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## WORK RELEASE IN THE UNITED STATES

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What are the objectives of a work release program? What are the comparative merits of the various types of work release legislation? What are the major difficulties encountered in implementation of work release? And how does work release measure up to society's requirements for effective penal sanctions? In the following article, Professor Grupp considers these and other questions growing out of the increasing use of work release in United States penological practice.—EDITOR.

In United States penological practice, the "work release"<sup>1</sup> program is well underway. Inaugurated in 1913 by Wisconsin's Huber Law,<sup>2</sup> the acceptance and expansion of work release has gained momentum in recent years. Certainly we have moved too slowly in applying sound penological practices to the misdemeanor problem. Thus, the growth of work release programs is encouraging to penologists and enlightened citizenry alike.

Under the typical work release program, the prisoner is employed outside the jail during working hours and returns to the jail at the close of his work day. His wages go directly to the program's administrator, who is responsible for the allocation thereof. In some states provision may also be made for the prisoner to attend school and church, as well as activities such as union and Alcoholics Anonymous meetings. Work release is generally limited to misdemeanants,<sup>3</sup> but North Carolina has led the way in applying the program to felons with sentences up to five years, and Maryland has recently authorized a similar program.

At least 17 states currently have laws formally providing for the work release sentence. In addition to Wisconsin (1913) these are: West Virginia (1917),<sup>4</sup> Virginia (1956),<sup>5</sup> California (1957),<sup>6</sup>

Idaho (1957),<sup>7</sup> North Carolina (1957),<sup>8</sup> Minnesota (1957),<sup>9</sup> North Dakota (1957),<sup>10</sup> Wyoming (1957),<sup>11</sup> Montana (1959),<sup>12</sup> Oregon (1959),<sup>13</sup> Illinois (1959),<sup>14</sup> Washington (1961),<sup>15</sup> Missouri (1961),<sup>16</sup> Michigan 1962,<sup>17</sup> Maryland (1963),<sup>17a</sup> and Indiana (1963).<sup>17b</sup> Dates in parentheses indicate the first year work release sentences were formally provided by statute in the respective states. Clearly the development has come in the last seven years.

In addition, in a number of jurisdictions apparently some use is made of work release without any formal legislative sanction. This practice contains built-in limitations, since it expands responsibilities beyond the formal legislative specifications. Nevertheless, it appears that some judges have undertaken to impose work release sentences on their own initiative.<sup>18</sup>

<sup>7</sup> IDAHO CODE tit. 20, ch. 6, §20-614 (Supp. 1961).

<sup>8</sup> N.C. GEN. STAT. ch. 148, art. 3, §33.1 (1958 replacement vol.).

<sup>9</sup> MINN. STAT. ANN. §631.425 (Supp. 1962).

<sup>10</sup> N.D. CENTURY CODE ANN. ch. 12-06, §§30-32 (1960).

<sup>11</sup> WYO. COMP. STAT. ANN. ch. 10, §§1418-1424 (Supp. 1957).

<sup>12</sup> MONT. REV. CODES ch. 78, §§94-7835-94-7841 (Supp. 1961).

<sup>13</sup> ORE. REV. STAT. ch. 137, §137.520 (1961).

<sup>14</sup> ILL. REV. STAT. ch. 75, §§35-41 (1961).

<sup>15</sup> WASH. REV. CODE §36.63.260 (Loose Leaf Supp., July 1, 1961).

<sup>16</sup> VERNON'S ANN. MO. STAT. §221.170 (1962).

<sup>17</sup> MICH. STAT. ANN., Current Material, Statutes Release no. 2, Public Act 60 of 1962, §28.1747.

<sup>17a</sup> MD. ANN. CODE art. 27, §700 A (Supp. 1962). This law, which became effective June 1, 1963, authorizes the Department of Correction to establish a work release program for prisoners sentenced to terms of not more than five years.

<sup>17b</sup> Ind. Sess. Laws 1963, ch. 339.

<sup>18</sup> Closely allied to work release is the week end jail sentence. Like work release, week end sentences reduce the public maintenance bill, make it possible for the prisoner to support himself and his family, and still have the advantage of serving the several functions of punishment.

<sup>1</sup> The phrase "work release" is used because it captures most accurately the nature of the program. Other terms used to refer to programs of this kind include "work furlough," "day parole," and "intermittent jailing." For a succinct statement on prison labor, see England, *New Departures in Prison Labor*, 41 PRISON J., no. 1 (1961). Professor England discusses "work release" under the heading "private pre-release work."

<sup>2</sup> WIS. STAT. ANN. ch. 53, §56.08 (1957).

<sup>3</sup> The Oregon law is limited to sentences not exceeding six months.

