, he signs a contract in which he agrees to follow all the center regulations and which informs him that "[violation] of any of the above conditions or provisions shall be deemed sufficient cause to have [his] Community Service privileges withdrawn, resulting in [his] immediate return to a State Correctional Institution." 272

267. Interviews with Center Directors Armstrong and Duff.
268. Interview with Regional Director Lonergan; interview with Center Director McGuire. Not all personnel from the centers or regions with small resident populations agree with this explanation. In fact, the Director of the Southcentral Region feels that the centers with larger resident populations should have additional counselors. Interview with Regional Director Murphy.
269. Interview with Deputy Commissioner DeRamus.
270. Surprisingly some think that those who have over-extended themselves are in fact doing a better job than their less ambitious counterparts. Interview with Superintendent Mazurkiewicz.
271. Interview with Deputy Commissioner DeRamus. It is unfortunate that Mr. DeRamus could only express hope that the necessary help will be forthcoming. Perhaps the Deputy Commissioner's uncertainty is a function of his inability to forecast the Bureau's future budget.
272. Northeast Region Resident Contract (on file at the Villanova Law Review). The Director of the Northeast Region said that the Community Services personnel are forced to utilize such contracts in order to convict residents of prison escape. Apparently, prior to the use of the contracts, the courts dismissed such escape cases. Interview with Regional Director Lonergan.
The center rules may be best characterized as general housekeeping guidelines. For instance, the provisions usually include a stipulation that prior to leaving the center, the resident must notify the house manager of his destination. The provisions also require him to observe the curfew, and attend all counseling sessions and other scheduled meetings with the staff.273

Although the importance of following the above rules cannot be overemphasized,274 the foundation of the whole structure of Community Services is the provision which stipulates that the resident be employed.275 A new resident in Community Services generally discovers, therefore, that his most pressing initial concern is to find a job.276 Until he has done so, his leisure time is restricted277 and his stay at Community Services is conditional — continued unemployment constitutes sufficient grounds for his return to the correctional institution.278

The residents, however, often experience difficulty in finding jobs.279 Many of the residents are unskilled laborers, looking for work in a lagging economy where they are forced to compete with others who do not have any criminal record to impede their search.280 Despite these obstacles,

273. See, e.g., Johnstown Community Services Center Resident Guidelines, December, 1972 (unpublished pamphlet on file at the Villanova Law Review). Generally, resident guidelines also include provisions which forbid the residents from gambling, utilizing certain types of credit arrangements, and owning or driving a car without staff permission. Furthermore, the residents are usually assigned certain housecleaning duties. Id.

274. Continued violations of these rules can result in return of the resident to the institution. See text accompanying note 272 infra.

275. Interview with Regional Directors Desuta, Fains, Lonergan, and Murphy; interviews with Center Directors Armstrong, Duff, McGuire, and Nordstrom.

276. This is not so in every case. Certain residents do not seek employment, but rather admission into academic or vocational training schools. However, various factors prevent a large number of residents from participating in such programs. First, it appears that only in the Southeast Region are residents encouraged to seek admission into school programs. Interview with Regional Director Fains; interview with Center Director Duff.

Lack of funding further impedes residents' admission into academic programs. Id. Although certain residents in the Southeast Region have their school costs paid by outside agencies, many other regions are unable to arrange such grants. Interview with Center Director Duff. Moreover, some recipients of scholarships have problems securing the necessary funds for personal expenses. As a result, certain prospective student-residents are eligible for public assistance. Interview with Regional Director Fains. However, only the personnel in the Southeast Region are not hesitant to utilize this resource. See notes 300-03 and accompanying text infra.

277. For example, at the York Center, an unemployed resident cannot leave the Center after 6:00 P.M. Once he works one full day, however, he can remain outside until 9:00 P.M. Interview with Center Director Berkheiser.

278. See note 356 and accompanying text infra.

279. Interviews with Regional Directors Fains and Murphy; interviews with Center Directors Armstrong, Berkheiser, Duff, and McGuire.

280. Interview with Regional Director Murphy; interviews with Center Directors Armstrong, Duff, and McGuire. Center Director Berkheiser does not feel that the residents have more trouble than most unemployed persons who are seeking employment during the current economic crisis. Interview with Center Director Berkheiser. Furthermore, a number of personnel believe that many people prefer to hire Community Services residents. Interview with Regional Director Lonergan; interview with Center Director McGuire.
some centers pursue a course of nonassistance insofar as the resident's search for employment is concerned.²⁸¹ This intentional nonassistance is evidently viewed by these centers as a therapeutic tool. Staff members at such centers feel that the resident gains self-esteem by successfully seeking employment without assistance, making his extra effort worthwhile.²⁸²

Even these staff members who do not render affirmative assistance apparently inform the residents of employers who have hired Community Services residents in the past.²⁸³ The resident is expected, however, to approach the employer himself without any further aid from the staff. Where a man had actively searched for work and had been unable to find any, however, one center director who usually abstained from providing any assistance would arrange a job with an employer he knew would be willing to hire a Community Services resident. But this was done only in rare situations. Furthermore, even then, the resident would not be informed that the director had arranged the job. The resident would merely be told that this employer had hired Community Services residents in the past and might be disposed to do so again at that time.²⁸⁴

Other Community Services personnel, however, do aid the men in their initial search for work.²⁸⁵ Reasoning that the important consideration is not the finding of a job, but the work itself, these personnel conclude that since the men at the Center are hampered in their search for work, they need as much help as the staff can provide.²⁸⁶ Notwithstanding this assistance, the residents at such centers are still expected to look for work, and are not permitted to merely wait for the staff to make the necessary arrangements.²⁸⁷

The staff members generally did not have specific viewpoints as to whether or not the man should inform his prospective employer of his participation in Community Services.²⁸⁸ Obviously, if an employer is unaware that a man is a resident in a center, the resident has a far better chance of obtaining employment. Hence, most staff members leave the

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²⁸¹ This procedure is followed at the Johnstown and York Centers. Interview with Regional Director Desuta; interview with Center Director Berkheiser.
²⁸² Id.
²⁸³ This is the usual procedure at the Johnstown and York Centers. Interviews with Regional Director Desuta; interview with Center Director Berkheiser. Obviously, this function is also performed by the staff in those centers where the resident is actively aided in his pursuit of employment. In the Southeast Region centers, for instance, employer files are maintained for just this purpose. Interviews with Regional Director Fains; interview with Center Director Berkheiser.
²⁸⁴ Interview with Center Director Berkheiser. The staff at the Johnstown Center also arranged work for these residents. Interview with House Manager Harrison.
²⁸⁵ Interviews with Regional Directors Fains and Lonergan; interviews with Center Directors Armstrong, Duff and McGuire.
²⁸⁶ Interview with Center Director Duff. In fact, in the Southeast Region, the center directors and the center counselors are charged with the responsibility of helping a resident find employment. Interview with Regional Director Fains.
²⁸⁷ Interview with Regional Director Lonergan; interview with Center Directors Armstrong and McGuire.
²⁸⁸ Interview with Regional Director Lonergan; interview with Center Directors Berkheiser, Duff, and McGuire.
decision up to the individual man. Only the Johnstown Center staff has a set policy of informing the employer of his new employee's status. After a resident is hired, a member of the Johnstown staff, generally a counselor or a house manager, contacts the employers as part of a "job investigation" in an attempt to establish a good rapport between the employer, the resident, and the Center staff. The Center staff utilizes this rapport to mediate any disputes which subsequently might arise between the employer and the resident.

Once a resident has secured employment, the center staff has certain legislatively imposed responsibilities regarding that resident's income. The staff is required by statute to collect the resident's wages and to disburse such monies according to a specified priority schedule. This procedure, however, is not practiced in any of the centers visited for this project. The Centers feel that such a scheme hampers the resident's adjustment to the community because it prevents him from accepting exactly the type of responsibility necessary for satisfactory reintegration. If a particular man proves himself unable to manage his own expenses, personnel in a number of centers do take varying degrees of control over his income until he is able to accept that responsibility himself. The

289. Id.
290. Interview with House Manager Harrison.
291. Id.
293. Id. § 1054. Section 1054 provides in pertinent part:
(a) The salaries or wages of inmates gainfully employed under any plan established by this act shall be collected by the Bureau of Correction or its designated agents or employes . . . .
(b) The salaries or wages of any inmate participating in any such plan shall be disbursed by the Bureau of Correction in the following order:
(1) The board of the inmate including food and clothing;
(2) Necessary travel expense to and from work and other incidental expenses of the inmate;
(3) Support of the inmate's dependents, if any;
(4) Payment, either in full or ratably, of the prisoner's obligations acknowledged by him in writing or which have been reduced to judgment;
(5) The balance, if any, to the prisoner upon his discharge.

Id.
294. Interviews with Regional Directors Desuta, Fains, Lonergan, and Murphy; interviews with Center Directors Armstrong, Berkheiser, Duff, McGuire, and Nordstrom.
295. Interviews with Center Directors Armstrong, Berkheiser, and Duff. However, Johnstown Center personnel do not feel that collecting the resident's income is antithetical to his adjustment. In fact, Regional Director Desuta states that legal problems, not treatment theory, forced him and his staff to discontinue collecting the income of the residents. Interview with Regional Director Desuta.
296. Initially, these personnel merely prepare a budget for the resident, in order to provide him with a structure within which he can operate. Interview with Regional Director Desuta; interview with Center Director Berkheiser. The staff at Johnstown apparently does not control the man's income beyond this. However, at the York Center, the staff collects and disburses a resident's money in an extreme case of mismanagement. Interview with Center Director Berkheiser.