<sup>4</sup> W. VA. CODE ANN. ch. 48, art. 8-1, §4777 (1961).

<sup>5</sup> 1950 VA. CODE §19.1-300 (1960 replacement vol.).

<sup>6</sup> CAL. PENAL CODE §1208.

## OBJECTIVES

The major objectives of work release are rehabilitation of the offender and provision for the support of both the prisoner and his family. It may well be that the interests of economy have served as the major impetus to the inauguration of work release laws. The evidence indicates that the state is saved literally thousands of dollars. Work release costs only a fraction of the amount required to maintain a prisoner full time in the county jail.<sup>19</sup> The Wisconsin Service Association has stated, for example, "But in all candor it must be said that savings in cost of prisoners' board in jail and in public relief for their impoverished families have proved greater inducements to apply the law."<sup>20</sup> Be this as it may, wisely administered, the program serves sound objectives of sentencing and correction.

## IMPLEMENTATION

Those interested in the expansion of work release legislation should not be content with statutory enactments alone. An unused work release law is of no value. Information regarding current implementation of work release statutes is incomplete. Wisconsin appears to be the only state with relatively inclusive state-wide data concerning the extent to which work release sentencing is utilized. Data from most of the other states is either spotty or nonexistent,<sup>21</sup> probably because the program is usually administered on a county basis, because there is no central data collecting agency, and undoubtedly because the laws are new. Hopefully, more data will be available in the years to come. Minnesota, for example, has recently passed legislation requiring that counties

<sup>19</sup> Walter H. Busher, County Probation Officer of Marin County, San Rafael, California, reports that in his county, if full credit is given to the earnings of the prisoners, the cost may well be less than 27.7% of the cost of traditional confinement. Report of the County Probation Officer to the Marin County Board of Supervisors, January 25, 1960.

<sup>20</sup> WIS. SERVICE ASS'N, WISCONSIN'S HUBER LAW IN ACTION 3 (1958).

<sup>21</sup> The Division of Corrections of the Wisconsin State Department of Public Welfare has published two reports describing the Huber Law in some detail. See, DIVISION OF CORRECTIONS AND BUREAU OF RESEARCH AND STATISTICS, PRIVATE EMPLOYMENT FOR COUNTY JAIL INMATES: A SURVEY OF WISCONSIN'S HUBER LAW, (Nov. 1957); and DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, (Research Bulletin C-6, State Dep't of Public Welfare, Feb. 1962). Marin and Santa Clara Counties in California provide reasonably complete data on "work release" programs in their counties.

make annual reports to the Department of Corrections.<sup>22</sup>

Available evidence indicates that work release is applied most extensively in Wisconsin, California, and North Carolina. It will be noted that these states are among those with the longest experience with the law.

Not all of the 71 Wisconsin counties make use of the Huber Law. Available information<sup>23</sup> is summarized in the accompanying table. Though use of work release varies considerably from county to county, state-wide statistics indicate that in 1956 and 1960, "Huberites" comprised 35 and 33 per cent, respectively, of the total Wisconsin county jail population.<sup>24</sup> Sanger Powers hopefully predicts the day when they will comprise 60 to 70 per cent thereof.<sup>25</sup>

Commitment under the Huber Law does not ipso facto assure employment for the prisoner. And we may assume that a comparable situation exists under work release laws in other states. The problems of securing employment will be discussed below. In 1960, 71 per cent of the Huber prisoners were employed. Urban counties of 100,000 and over accounted for 82 per cent of the employed Huberites. In the words of the Wisconsin report, 1960, "Over half . . . of the Huber Law sentences were in Milwaukee and Dane counties and well over half . . . of the prisoners actually employed under the law were from the same two counties, which comprise less than one-third of the state's population."<sup>26</sup> It is clear that

<sup>22</sup> MINN. STAT. ANN. §631.425(12) (Supp. 1962).

<sup>23</sup> DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, app. at 16-17; Powers, *Day Parole for Misdemeanants*, 22 Fed. Prob. 44 (Dec. 1958); KEPNER, AN ANALYSIS OF THE WISCONSIN HUBER LAW 4 (Informational Bulletin No. 151, The Wisconsin Legislative Reference Library, Madison, May, 1956). There is general agreement that the Huber Law had limited use until the 1950's; however, exact information for the earlier period does not seem to be available.

<sup>24</sup> DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, at 4-5. The slight decrease is reported to be largely due to a revision of sentencing procedures in 1959. Prior to 1959, individuals sentenced to "hard labor" were automatically eligible as Huber prisoners. The 1959 revision made sentencing under the Huber Law discretionary on the part of the committing court. As a result, the court must now specify if the sentence is under the Huber Law.

<sup>25</sup> Powers, *supra* note 23, at 45.

<sup>26</sup> DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, at 5. Madison is the county seat of Dane County. In 1956, approximately two-thirds of the Huber prisoners were employed. See, PRIVATE

TABLE  
WISCONSIN COUNTIES REPORTING USE OF THE  
HUBER LAW

Year	Number of Counties
1914	28
1939	11
1956	50
1960	52

sentencing under the Huber Law occurs principally in the large urban centers.

Work release in California, as promulgated under the "Work Furlough Rehabilitation Law" of 1957, section 1208 of the Penal Code of California, requires an ordinance by the county board of supervision for full implementation. The law of 1957 was antedated by "experiments" in Fresno and Santa Clara Counties. The work of these counties was briefly reported in the 1957 California State Report, *The County Jails of California: An Evaluation*,<sup>27</sup> which recommended passage of a work release law. Work release programs are currently underway in Marin, Del Norte, Orange, Santa Clara, and Stanislaus Counties; and one is now being established in San Mateo.

North Carolina's program, as mentioned above, includes felons with sentences up to five years. Work release applies to the entire state, and the Prison Department is empowered by statute to establish programs where the need exists. On May 9, 1962, there were 179 misdemeanants and 22 felons in the program.<sup>28</sup>

#### SELECTION AND EMPLOYMENT

Careful selection of work release participants is imperative. There is general agreement that work release is most appropriately used for certain classes of offenders. Among these are nonsupport cases, traffic offenders, selected check offenders, and individuals for whom alcohol is a problem—though the latter undoubtedly call for special consideration. Certainly the individuals selected should possess sufficient stability not to pose a security problem.

EMPLOYMENT FOR COUNTY JAIL INMATES: A SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, at 7.

<sup>27</sup> ADAMS & BURDMAN, *THE COUNTY JAILS OF CALIFORNIA: AN EVALUATION* 61 (Special Study Com'n on Correctional Facilities and Services and the State Bd. of Corrections, Sacramento 1957).

<sup>28</sup> Data and information provided by Mr. George W. Randall, Director, Prison Department, Raleigh, North Carolina.

In no instances should such objectives as the relief of overcrowding in the jail be the major consideration in the program. Further, officials responsible for selecting, finding employment for, and supervising the work release prisoners should not be subject to political or other pressures either from prisoners with "influence" or from potential employers. At its worst, work release can be a means of prisoner exploitation whereby personal friends of the work release administrative personnel are provided with cheap labor. A statutory provision requiring employment at the prevailing wage for similar work *may* be of some help. California and Oregon have such provisions.

At the same time the implementation of work release must be realistic and bear a reasonable relationship to the prevailing economic conditions of the community. In our desire to implement the sound objectives of the program, care must be taken not to be so zealous that we deprive law-abiding citizens of employment. But it would be absurd to wait until all law-abiding citizens have jobs. The work release program must stand on its own merits. This of course is but one of the many problems in the "art" of punishment.

What type of work do work release prisoners do? Among those jobs commonly mentioned are positions as laborer, salesman, painter, construction worker, and gas station attendant. Under the Wisconsin program, in addition to the more usual types of employment, the prisoner may leave jail to conduct his own business, to obtain medical treatment, to attend school, and, if the prisoner is a woman, to attend to housekeeping tasks.

In most jurisdictions work release authorization is in the hands of the court, which in some jurisdictions must act in conjunction with the sheriff, the state's attorney, or both. In North Carolina the Parole Board, too, may authorize work release assignments. Of the 222 participating inmates on May 9, 1962, 96 were recommended by the courts and 126 by the Parole Board.<sup>29</sup>

Information from Wisconsin and North Carolina suggests that work release prisoners are apt to be those inmates who had employment at the time of sentencing. In 1960 "many" of the Huberites continued with their usual employment.<sup>30</sup> The same pattern prevails in North Carolina. The

<sup>29</sup> *Ibid.*

<sup>30</sup> DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, at 9.

statute as interpreted by the North Carolina Prison Department is "primarily set up for those inmates who have employment with a reputable firm or person who is willing to continue him on the job under this plan."<sup>31</sup>

States vary in their efforts to find employment for the work release inmate. Wisconsin illustrates an active effort on the part of the state. Wisconsin law requires the sheriff to seek employment for work release prisoners. In 1960 the sheriffs' offices of 29 counties helped in finding jobs for at least some prisoners.<sup>32</sup> Conscientious implementation of this law requires the sheriff and his staff to be what Sheriff Hass of Dane County has termed "Huber-Law-minded." With regard to his office's function in finding jobs, Sheriff Hass says, "We . . . keep up the soliciting of jobs every day so that is the reason for . . . success. It has great therapeutic value because it keeps them occupied and we, also, find work for individuals who could not find work themselves."<sup>33</sup>

Most other work release states appear to make at best a moderate effort. North Carolina does not "usually" try to find employment, but the door is kept open for including those inmates who, though not sentenced to the program, are somehow able to find employment after commitment.