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personnel at the centers exercise further control over a resident's income since they are entrusted with the duty to charge the resident rent.\(^{297}\) This regulation is complied with in all but one of the centers visited.\(^{298}\) Most staff members feel that this payment promotes a sort of societal simulation necessary for successful reintegration.\(^{299}\)

Often an unemployed resident is eligible for public assistance, but except in the Southeast Region the Community Services personnel disdain its general use.\(^{300}\) No explanation was ever given as to why this public service is not utilized while other community resources are.\(^{301}\) Evidently, however, there is a fear that its use impedes the growth of the resident's motivation to accept responsibility.\(^{302}\) That fear seems unjustified in light of the fact that a resident who does not seek work can be returned to the institution.\(^{303}\)

\(^{297}\) 37 Pa. Code § 95.111 (1973), provides that "[r]esidents participating in the community treatment center program are required to pay rent for their quarters."

\(^{298}\) Center Director Duff states that she and her staff do not pressure the Center residents for rent since the men are generally poorly paid and have more important financial payments to make. Interview with Center Director Duff.

\(^{299}\) Interviews with Regional Directors Lonergan and Murphy; interviews with Center Directors Armstrong, Berkheiser, McGuire and Nordstrom; interview with House Manager Harrison. The usual rental payment at Scranton and Johnstown is 10 dollars weekly, although in some centers a sliding scale payment schedule is used which varies the rental charge according to the individual resident's income and the amount of any debt he has incurred. Interviews with Center Directors Armstrong and Berkheiser. Even in the centers where the staff charges a fixed rental rate, men with severe financial problems are allowed to pay a lower fee. Interviews with Regional Directors Lonergan and Murphy; interviews with Center Directors McGuire and Nordstrom; interview with House Manager Harrison.

\(^{300}\) Interviews with Regional Directors Desuta and Murphy; interviews with Center Directors Berkheiser, McGuire, and Nordstrom. These personnel stated, however, that in certain situations they allow the residents to utilize public assistance. In York and, apparently in Harrisburg, public assistance is employed occasionally as a "crisis intervention" tool. Interview with Regional Director Murphy; interviews with Center Directors Berkheiser and Nordstrom. It is not clear what constitutes such a crisis situation. In the Johnstown Center, the staff remedies the residents' lack of medical insurance by utilizing medical coverage provided by the Department of Public Assistance. Interview with Regional Director Desuta. Perhaps the one reason for the existence of such a clear distinction between the use of public assistance in the Southeast Region and in the other regions is that the staff in the latter regions are able to provide residents with short-term loans during periods of financial stress, while the staff in the Southeast Region does not have access to such funds. Interviews with Regional Directors Desuta and Lonergan; interviews with Center Directors Berkheiser, Duff and McGuire.

\(^{301}\) For further discussion of the utilization of outside community services, see notes 324–26 and accompanying text infra. One problem which may have gone unstated by the personnel is the questionable legality of providing Community Services residents with Department of Public Assistance benefits. Although Mr. DeRamus mentioned this issue, he did not resolve it. Interview with Deputy Commissioner DeRamus. However, Center Director Armstrong stated that since the fall of 1973, it has been certain that residents could receive public assistance. Interview with Center Director Armstrong.

\(^{302}\) A number of personnel intimated such a concern. Interview with Regional Director Desuta. Interview with Center Director Berkheiser.

\(^{303}\) See note 356 and accompanying text infra.
As noted previously, the resident's life at a center is a structured and controlled one.\textsuperscript{304} Even though the types of regulations and controls placed upon a resident vary, there is a basic similarity: all the programs operate with a response-reward approach. "Correct" behavior is compensated by positive reinforcement both on a personal level, through interactions with the staff, and on a practical level, through extension of leisure time. "Incorrect" behavior results in a negative response from the staff. Therefore, the differences among the center programs are differences, not in philosophies, but in the effectuation of a common treatment theory.

Harrisburg's program appears to be the most structured. The Harrisburg staff has created a system whereby the men receive points for accepting certain responsibilities.\textsuperscript{305} The residents use these points to "purchase" extra leisure time. The program is explained in the resident manual as follows:

[The man] is given points for his positive behavior which he can use to obtain leisure time out of the center, weekends at home . . . and other rewards. The primary function of the program is to reward a man for what he does in a token way. It is, of course, a duplication of what happens in society. The reasons that individuals work are to get money (points). The money (points) can then be turned in for goods, vacations, etc. (privileges).\textsuperscript{306}

The system consists of three "societal" levels, each one affording the resident greater amounts of leisure time. Advancing to a new level costs the resident a certain number of points, but once there, the resident can buy more leisure time than he could at the lower level. For instance, a man can purchase entrance into the second level for 120 points which then entitles him to buy an overnight pass, something he could not do at level one.\textsuperscript{307} A man generally earns points by satisfactorily completing certain household chores.\textsuperscript{308} Although these chores do not appear to be therapeutic, and, in fact, are rather mundane,\textsuperscript{309} the staff feels that performance of these various tasks demonstrates assumption of responsibility, a character trait indicative of favorable adjustment. Thus, in their opinion, a man

\textsuperscript{304} See notes 272-75 and accompanying text supra.

\textsuperscript{305} See Harrisburg Community Services Center Treatment Plan and Guidelines, August, 1973 (unpublished pamphlet on file at the Villanova Law Review) [hereinafter cited as Harrisburg Plan]. Every resident has to participate in the point program. A failure to do so apparently constitutes conclusive evidence of his inability to adjust adequately and he can be returned to the institution on such grounds. Id. at 2.

\textsuperscript{306} Id. at 3.

\textsuperscript{307} Id. at 6.

\textsuperscript{308} This is the usual, but not the only way for men to earn points. For instance, in level two a man earns one point for every hour he works overtime. Id.

\textsuperscript{309} At Harrisburg, points are awarded on a very specific rather than general basis. For example, he also receives one point for each of the windows and window frames he cleans, two points for each of the doors he cleans, and so on. Id.
who amasses the points necessary to buy a weekend furlough or a late
curfew is a man who deserves such an extension of leisure time.\textsuperscript{310}

The other centers operate less structured programs. Evidently, some
staff members hesitate to implement such a formal system for fear of
losing flexibility in determining what behavior amounts to satisfactory
adjustment.\textsuperscript{311} The program utilized in York illustrates the desire for
flexibility. Although the York staff employs a multi-tiered system,\textsuperscript{312} the
criteria they use to determine a resident's advancement are less capable of
objective analysis than those used in Harrisburg. For instance, in order
to advance from unit four to unit five-six, a resident has to meet four
requirements:

(1) completion of the one week minimum time period (2) adequate
use of the increased leisure time [in unit four] (3) increased responsi-
bility in relation to informing the center of location changes (4)
continued conformity to center rules.\textsuperscript{313}

Obviously, all the requirements other than the first one\textsuperscript{314} permit the
staff a good deal of discretion. The York Center Director feels that this
system is valuable to both the staff and the residents, since the tier system
provides the residents with a scale against which they can measure their
growth at the center, while the subjective evaluative mechanism provides
the staff with the discretion necessary to plan flexibly each resident's pro-
gram.\textsuperscript{315} This dual utility is expressed in the resident handout, wherein
the system is described as

a unified treatment approach for residents. . . . It is intended to pro-
vide unity and structure in the resocialization of the resident. It
must be noted that this system while providing structure, allows
for individual differences and an individualized treatment approach.

\textsuperscript{310} Interview with Regional Director Murphy; interview with Center Director
Nordstrom. If a man does not have the requisite number of points to buy an extension
of leisure time, but the staff believes that he deserves the privilege, they can supersede
the system and grant the man an extension. \textit{Id.} Only in very rare cases is a man
who has a sufficient number of points to buy extended leisure time prevented from
doing so. Interview with Center Director Nordstrom. However, if a man breaks the
rules of the Center, he can be restricted regardless of the number of points he has
earned or the level of society he has entered. A "behavior committee," consisting of
the house manager on duty, two counselors, and three residents selected by the house
population, mete out any punishment. Harrisburg Plan, \textit{supra} note 305, at 5.

\textsuperscript{311} Interviews with Regional Director Desuta; interview with Center Director
Berkheiser.

\textsuperscript{312} The system utilized in the York Center consists of seven levels. As in the
system employed in Harrisburg, each level affords the resident greater amounts of
leisure time. \textit{See} York Community Services Center Treatment Plan 1, June, 1974
(unpublished pamphlet on file at the \textit{Villanova Law Review}) [hereinafter cited as
York Plan].

\textsuperscript{313} \textit{Id.} at 8.

\textsuperscript{314} A man cannot advance from one level to the next until he has remained in
the lower level for a minimum amount of time. It takes a man, at the minimum,
3 months of residency to reach unit seven-eight, the final level of "society." \textit{Id.} at 1.

\textsuperscript{315} Interview with Center Director Berkheiser.
Although each resident enters the program at the same point each moves at a different pace.\textsuperscript{316}

The remaining centers do not utilize a graduated program. The personnel at these centers do, however, employ response-reward systems, although they are less structured than either the York or Harrisburg plans. The scheme used at Johnstown serves as a model of this approach.

When a resident arrives at the Johnstown Center, he and the counselor draft a treatment plan. This plan, along with the center rules, provides the man with an integrated idea of what is expected of him during his stay at the center. Thereafter, the staff’s perception of his adjustment to his plan and to the center rules comprises the determinative factor in the staff’s decision to extend or reduce the man’s leisure time.\textsuperscript{317} There is no established structure involved in that determination; the man does not “advance” to any “level,” and there are no absolute, objective criteria. As the staff explains in the resident guidelines, “[e]xtensions or elimination of curfews, as well as all furloughs, are individual treatment decisions.”\textsuperscript{318}

c. Counseling

The degree of control maintained by the counseling staff\textsuperscript{319} over a resident varied from system to system. Generally, the counseling staff gains more insight into a resident through daily exposure to him than through formal therapy sessions. Each resident is expected to meet formally with

\textsuperscript{316} York Plan, \textit{supra} note 312, at 2. Since the staff controls each man’s “pace,” the system provides them with a mechanism to prevent a man from advancing to a higher level when it is not in his best interests. Aside from advancement and “maintenance in a stationary position,” a man can also be demoted under the York system. When this action is necessary, as a result of curfew or housekeeping violations, the Resident-Staff Board, consisting of three staff members and two high level residents, convene and decide on the degree of “backward movement” the man deserves. \textit{Id.} at 12–13.

\textsuperscript{317} Interview with Regional Director Desuta.

\textsuperscript{318} Johnstown Community Services Center Resident Guidelines 1, December, 1972 (unpublished pamphlet on file at the Villanova Law Review). All decisions regarding a man’s treatment plan are made by the entire staff, including the house manager. Each staff member has an equal vote in the decision, but no residents are involved in the decisionmaking process. Interview with Regional Director Desuta; interview with House Manager Harrison.

\textsuperscript{319} The counseling staff generally consists of the center director and the two counselors. Interviews with Center Directors Berkheiser, Duff, and McGuire. In some centers, the house managers, whose technical duty it is to render 24-hour supervision, also take part in the counseling process. Interviews with Regional Directors Desuta and Murphy; interview with Center Director Nordstrom; interview with House Manager Harrison. In the Harrisburg Center the counseling performed by the house managers is done on an informal basis. Interviews with Regional Director Murphy; interview with Center Director Nordstrom. However, at the Johnstown Center the house managers are assigned the same responsibilities as counselors are, and hence, perform counseling on a formal basis. Interview with Regional Director Desuta; interview with House Manager Harrison.
his counselor twice a week,\textsuperscript{320} but staff members feel that counseling is continuous and cannot be encased in any rigid format.\textsuperscript{321}

The center personnel do, however, utilize formal group sessions which can take two forms. The first involves weekly group therapy meetings in which the men apparently discuss different problems they have encountered in adjusting to the outside community.\textsuperscript{322} The other form of group sessions is similar to a town meeting. The residents meet to discuss specific problems which exist at the center in the hope that the assembly can solve the dilemmas, producing a healthier atmosphere.\textsuperscript{323}

The center personnel bolster their counseling services by directing residents to outside community resources, such as Alcoholics Anonymous.\textsuperscript{324} One center director explained that utilization of outside agencies additionally serves to show the residents that they can rely upon such resources after they leave Community Services.\textsuperscript{325} Despite this favorable attitude, one group of researchers has found that the personnel do not employ the outside services as frequently as they might:

Preliminary indications are that the Centers have had good working relationships with outside agencies, but that contacts have been minimal. While no community service agency identified major problems in their relationships with the Centers, many did state that the Centers were not requesting several of the services which they felt they could provide.\textsuperscript{326}

4. \textit{Group Homes}

Certain outside agencies are not only used for consultation by the Community Services personnel, but also as group homes. A group home connotes a form of Community Services "which serve[s] as a complement to community treatment center[s]."\textsuperscript{327} Briefly stated, a group home is a residence, operated by an outside agency, which provides special treat-

320. In some centers, the staff members are expected to meet with the residents three and four times weekly.
321. Interviews with Regional Director Desuta and Lonergan; interviews with Center Directors Berkheiser and McGuire. However, in the Southeast Region the personnel do apparently restrict the counseling to formal sessions, probably as a consequence of the large caseloads that each counselor in that Region carries. Interview with Regional Director Fains; interview with Center Director Duff.
322. The staff in every center utilizes this form of group therapy. Interviews with Regional Directors Desuta, Fains, Lonergan, and Murphy; interviews with Center Directors Armstrong, Berkheiser, Duff, McGuire, and Nordstrom. In the Southeast Region the staff often runs group therapy for various residents and their families in an effort to "redevelop" family relationships. Interview with Regional Director Fains.
323. Only the Johnstown Center uses this form of group session. Their sessions are convened on an ad hoc basis, whenever a problem of sufficient magnitude develops. Interview with Regional Director Desuta.
324. Interview with Regional Director Desuta; interviews with Center Directors Berkheiser and Duff. The availability of outside services was, in fact, an important criterion used in the selection of the center sites. See DUFFEE, supra note 57, at 84.
325. Interview with Center Director Berkheiser.
326. DUFFEE, supra note 57, at 92.
ment for persons with certain specific disabilities such as drug or alcohol addiction. In order to acquire these services for inmates who are eligible for Community Services and who need special care, the Bureau of Correction contracts with the agencies, agreeing to pay the costs of the program for each inmate referred.

Daily supervision and treatment of the inmates who are referred to special agencies is handled by the personnel of the outside agency, but the Community Services personnel remain administratively responsible for the group home resident. The personnel satisfy this obligation by monitoring reports, sent to them by the outside agency, which detail the progress of each group home resident.

5. Outresidency

Prior to January, 1974, when outresidency was suspended a group home or center resident who had adjusted well to his life in Community Services and who had shown an ability to assume responsibilities concomitant with noninstitutional existence, was eligible for outresidency. This was considered the "final program in the prerelease spectrum," because it "maximize[d] freedom for a resident and at the same time optimize[d] [his] responsibility." Although the outresident was required to meet

328. Id. The administrative directive defines group home residency as:
A program separate and distinct from regional and Commonwealth correctional institutions which serves as a complement to community treatment center residency. This program is operated from a facility of a public or privately owned agency, which provides specialized residential treatment, such as drug or alcohol, and includes 24-hour supervision, living quarters and special services for selected residents. Residents are either recently arrived from the regional or Commonwealth institutions or they have already begun programs while in community treatment center residency; but in either case have demonstrated a need for more specialized program services than offered at a community treatment center. Supervision is provided both by the group home personnel and by corrections counselors, who maintain administrative responsibility.

329. Interview with Chief Witten; interview with Regional Director Desuta. The men who participate in the group homes are either referred by institutional personnel or by Community Services personnel. 37 Pa. Code § 95.111 (1973).
330. Interview with Chief Witten; interview with Regional Director Fains; interview with Center Director Berkheiser.
332. Interview with Chief Witten; interview with Regional Director Fains; interview with Center Director Berkheiser.
333. Memorandum from Bureau Commissioner Werner to Regional Directors, Superintendents, and Central Office Directors and Chiefs, January 7, 1974 (May 7, 1974 TWX confirmation on file at Villanova Law Review) [hereinafter cited as January Memorandum]; see text accompanying notes 340-42 infra.
334. 37 Pa. Code § 95.111 (1973). The administrative directive defined outresidency as:
A program also separate and distinct from regional and Commonwealth correctional institutions which serves as a further extension and complement to community treatment center residency. This program utilizes resources inherent to the community in which the inmate shall eventually participate. These resources include, for example, the resident's own home, an apartment, the Salvation Army,
with his Community Services counselor at least twice a week, he lived at his own home, did not have a curfew time, and could go on furlough simply by notifying the staff of his intention to do so.

The outresidency program was popular with the Community Services residents and Community Services personnel. From the resident's point of view, the freedom that was attached to outresidency status made it a goal well worth attaining. As a result, the personnel were able to use the program effectively as a treatment tool, and it therefore, was employed quite extensively. At the time of the moratorium, between 40 and 50 percent of all participants in Community Services were outresidents.

Personnel at certain centers, however, apparently applied outresidency too extensively. In an effort to serve as many eligible inmates as possible, such personnel sent center residents into outresidency on a regular basis, in order to create vacant bedspace. The problem arose that the personnel began to overextend their caseloads so that adequate checks were not maintained on all the outresidents. This overextension caused the Bureau to curtail further implementation of the outresidency program.

the Y.M.C.A., or a "foster home." The resident, while using this primary resource, continues in those programs in which he participated while in community treatment center residency or group home residency. While this allows more autonomy, the resident is still continued under the supervision of a corrections counselor and reports for counseling at least twice weekly, and additionally, as the counselor deems appropriate. This final program in the prerelease spectrum maximizes freedom for a resident and at the same time optimizes responsibility. No resident may be considered for outresidency until he has spent a minimum of 30 days as an inresident in a community treatment center or group home.

Id.

335. Id.
336. Id.
337. Interview with Regional Director Desuta.
338. Interview with Center Director Berkheiser. It was utilized as a treatment tool in the same manner that the extension of leisure time is presently used. Id.
339. Interview with Chief Witten; interview with Center Director Berkheiser.
340. January Memorandum, supra note 333; interview with Chief Witten; interviews with Regional Directors Desuta, Lonergan, and Murphy; interviews with Center Directors Berkheiser, McGuire, and Nordstrom. Some of these people believe that the offending region was the Southeast Region, explaining that in their areas, outresidency had been operated according to the regulations and without any problems. Since the blame fell on the personnel of the Southeast Region for disrupting the program due to their lack of adherence to the rules, a great deal of resentment exists toward the staff of that Region. Most personnel feel that only the Southeast Regional staff should have been prevented from utilizing outresidency. Interviews with Community Services personnel. One center director stated that he had been told the reason that this selective termination of outresidency privileges did not occur was because the Bureau officials believed they could not terminate outresidency in a region which had predominately black participants and continue to allow its use in predominately white regions. Interview with a center director. The true explanation is not known, because the Commissioner never explained the reasons for his actions. DUFFER, supra note 57, at 51. Indeed, a separate theory, that the outresidency program was illegal as ultra vires the legislative enactment which created Community Services, is asserted as a contributing factor to the termination of outresidency. Interviews with Regional Directors Desuta and Murphy; interviews with Center Directors Berkheiser and
The strict moratorium was eased somewhat in September, 1974, when the Commissioner ruled that outresidency privileges were permitted in five exceptional circumstances.\textsuperscript{341} This new procedure, however, has no practical effect upon the Commissioner's original action, and thus outresidency is still not a viable program.\textsuperscript{342}

Nordstrom. However, the statutory language would appear to contradict this theory. \textit{See Duffee, supra} note 57, at 27–28.

Dr. Duffee and his staff also found that the Community Services personnel did not know why outresidency had been terminated. \textit{Id.} at 51. As was incumbent upon Duffee and his staff, they recommended that

[a]ll Center staff receive a full explanation of the reasons for the termination of outresidency. \ldots \textit{[I]t} is apparent at all the centers that were visited that CTS personnel and center residents do not have a clear understanding of the reasons for termination. Under these conditions, staff and residents are prone to concoct explanations of their own, that fit the situation as they see it. This arm-chair theorizing, and the conflict that it produces can be minimized if the Bureau staff is more open about the reasons for the termination.

\textit{Id.}

341. Memorandum from Bureau Commissioner Werner to Regional Directors, Superintendents, and Central Office Directors and Chiefs, September 19, 1974 (on file at the \textit{Villanova Law Review}) [hereinafter cited as September Memorandum].

The five exceptional circumstances were:

1. situations in which “continued living in a community service center or group home would prove significantly detrimental to [the resident's] treatment program” because the resident suffers from a “severe physical disability”;
2. situations in which a member of the resident's immediate family is physically or mentally ill;
3. situations in which:
   a resident, after successfully completing a minimum center or group home residency, is precluded from accepting or continuing in an occupation peculiar to his ... skills because a community service center or group home is not reasonably accessible to the place of occupation assignment;

\textit{Id.} at 1.

4. situations in which the staff must relocate the resident because of an adverse community response to his presence in the area and neither another service center nor a group home can adequately serve as an alternative;
5. situations in which:
   professional judgment [has] determine[d] that prolonging inresidency will potentially lead to depression or regressive tendencies and [the] resident has conclusively demonstrated program success by living in a community service center and/or group home continuously in excess of six months [and] alternative treatment solutions [which were] applied ... [have] proven ineffective or inappropriate.

\textit{Id.} 1–2.

342. Interviews with Regional Directors Desuta, Fains, Lonergan, and Murphy; interviews with Center Directors Armstrong, Berkheiser, Duff, McGuire, and Nordstrom. At least two factors inhibit utilization of the altered outresidency program by Community Services personnel. First, the circumstances in which outresidency status is permitted are very limited. \textit{See note 341 supra}. Second, the staff has to comply with complex administrative procedures before an eligible resident can participate in the program. Initially, a written request, “complete in documentation of all facts pertinent to a case” had to be submitted to the Commissioner. September Memorandum, \textit{supra} note 340, at 2. Furthermore, provision for “continuous daily contact” between prospective outresidents and a law enforcement or Bureau official has to be arranged. Lastly, the Commissioner and the Deputy Commissioner have authority to extend outresidency privileges to a Community Services participant; the regional and center directors no longer have such power. \textit{Id.}; interview with Regional Director Desuta.
6. Modified Group Homes

In order to overcome the treatment gap created by the changes in outresidency, a number of the Community Services personnel began to operate modified group homes. Such group homes do not provide special treatment for Community Services participants, but rather are used to house participants whom the staff feels deserve more freedom and require less structure. Generally, physical maintenance of the homes does not require Bureau funding; the residents pay all necessary expenses, such as rent and furniture. In fact, at the group homes in the Central Region, the Bureau has no related expenditures, because the supervisory staff receives free housing, rather than monetary compensation, in exchange for their services.

Although there is less control at these group homes than there is at the centers, supervision does exist. For example, curfews for the men are set at the group homes in both the Southeast and Central Regions; in the Central Region, the men are required to sign in and out of the home, just as they are required to do at the center, and the residents at the group homes are obligated to meet with their Community Services counselors on a steady basis.

The modified group homes provide the Community Services personnel with an alternative, but this alternative does not totally fill the treatment void created by the changes in outresidency. The most important reason for this lacuna is an inability of the personnel to tailor the modified group home approach to individual problems, which was easily accomplished with outresidency. Additionally, there is a lack of funds necessary to

343. At the time of the interviews, in the fall of 1974, modified group homes existed in the Central, Southcentral, and Southeast Regions. Interviews with Regional Directors Desuta, Fains, and Murphy. The staff in the Northeast Region is in the process of arranging such a group home. Interview with Regional Director Lonergan.
344. Interviews with Regional Directors Desuta and Fains. These residents would have been eligible for outresidency status prior to the alteration of that program. Id.
345. Id. The residents generally pay these expenses out of their wages. Id. However, in the Central Region, a group home operates at the Pennsylvania State University in order to provide a facility for residents who wish to further their college education. There the residents pay such expenses from funds they received from the Department of Public Assistance. Interview with Superintendent Mazurkiewicz.
346. Interview with Superintendent Mazurkiewicz; interview with Regional Director Desuta. It is not clear whether the group home personnel in the Southcentral and Southeast Regions are employed under similar conditions or if they are paid in cash for their services. In any case, at least in the Central and Southeast Regions, only one supervisory person is employed at each group home on 24-hour call. Interviews with Regional Directors Desuta and Fains.
347. Id. The lesser degree of supervision at modified group homes is apparently sufficient to overcome the problems associated with outresidency. Indeed, Deputy Commissioner DeRamus hopes this new use of the group home concept will continue and expand. Interview with Deputy Commissioner DeRamus.
348. Interviews with Regional Directors Desuta and Fains.
349. Interview with Regional Director Desuta. However, this is not a requirement at the group homes in the Southeast Region. Interview with Regional Director Fains.
350. Interviews with Regional Directors Desuta and Fains.
pay supervisory staff.\textsuperscript{352} The Central Region's system obviously solves this dilemma, but at least one center director feels that it is difficult to acquire the services of dependable supervisory personnel without compensation.\textsuperscript{353} Finally, the modification in the availability of outresidency caused most Community Services personnel to begin to accept only those referrals who have but a short time to serve before they are eligible for parole.\textsuperscript{354} Consequently, some staff have noted a difficulty in locating an adequate number of residents, with sufficiently long minimum sentences to serve, to feasibly operate a modified group home.\textsuperscript{355}

7. Termination of Prerelease Status

Modified group homes and outresidency are programs utilized by the Community Services personnel in situations where a resident has adjusted well to the center life. Obviously, not all Community Services residents perform well enough to qualify or stay in such programs. If a man's adjustment is inadequate, he can be sent back to the correctional institution—a recourse which admittedly has been taken.\textsuperscript{356} The staff has no formal procedure to follow in order to remit a man to the institution.\textsuperscript{357} Generally, the decision is made by the staff without any input by the man.\textsuperscript{358} One regional director opined that the man's only right in such a situation is to be informed of the reasons for his return to the institution.\textsuperscript{359}

A man can also be sent back to the institution if he is officially charged with a crime,\textsuperscript{360} regardless of how fabricated or groundless the charges

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\item The apparent reason for this is that the man has no right to Community Services status; it is a privilege granted him by the Bureau, and can, therefore, be withdrawn when "necessary for satisfactory treatment." \textit{Id.}\textsuperscript{361}
\item See notes 347–55 supra.
\item See notes 244–47 and accompanying text supra.
\item Interview with Regional Director Lonergan; interview with Center Director McGuire. These personnel indicated that at least three residents are required to "justify" the establishment of a modified group home. \textit{Id.}\textsuperscript{362}
\item Interview with Regional Directors Desuta, Fains, and Lonergan; interviews with Center Directors Berkheiser and McGuire. Men who have been sent back under these circumstances had generally refused to work or had continually violated the center rules. \textit{Id.} At the Johnstown Center, the staff often sends such men back to the institution for 2 or 3 months as a "shock treatment." Interview with Regional Director Desuta.
\item Interview with Regional Directors Desuta and Lonergan; interviews with Center Directors Berkheiser and McGuire; interview with House Manager Harrison. The Bureau is reportedly formulating procedures for such situations. Interview with House Manager Harrison. For a discussion of the legal issues involved in returning a resident to the institution, see notes 392–429 and accompanying text infra.
\item Interviews with Regional Directors Desuta and Lonergan; interview with Center Director McGuire. Apparently the man is advised during his stay at the center that such behavior will result in his return to the institution. Interview with Regional Director Desuta; interviews with Center Directors Berkheiser and Nordstrom.
\item Interview with Regional Director Lonergan. The apparent reason for this is that the man has no right to Community Services status; it is a privilege granted him by the Bureau, and can, therefore, be withdrawn when "necessary for satisfactory treatment." \textit{Id.}\textsuperscript{361}
\item See notes 347–55 supra.
\item Interviews with Regional Directors Desuta, Fains, Lonergan and Murphy; interviews with Center Directors Armstrong, Berkheiser, Duff, McGuire and Nord-
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may be. The man charged remains in prison until his case is disposed of, and, if adjudged innocent, he is accepted back into the center. Meanwhile, of course, he spends a number of months in prison.

Assuming that a resident is not returned to the institution and that he adjusts well, the center or group home staff recommends to the Board of Pardon and Parole that he be accepted as a parolee when he becomes eligible for that program. If the recommendation is accepted, the man's entrance into the parole program marks the termination of his relationship with Community Services and, therefore, the end of the prerelease segment of the rehabilitation process.

III. LEGAL PROBLEMS

A. Right to Rehabilitation

While rehabilitation as a goal of corrections has received broad acceptance from most penological theorists, including those in Pennsylvania, courts have been unwilling to find that a resident has a legal right to rehabilitation. The trend of cases holding that juveniles and those convicted of criminal behavior can be sent back to the institution, even if he is not officially charged, so long as the staff feels there is a serious possibility of his guilt. Interview with Regional Director Lonergan.

361. Interview with Regional Director Lonergan; interview with Center Director Armstrong.
362. Interviews with Regional Directors Desuta, Fains, and Lonergan; interviews with Center Directors Armstrong and McGuire.
363. Interview with Regional Director Desuta; interview with Center Director Armstrong. See also Harrisburg Plan, supra note 305, at 1. However, this is not always the case. At times a man who is eligible for parole continues at the center because the center staff considers that to be a better treatment program. Interview with Regional Director Desuta.
364. The discussion contemplated with regard to legal problems is a cursory one, only delineating the issues and the general state of the case law. Extensive treatment of any of the areas is outside of the scope of this descriptive study.
365. See text accompanying note 52 supra.
366. Interview with Deputy Commissioner DeRamus; interview with Administrative Assistant Sauer; interview with Chief Witten. As to the reintegration aspects of rehabilitation, see DUFFEE, supra note 57, at 2.
367. This position seems consistent with the opinions of most of the Bureau of Correction personnel interviewed. See, e.g., interview with Deputy Commissioner DeRamus.
368. The constitutional sources of a juvenile's right to rehabilitation lie in the due process clause of the fourteenth amendment and the eighth amendment prohibition of cruel and unusual punishment. The argument is that if the state in its parens patriae capacity detains a juvenile, it must provide rehabilitative treatment or the detention runs afoul of the due process and cruel and unusual punishment provisions of the Constitution. The treatment is the quid pro quo for the detention. Mastarella v. Kelley, 349 F. Supp. 575, 585 (S.D.N.Y. 1972).


The juvenile and the adult have been distinguished because the sole objective of juvenile detention is rehabilitation, while in the case of the adult, other purposes are involved. As one court explained:
mitted for mental illness must be provided some form of rehabilitation has not, as yet, affected the treatment of the adult offender. Potentially, however, a constitutional or statutory right of rehabilitation for the adult incar-

juvenile justice system has been defined differently from due process in the criminal justice system because the goal of the juvenile system, rehabilitation, differs from the goals of the criminal system, which include punishment, deterrence and retribution. Thus due process in the juvenile justice system requires that the post-adjudicative stage of institutionalization further this goal of rehabilitation. Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1364 (D.R.I. 1972). It is unclear whether the court was stating that simply the existence of these other goals of adult incarceration leads to the conclusion that a right to rehabilitation cannot exist, or whether it was reasoning that, since these goals are inconsistent, that inconsistency precludes the finding of such a right. If the court was adopting the latter rationale, but the goals are not in fact inconsistent, there appears to be no reason why a court should not force an institution to meet these four legislative goals as it forces juvenile institutions to meet one — rehabilitation. It is not clear that the goals are incompatible. See discussions, notes 34-56 and accompanying text supra. First, rehabilitation may be considered by the resident as punishment. Second, if it is true that any length institutional stay provides future deterrence, then rehabilitative programs which include a period of residence in the institution function as sufficient deterrents to crime. Third, even the quarantine goal is partially satisfied by offering various aspects of the rehabilitation program within the institution. Simply pointing to the myriad of goals for adult criminal incarceration, therefore, may not be enough to justify a refusal to afford an adult a due process right to rehabilitation.

369. The wellspring in the area is Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966), where the court considered both constitutional and statutory arguments advanced against involuntary commitment and decided that the statute was a sufficient basis for finding a right to treatment, making unnecessary a definitive constitutional determination. Nevertheless, it was clear that the court felt the statute, the 1964 Hospitalization of the Mentally Ill Act, D.C. CODE ANN. §§ 21-501 et seq. (1967), was merely the implementation of a deeper, constitutional right. 373 F.2d at 455. See also Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971).

In O'Connor v. Donaldson, 95 S. Ct. 2486 (1975), the United States Supreme Court took what could be a first step in the direction of a constitutional right to treatment. In a case involving an involuntary civil commitment, the Court held:

In short, a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.

Id. at 2494. However, the Court was careful to delineate what was not at issue:

We need not decide whether, when, or by what procedures, a mentally ill person may be confined by the State on any of the grounds which, under contemporary statutes, are generally advanced to justify involuntary confinement of such a person — to prevent injury to the public, to ensure his own survival or safety, or to alleviate or cure his illness.

Id. at 2493. Further, it expressly noted that the Fifth Circuit's far-reaching opinion in the case had no precedential value. Id. at 2495, n.12. See also id. at 2496 (Burger, C.J., concurring). Hence, it is not at all clear that the Court will be willing to take a second step toward a right to treatment. See generally Developments in the Law — Civil Commitment of the Mentally Ill, 89 HARV. L. REV. 1190, 1316-44 (1974). See also 20 VILL. L. REV. 214 (1974).

Nevertheless, some courts prior to O'Connor did extend the limits of the right to treatment beyond involuntary civil commitments. At least one court has held that the failure to provide equal care to those criminally committed is a denial of equal protection, unless it can be shown that the criminal situation is different. Reynolds v. Neill, 381 F. Supp. 1374 (N.D. Tex. 1974). As in the case of juvenile detention, the court pointed to the absence of punishment as a purpose of criminal commitment to distinguish normal criminal incarceration from incarceration of the mentally ill and to support the right it found. Id. at 1384.
cerate could be extrapolated from these cases. A statutory right would have to be found in corrections legislation which refers to rehabilitation as a purpose of imprisonment. Constitutionally, different facets of such a right could be based upon the first, eighth, or fourteenth amendments to the United States Constitution. Case law, including that in Pennsylvania, is extremely sparse, and has not yet held that a right to rehabilitation exists.

The only Pennsylvania case which squarely confronted this issue was Commonwealth ex rel. Saunders v. Creamer. Plaintiff, Clarence Sanders, had, over the course of several months, applied and reapplied for both Community Treatment status and a number of furloughs, all of which were denied. He finally requested a hearing with the office of the attorney general of Pennsylvania, intending to present a case contending that the Community Treatment and furlough programs were being administered discriminatorily. That request was also refused. In late 1972, Sanders filed suit, alleging first, that the Bureau of Correction had abused the discretion vested in it by Administrative Directives 5 and 5a by denying him prerelease status when he had fulfilled all the requirements for prerelease, and second, that the fourteenth amendment of the United States Constitution guaranteed him a right to rehabilitation, which right was denied to him by discriminatory acts of the defendant. Defendant filed a number of preliminary objections, claiming that plaintiff did not allege compliance with the prerequisites to prerelease status.

Initially, the Commonwealth Court held that the complaint failed to allege compliance with the statutory requirements for prerelease:

The very detailed instructions which have been provided do not merely require the applying inmate to be a well-behaved resident, the only qualification alleged by the Plaintiff, but entail a professional evaluation by the resident’s counselor and by the Director of Treatment.


371. Id. at 236.

372. Id. at 237-48. The cruel and unusual punishment prohibition of the eighth amendment has been the source of most of the litigation. See notes 385-91 and accompanying text infra.


374. Saunders had, at that time, met the statutory minimums for prerelease. Interview with resident Saunders.

375. 11 Pa. Comm. Ct. at 162, 312 A.2d at 456. For a more detailed discussion, see Plaintiff’s Complaint, paras. 8-15 (on file at the Villanova Law Review). After Saunders filed suit, furloughs were granted and Community Treatment status eventually awarded to him. Interview with resident Saunders.

376. Plaintiff requested damages, a declaratory judgment, and a preliminary injunction staying the denial of admittance to prerelease. 11 Pa. Comm. Ct. at 162-63, 312 A.2d at 456.


However, the court proceeded to cloud the issue when it continued:

Release being a matter of skilled administrative discretion, therefore, we might not interfere unless a clear abuse is demonstrated by a showing that the plaintiff was denied a clear right due to him. This clear right has not been shown. As has been said in regard to another somewhat analogous prison program, “parole is a matter of grace, and not right, . . . a prisoner [only] has a right to apply for parole.” Banks v. Board of Probation and Parole, 4 Pa. Comwlth. 197, 200 (1971).\textsuperscript{380}

It is not entirely clear which argument the court was addressing in this statement. Since the defendant’s demurrer was based upon the argument that plaintiff’s complaint failed to allege sufficient facts necessary to make out a cause of action,\textsuperscript{381} it could be contended that the last quoted paragraph applied only to that point. The language used, however, simply does not support that position. The court did not assert that the plaintiff had failed to show sufficient facts to prove a right was due him, but rather intimated that there was no clear right regardless of the facts shown. Although this conclusion is dictum, the court was expressing an opinion about the plaintiff’s claimed right to rehabilitation as evidenced by its inclusion of the above-quoted passage from the Banks decision. Banks followed a line of Pennsylvania cases which had stated that parole is a privilege not a right,\textsuperscript{382} so that court interference may only be based upon abuse of discretion or violation of an inmate’s constitutional rights. Hence, the Saunders dictum indicates that, as with parole, there is no statutory right to prerelease.

As to the claimed right under the United States Constitution, the court stated:

Although declaratory judgments are no longer considered to be an “extraordinary” remedy . . . the pleadings here do not demonstrate that the plaintiff acquired a legal right as required by the Declaratory Judgments Act; we cannot adjudge, therefore, as the plaintiff requests, that his rights have been denied.\textsuperscript{388}

This passage could be read in two ways. First, the court might be stating that the plaintiff’s pleadings were insufficient to show that he met the requirements necessary to fit within an existing right to rehabilitation.


\textsuperscript{381} Defendant’s Preliminary Objections, para. 2 (on file at the Villanova Law Review).


\textsuperscript{383} 11 Pa. Comm. Ct. at 165, 312 A.2d at 457. The Uniform Declaratory Judgments Act, PA. STAT. ANN. tit. 12, §§ 831 et seq. (Supp. 1975-76), provides in pertinent part:

[r]e lief by declaratory judgment or decree may be granted in all civil cases where . . . the court is satisfied that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and . . . there is a challenge or denial of such asserted relation, status, right, or privilege by an adversary party who also has an asserted concrete interest therein . . . .

\textsuperscript{388} Id. § 836.
Second, this language could be read as indicating that, since no legal right to rehabilitation exists, plaintiff had failed to demonstrate that he had been denied a legal right. It is likely that the court meant the latter, for this reading is consistent with the court’s earlier citation to the parole cases which declared that parole is not a right, but a privilege.

*Saunders v. Creamer*, then, is inconclusive. Language, apparently dicta, indicates that no statutory right to rehabilitation exists. As to the constitutional question, the opinion is ambiguous, but it is likely that the court found that no constitutional right to rehabilitation exists. Both of these conclusions, if accurate, put Pennsylvania firmly in line with case law in most jurisdictions.88

While no court has found that the adult offender has a right to rehabilitation, some courts have held that the lack of rehabilitative programs is one element which may contribute to a determination that a particular prison facility constitutes cruel and unusual punishment in contravention of the eighth amendment. The leading case is *Holt v. Sarver*88 where the United States District Court for the District of Arkansas found the entire Arkansas penal system to be cruel and unusual punishment for its prisoners. While the court indicated that the lack of rehabilitation programs would not in itself constitute a violation of the eighth amendment,88 the fact that the institutions had no programs whatsoever was held to be a factor to be considered in the constitutional equation:

Given an otherwise unexceptional penal institution, the Court is not willing to hold that confinement in it is unconstitutional simply because the institution does not operate a school, or provide vocational training, or other rehabilitative facilities and services which many institutions now offer.

That, however, is not quite the end of the matter. The absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such a program conditions and practices exist which actually militate against reform and rehabilitation. . . .

. . . .

Thus, the absence of rehabilitation services and facilities of which Petitioners complain remains a factor in the overall constitutional equation before the Court.87

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"Rehabilitation must be the underlying goal of our correctional institutions. Unless society subordinates all of the correctional purposes to the goal of re-
Pennsylvania has apparently integrated the Holt test into its own analysis. The Pennsylvania Supreme Court in Commonwealth ex rel. Bryant v. Hendrick\textsuperscript{388} cited with approval the following language from Holt:

The distinguishing aspects of Arkansas penitentiary life must be considered together. One cannot consider separately a trusty system, a system in which men are confined together in large numbers in open barracks, bad conditions in the isolation cells, or an absence of a meaningful program of rehabilitation. All of those things exist in combination; each affects the other; and taken together they have a cumulative impact on the inmates regardless of their status.\textsuperscript{389}

Finding that a lack of rehabilitative programs is a cognizable element, however, alleviates only the harshest of circumstances. There is no indication of how the courts will deal with the situation where an institution offers rehabilitation programs, but most individuals do not have an opportunity to participate in them.\textsuperscript{390} Nor is there any indication of how the courts will decide whether programs are meaningfully effectuating a right to rehabilitation. It is unlikely, however, that the courts will decide such issues in the near future. In Bryant, the court made it clear that cruel and unusual punishment would be found and the remedy of habeas corpus awarded only where the adverse conditions of confinement were extreme.\textsuperscript{391} Hence, at least in Pennsylvania, there is no foreseeable constitutional right to rehabilitation.

### B. Due Process

There are two points along the prerelease continuum where due process hearings arguably are mandated by the Constitution. The first occurs during consideration of the man's initial application for prerelease.\textsuperscript{392} The second situation arises when the man already is participating in a prerelease program but, due either to a filing of a criminal charge against him, or the belief of the prerelease staff that he represents a management problem, his

\textsuperscript{388} See notes 122-51 and accompanying text supra.
prerelease status is revoked and he is returned to the institution.393 Because due process is more likely to be required where a conditional liberty is being revoked than where the initial decision to grant or deny that liberty is made, consideration begins with the revocation situation.

Neither the Act which authorizes prerelease394 nor the administrative regulations395 provide any assistance in determining the procedure to be employed to decide whether the rules and regulations governing prerelease have been violated.396 The Act states merely that:

The Bureau of Correction shall establish rules and regulations for granting and administering release plans . . . . If any inmate violates the rules or regulations prescribed by the Bureau, his release privileges may be withdrawn.397

The regulations neither explain nor expand upon the Act's cursory comment that prerelease can be revoked.398 Possibly as a result of this lack of guidance, few hearings are given in either the Community Services Centers or the institutions.399 There is reason to think, however, that some safeguards are constitutionally required.

393. See notes 356-62 and accompanying text supra. While the most common prerelease revocation situations occur in the Community Services Centers, the same considerations apply to work and education release. This is particularly true since the existing work and education release programs involve participants living outside the institution walls. See text accompanying notes 165, 174 & 176 supra. Therefore, when a violation occurs, the man's status is altered in that he can no longer attend work or school during the day, or sleep outside the institution at night.

394. PA. STAT. ANN. tit. 61, §§ 1051 et seq. (Supp. 1975-76). Compare the prerelease revocation procedure with PA. STAT. ANN. tit. 61, § 331.21a(b) (1964), requiring a hearing when parole is revoked for a technical, as opposed to a criminal, violation. When commission of a crime is alleged, parole revocation occurs only after a guilty plea or a determination of guilt by a judge or a jury. PA. STAT. ANN. tit. 61, § 331.21a(a) (1964).


396. DUFFEE, supra note 57; at 40.


398. The administrative regulations provide in pertinent part:

In the event that it is necessary to return a resident from Community Treatment to an institution the following shall apply:

(i) The individual shall be accompanied by or have simultaneously submitted a complete JBC-7X report.
(ii) Within 48 hours a more detailed report shall be submitted, at which time the Regional Director shall:

(A) Accompany a statement of intent to maintain community treatment services control of the resident with a detailed treatment plan; or
(B) Relinquish control of the resident to the institutional treatment staff.
(iii) If responsibility for the resident is relinquished to the institution, all case records shall be returned and accompanied by a report containing recommendations for the institution treatment staff.
(iv) Residents returned to a support institution shall eventually be placed in their regionalized institution, not necessarily the institution from whence he entered community treatment services.

37 PA. CODE § 95.128(e) (8) (1973).

399. The process utilized at Graterford is representative of institutional hearing procedure for revocation of work or education release. Where the misconduct is minor, the hearing is conducted by the institution's Transportation Bureau. When the misconduct is major, a more restricted status,
The parameters of due process to be afforded an inmate are set by three United States Supreme Court opinions: Morrisey v. Brewer,400 Gagnon v. Scarpelli,401 and Wolff v. McDonnell.402 In Morrisey, the Court held that revocation of parole constituted such a grievous loss of liberty that due process was required.403 The Court outlined procedural requirements which would satisfy the fourteenth amendment: a preliminary and a revocation hearing with guarantees that the parolee have prior notice of the charges; disclosure of the evidence against him; an opportunity to defend against the charges by presenting his own and witnesses' statements; a right, with certain reservations, to confront and cross-examine witnesses; a neutral hearing body; and a written statement of the decision and the reasons for it.404

A more formal hearing is conducted. The alleged violation is heard by the major of the guard, the casework supervisor, and the work supervisor. The resident receives a copy of the charges prior to the hearing. Also, while he is not allowed an attorney, he can solicit a member of the staff or another resident to assist him in his defense. After the hearing he receives a copy of the decision and the minutes of the proceeding. He may appeal within 5 days to the program review committee which consists of the Deputy Superintendent of Programs, Deputy Superintendent of Operations, and Director of Treatment. This procedure is a fairly recent innovation at Graterford. Interview with Superintendent Marks. Similar procedures exist in all the institutions with regard to disciplinary matters where prerelease is not involved. Interview with Former Counsel Packel.

With respect to revocation of Community Services Center status, the institutions assume that any hearing occurs at the center. Interview with Superintendent Mazurkiewicz. As a result, apparently none of the institutions provide any hearing under those circumstances. Interviews with Superintendents Jeffes, Marks, and Mazurkiewicz. Unfortunately, the centers assume that the institutions provide a hearing. Interviews with Regional Directors Desuta and Lonergan. When the resident is charged with a crime, he is sent back without any discussion. If the violation involves treatment or management problems, the decision to actually return the man is made in a staff meeting. While the man is warned that there are problems, nothing which could be characterized as a hearing actually occurs. See notes 356-59 and accompanying text supra.

The first explanation for this lack of a hearing is that the determination is treatment-oriented, and a hearing is inconsistent with that nature of the decision. The centers also apparently consider the contract, signed by the resident in order to enter prerelease, to be a waiver of any due process rights which might otherwise exist. The contract, however, simply requires that the man follow the center rules as follows:

I have read or have had read and explained to me, and fully understand the rules and regulations concerning proper conduct and procedures at the above named facility and during time spent away from it. I understand that compliance with these rules and procedures is a condition for my continued participation in the Community Treatment Program and hereby agree to abide by all rules and regulations set forth, as well as those covered by the "Penal Code."

Scranton Community Services Center Contract (unpublished document on file at the Villanova Law Review). This does not appear to contain a waiver of any potentially necessary due process hearing. Indeed, a hearing would go to the determination of whether a violation had in fact occurred; hence, any center reliance upon the contract as a means to avoid a hearing apparently is misplaced.

400. 408 U.S. 471 (1972).
404. Id. at 485-89.
Since there is no relevant constitutional difference between parole and probation, the Court in *Gagnon v. Scarpelli* extended the requirement of due process to the latter class of cases.\(^{405}\) In addition to the *Morrissey* requirements, however, the *Gagnon* majority adopted a case-by-case approach for determining when counsel’s presence is necessary at a probation revocation hearing. The Court held that counsel is necessary when the facts or the evidence are so complex that only a trained advocate can adequately safeguard the probationer.\(^{406}\)

Finally, in *Wolf*, the Court held due process necessary where an inmate is deprived of his good-time credit by a state prison disciplinary board.\(^{407}\) The *Wolf* Court noted, however, that where the criminal incidents occurred in the institution, fewer elements of due process were warranted.\(^{408}\)

The initial inquiry in a due process analysis is whether the individual is to be “condemned to suffer grievous loss.”\(^{409}\) Furthermore, the nature of the individual’s interest must be within the “liberty” language of the fourteenth amendment.\(^{410}\) A liberty is equally protected even though it is created by a state statute.\(^{411}\) Moreover, as the *Wolf* Court stated, some protection is required whenever “a major change in the conditions of confinement . . . is . . . imposed [as punishment for] . . . misconduct.”\(^{412}\)

Certainly the conditional liberty which arises from prerelease approaches that ascribed to parole in *Morrissey*. Like parole, prerelease

is an established variation on imprisonment of convicted criminals. Its purpose is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. It also serves to alleviate the costs to society of keeping an individual in prison.\(^ {413}\)

It is equally certain that the return to prison life is a major change in the conditions of confinement.\(^{414}\) Therefore, it seems clear that prerelease "termination calls for some orderly process, however informal."\(^ {415}\)

\(^{405}\) 411 U.S. at 782.
\(^{406}\) Id. at 788.
\(^{407}\) 418 U.S. at 558. Good-time credit, which is given for time served with good behavior, may shorten the inmate’s sentence. Id. at 557.
\(^{408}\) The Court required prior written notification of the charges, the opportunity to present evidence, a written statement of the reasons for the decision, and, if necessary, assistance by another resident or, where that is prohibited by the institution, assistance by a staff member. Id. at 563–70.
\(^{409}\) 408 U.S. at 481, quoting Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring).
\(^{412}\) 418 U.S. at 571–72 n.19. See also id. at 581 n.1 (Marshall, J., dissenting in part).
\(^{413}\) 408 U.S. at 477 (citations omitted).
\(^{414}\) This would be true of work and education release as well as Community Services Centers, group homes, and outresidency. See note 393 supra.
Once it is determined that due process is required in the prerelease revocation situation, the question becomes what process is due. Surely those elements which apply to revocation of good-time credit apply equally to prerelease. If so, at a minimum, the procedure must include written notice of the alleged violation, the right to call witnesses and present documentary evidence where such is not hazardous to institutional safety or detrimental to correctional goals, and presentation of a written statement of the hearing body's findings of fact. What additional elements are necessary will arise from the tension between the greater due process standards in parole and probation situations in Morrissey and Gagnon and the lesser requirements in an institutional setting as developed in Wolff.\textsuperscript{410}

In distinguishing Morrissey, Wolff first pointed to the fact that the loss of good-time credit does not necessarily cause a change in the conditions of liberty.\textsuperscript{417} In this regard, prerelease is more nearly analogous to parole; revocation of prerelease results in an immediate change in the conditions of the offender's liberty because regardless of the form of prerelease, the resident is immediately returned to the institution. While the change might be more dramatic where the resident is returned from a Community Services Center or from outresidency, the change is just as effective when work or education release is revoked. In those cases, the resident is transferred from the less controlled atmosphere of a structure on the prison grounds,\textsuperscript{418} and from the relative freedom of daily work or school, to the rigid life of the institution.

Even more than the change in conditional liberty, the Wolff Court stressed the greater interest the state had in the security of its prisons. Specifically, it emphasized the uniquely controlled institutional atmosphere where guards and inmates coexist in direct contact. The Court noted the likelihood of retaliation if residents and guards were subjected to cross-examination and required to testify openly against residents.\textsuperscript{419} Contra-distinctively, these difficulties do not appear to be applicable to prerelease. The clearest situations are Community Services Center and outresidency revocation. By definition, prerelease participants present less of a security risk than institutional occupants. The residents must have minimum custody status, as opposed to the Wolff situation where due process requirements must apply equally to all inmates, regardless of their security status.\textsuperscript{420} Prerelease revocation may further be distinguished from prison proceedings on the basis that following the former, there is no opportunity for direct contact. If there is no revocation, there is little danger of retaliation.

\textsuperscript{416} Accord, DUFFEE, supra note 57, at 44.

\textsuperscript{417} 418 U.S. at 560–61.

\textsuperscript{418} See text accompanying note 165 supra (work release housing) & text accompanying notes 174–76 supra (education release housing).

\textsuperscript{419} 418 U.S. at 561–62.

If there is revocation, the resident is returned to the institution. While revocation of work and education release privileges cannot be distinguished from Wolff as readily as the other forms of prerelease, the possibility of later conflict is also unlikely in these programs. In any case, where the risk to security is serious, Morrissey provides an outlet — confrontation and cross-examination can be curtailed. It would seem, then, that the Morrissey requirements should apply to prerelease.

A further issue is whether the double hearing mandated by Morrissey in parole revocation should also be required in revocation of prerelease. The main reason underlying the requirement of a preliminary and a revocation hearing for parole is that there might be a substantial lapse of time between the alleged violation and the revocation. This does not apply to prerelease, but there might be nonconstitutional, policy rationales to support a procedure whereby an initial probable cause hearing would take place at the center, and the final revocation hearing at the institution. First, such a procedure minimizes the possibility that a man who knows that his prerelease status might be revoked will attempt to escape. Second, the procedure eliminates any possible bias which might exist if the hearing board members and the person alleging the violation are part of the same staff. Finally, at least some minimal inquiry is thereby guaranteed before the man is required to spend time in the institution awaiting a hearing. Therefore, the double hearing, although probably not constitutionally compelled, might be the best procedure to effectuate the necessary due process requirements of prerelease revocation.

421. Only when Community Services staff or residents testify against an offender, urging that, due to management problems, he should be returned, would the danger of retaliation exist. If the hearing body decides that the man should not be returned, there is some possibility of revenge against the witnesses. There are a number of reasons, however, why this threat would not appear serious. First, any danger would only arise if the hearing were conducted at the center instead of at the institution. Second, the problem does not exist when the violation alleged is criminal, because the witnesses would not be the residents or the staff of the center. Finally, the same problem potentially exists when the hearing is for parole revocation, but the Morrissey Court apparently found that this danger was not serious enough to merit mention.

422. Morrissey provides that confrontation may be prohibited if the hearing officer specifically finds good cause for not allowing it. 408 U.S. at 489.


424. See notes 356-62 and accompanying text supra.

425. Because of the geographical proximity of the work and education release buildings to the institutions, the reasons for conducting a double hearing do not apply to those forms of prerelease.

426. Easy access to the community and inability to hold a man if he really wanted to escape are the two major reasons for immediately returning a man to the institution. Interviews with Regional Directors Desuta and Lonergan.


428. Assuming the final determination will be made at a correctional institution, this preliminary hearing might be constitutionally compelled. See Morrissey v. Brewer, 408 U.S. 471, 485 (1972).

429. Compare the requirements of due process with Graterford's procedure, which by design allowable to witnesses to test and identify, for examination and cross-examine witnesses and that none of the members of the hearing body are involved.
The question which remains is whether due process must exist at the hearing which determines whether prerelease status will be granted. Surprisingly, while there are no cases holding due process necessary for revocation, at least one court has found it necessary in the context of the more difficult prerelease determination. In *United States ex rel. Myers v. Sielaff*, the United States District Court for the Eastern District of Pennsylvania considered this issue on a motion for summary judgment. The court analogized the state-created, good-time credits in *Wolff* to the state-created, prerelease programs in Pennsylvania and found them equally significant. Judge Gorbey stated:

Consequently, it seems logical to conclude and this court finds that such inmate's "interest has real substance and is sufficiently embraced within the Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated."

. . . Thus, it appears that the denial of the admittance of a qualified inmate to a Community Treatment program set up by the State would result in a grievous loss just as it would in the revocation of a parole or the denial of good-time credit.

While the court did not detail what process was due at the hearing, it did indicate that the facts have to be rationally determined. The prisoner also has to be confronted with the evidence against him and afforded an opportunity to explain his actions.

In the analogous area of determination of eligibility for parole, the courts have split on the due process issue. The trend, while not par-

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in the allegation that a violation has occurred, Graterford's procedure would appear to be constitutionally sufficient for purposes of revocation of work or education release.

380. 381 F. Supp. 840 (E.D. Pa. 1974). The plaintiff also claimed that disciplinary proceedings which arose out of his actions during the prerelease hearing and which resulted in punitive segregation denied him due process. *Id.* at 842.


As the district court explained:

It seems crystal clear that if plaintiff can prove his allegations with respect to each hearing which include, *inter alia*, the willful acceptance of known false statements, refusal to permit plaintiff to contest their truth, refusal to confront him with the witnesses against him, followed by punitive action, that such action would not only offend one's sense of decency and fairness, but would also violate the inmate's constitutional rights.

381 F. Supp. at 844.

ticularly strong, seems to be to provide some minimal due process in this determination. Representative of this trend is Childs v. United States Board of Parole.\footnote{434} In that case the Circuit Court of Appeals for the District of Columbia found that a denial of parole was sufficiently similar to termination of parole so that the former could be characterized as causing the resident a grievous loss.\footnote{435} As a result, the court concluded that some due process was necessary; specifically, at a minimum, the inmate must be informed of the reasons for the denial of the application.\footnote{436} It appears, therefore, that some due process is necessary in both the revocation and determination procedures. While the latter situation certainly requires less in the way of safeguards, a statement of reasons for the rejection is minimally necessary. In either case, although this will cause some inconvenience to the institutional and center staffs, the inconvenience is outweighed by the enhancement of rehabilitation resulting from the use of nonarbitrary procedures.\footnote{437} And, in the case of the prerelease determination, knowledge by the inmate of that which will result in the granting of prerelease status will undoubtedly encourage his compliance.


\footnote{434} 511 F.2d 1270 (D.C. Cir. 1974).

\footnote{435} Id. at 1278. The Childs court reasoned as follows: The Board holds the key to the lock of the prison. It possesses the power to grant or deny conditional liberty. In the exercise of its broad discretion it makes judgments concerning the readiness of an inmate to conduct himself in a manner compatible with the well-being of the community and himself. If the Board’s decision is negative, the prisoner is deprived of conditional liberty. The result of the Board’s exercise of its discretion is that an applicant either suffers a “grievous loss” or gains a conditional liberty. His interest accordingly is substantial.


C. Nuisance

The final legal problem arises in an entirely different context than that of the first two. In this situation, the local populace attempts to avoid the establishment of a prerelease structure, probably a Community Services Center, in their community.438 One argument that has been employed in this context is that the prerelease center constitutes a nuisance. The only Pennsylvania case which has considered the problem is West Shore School District v. Commonwealth of Pennsylvania,439 there the Commonwealth Court denied local residents an injunction which would have prohibited the State Correctional Institution at Camp Hill from placing residents in trailers outside the institution’s walls. The court held that where the center had not yet opened and where the plaintiffs had not proven by convincing evidence that the proposed use would be unreasonable, the injunction could not issue.440 In so concluding, the court followed the rationale of Nicholson v. Connecticut Half-Way House, Inc.441 The plaintiffs in Nicholson had also requested an injunction, claiming that the proposed use of the property as a half-way house was a nuisance. Specifically, they maintained that use of the property was unreasonable because the residents might commit criminal acts and presence of the house would have a detrimental effect upon land values.442 Noting that the prediction of criminal acts was mere speculation, and that depreciation of land values would be due only to the subjective apprehension of the landowners, the court concluded that neither of these fears were sufficient ground for an injunction.443

The West Shore court distinguished Arkansas Release Guidance Foundation v. Needler,444 a case in which the Arkansas Supreme Court enjoined the operation of a half-way house already in use because it had been established that some of the residents had committed criminal acts and that property values had depreciated. The court in West Shore implied that Arkansas Release Guidance Foundation could be precedent for a case in which the damage alleged was less speculative.445 If Arkansas

438. There have also been periodic attempts at zoning prerelease centers out of the community; these have, however, been uniformly unsuccessful. In the most recent case, Pittsburgh v. Commonwealth, 341 A.2d 228 (Pa. Comm. Ct. 1975), the court summarized the applicable law:

The law of Pennsylvania is that the Commonwealth is not subject to the zoning requirements of municipal subdivisions and that it is not required to obtain or apply for zoning permits.


This proposition holds true even if the Commonwealth does not own the property, but is merely renting it. Pittsburgh v. Commonwealth, 341 A.2d 228, 230 (Pa. Comm. Ct. 1975).

440. Id. at 247, 325 A.2d at 672.
442. Id. at 510–11, 218 A.2d at 385–86.
443. Id. at 511–13, 218 A.2d at 386.
444. 222 Ark. 194, 477 S.W.2d 824 (1972).
Release Guidance Foundation was followed, it would present serious legal difficulties for prerelease because most of the centers have experienced incidents of criminal activity by their residents.\(^446\) Practically, however, if the present approach of notifying the local community prior to the establishment of a center continues,\(^447\) these problems should be minimized.

IV. Future of Prerelease

With the possible exception of furlough, Pennsylvania prerelease is a relatively limited corrections program reaching only a small proportion of the total resident population. Nevertheless, if success can be measure by comparing rates of recidivism of those who participated in prerelease programs to those who did not, the program has worked.\(^448\) Further, the cost of keeping a resident in a Community Services Center is substantially lower than the cost of confining him in an institution.\(^449\)

There are two types of expansion which can take place. First, expansion within the present funding framework, which contemplates handling more residents without additional expenditures. For Community Services Centers there are three means by which this can be achieved. The simplest is to increase the number of residents in a center. While most of the centers are already at or over their capacity, one or two centers are grossly underpopulated.\(^450\) Expansion for them would be relatively easy. The second manner in which more residents can be serviced is through outresidency, but unless the Bureau returns outresidency to its past status or liberally interprets its own guidelines for granting outresidency, this alternative will remain nugatory. The final approach is the expansion of the use of modified group homes in place of outresidency. This alternative involves no expenditure of funds and, for the centers which are already overcrowded, it is presently the only available avenue. While an increase in the number of residents will result in greater caseloads for center counselors, those caseloads would still be minimal when compared with the number of residents handled by counselors in the institutions.

The expansion of institutional programs without funding is somewhat more difficult. The need, however, seems even greater than that in the centers. Work and education release reach incredibly few residents. Yet no expansion seems possible without more money because some initial expenditure for prerelease housing for the work and education participants is necessary. The cost of the program can be reduced somewhat by

\(^{446}\) Interviews with Regional Directors Desuta, Fains, Lonergan, and Murphy.

\(^{447}\) See text accompanying note 199 supra.

\(^{448}\) While recidivism is not an altogether satisfactory criterion (see note 54 supra), the studies which have been done indicate that the prerelease programs decrease the percentage of returnees to the correctional system. Interview with Chief Witten.

\(^{449}\) The average cost per man per day in an institution is $21.83, while the average cost per diem in a center is $13.75. Duffee, supra note 57, at 173.

\(^{450}\) Interview with Regional Director Lonergan.
charging the men rent as is done with Graterford's trailers. Nevertheless, the best answer for institutional prerelease, the development of regional facilities where the new structures can be designed to afford greater community contact, requires a substantial expenditure of money.

The second form of expansion can occur only if the legislature appropriates money for the construction of more centers, institutional prerelease structures, and regional facilities. Since the program is relatively expensive and appears to be effective, but only reaches a small number of residents, one would predict that support for expansion would be strong. Unfortunately, this is not necessarily the case; the state legislature has not evidenced any intent to vastly expand the Bureau's budget.\(^{451}\) There is no legislative support simply because there is no community support. Some attempts are being made to change that however. For example, at the local level some of the center directors and institutional superintendents have gone into the community to explain the various programs, and in those areas, community relations have improved considerably. Statewide support is necessary through, and the Bureau simply has not publicized the successes of the program, or made a case for reintegration rather than punishment. Since the public relations job was not done in the past, the legislature is presently hesitant to appropriate the necessary money for expansion.

Presumably, Pennsylvania Senate Bill 983, providing for the merger of prerelease and parole, if passed, would improve the situation.\(^{452}\) Such a merger would have a number of advantages. First, it would result in a more logical process for corrections purposes. The two programs would mesh into one continuum toward release. Second, prerelease would gain legitimacy by being associated with the more well-accepted practice of parole and more funding may result. Collaterally, the due process procedures already established for parole could be easily extended to prerelease, since they are probably constitutionally required. It would be possible to create one impartial hearing board for the entire area or, at least, to standardize the various procedures. Finally, prerelease might expand, like parole, to the point where almost all residents would participate prior to their ultimate release.

Unfortunately, however, the necessary expansion appears to be far in the future, whether Senate Bill 983 passes or not. Although the support for prerelease exists in the Bureau of Correction, the opinion of the elector has to change radically before reintegration and rehabilitation can replace punishment and isolation as the community's penological philosophy.

Peter L. Feldman
James T. Huber

\(^{451}\) Interview with Deputy Commissioner DeRamus. Only one or two new centers and two new regional facilities are planned. Id.