In a number of work release states, the inmate may seek employment. Wisconsin, Michigan, and Maryland allow the prisoner to leave jail to seek employment for himself.<sup>34</sup>

Section 36.63.260 of the Revised Code of Washington, 1961, provides for the continuation of regular employment, but also specifies that the court "may authorize the sheriff or other appropriate officer to make every effort to secure some suitable employment or may authorize the person to secure employment for himself in the county."

<sup>31</sup> N.C. Prison Dep't, "Prisoner Work Release Program" (one-page mimeograph) (Oct. 2, 1961).

<sup>32</sup> DAY PAROLE AND EMPLOYMENT OF COUNTY JAIL INMATES: 1960 SURVEY OF WISCONSIN'S HUBER LAW, *op. cit. supra* note 21, at 9. The 1963 Indiana law requires that the county welfare board seek work for the prisoner.

<sup>33</sup> Letter from Sheriff Franz G. Hass, Dane County, Madison, Wis., May 24, 1962.

<sup>34</sup> Santa Clara County, California, has found that with the exception of union members in good standing "it is not good practice to allow prospective participants to leave custody to seek work by themselves." See GIBBONS, WORK FURLOUGH PROGRAM PROCEDURE (Santa Clara County Sheriff's Dep't, San Jose, California).

Idaho, Minnesota, Missouri, and Oregon have similar statutory provisions.<sup>35</sup>

The Montana and Wyoming statutes make express provision for the continuation of regular employment, but fail to say anything about finding jobs for the unemployed. The Virginia Code similarly applies to those "regularly employed."

Limiting work release to those already having employment is a questionable policy. It may tend to include only the best risks, ease administration, and minimize costs. At the same time, it probably excludes those who have the most to gain from a well contrived and well implemented program. If the objectives of work release are to be attained, every reasonable effort should be made to secure work for the work release inmate without a job. In those states where either statute or practice excludes the inmate without employment at the time of sentencing, serious consideration should be given to a change of policy.

One further consideration must be mentioned in connection with the state's effort to secure employment for the work release inmate. If sentences under work release are too short, the expenditure of time, effort, and money made in seeking employment may be unjustified. As we become more "work-release-minded," we must recognize the need for intensified scrutiny of our sentencing policies. This is but another of the problems in balancing the interests of the individual with those of society, an endless road in the implementation of punishment.<sup>36</sup>

#### SPECIAL PROBLEMS

Administrative duties, record keeping, checking prisoners in and out, job finding, et cetera, encumber upon already over-burdened offices, rank high in the list of so-called disadvantages of work release programs. In 1956 and 1960, Wisconsin sheriffs ranked "lack of personnel" among the important reasons for the limited use of the law. In most work release states, the adminis-

<sup>35</sup> Because of rigid statutory strictures, the Missouri law seems to have limited coverage. In the opinion of Mr. Robert Welborn, Legal Assistant to the Governor, "it is doubtful if the law applies to any counties outside of St. Louis County." Letter from Mr. Welborn, May 15, 1962.

<sup>36</sup> The Wisconsin Service Association has called attention to this problem, recommending that for sentences of 30 days and under, unless employment is known to be available, no attempt be made to secure work for the prisoner. WISCONSIN SERVICE ASS'N, *op. cit. supra* note 20, at 17.

trative burden falls on the sheriff. It is unwise to burden the office of sheriff with the multiple work release administrative duties without providing him with adequate personnel to do the job. Too, it may be that the administrative and supervisory duties inherent in the work release program call for specialized skills that we cannot legitimately expect of the sheriff. This is not to imply a lack of confidence in the sheriff nor to suggest that his role is inherently inconsistent with the requisite rehabilitative orientation. But in relatively large counties an extensive and well conceived program calls for a full-time work release administrator. Since "work releasers" are prisoners, a "work-release-minded" deputy sheriff might be the logical person for this position.

At the same time there seems to be merit in the position that the administrative responsibilities of work release should be removed from political offices, where the administrator may be exposed to undue political pressure. The best administrator may well be a civil service appointee, who is relatively removed from potential political pressures, possibly one with social work training and one who can work closely with the sheriff's office. In two California counties, Marin and Orange, probation officers serve as work release administrators. In California the county board of supervisors is required by statute to prescribe whether the probation officer or the sheriff is to perform the function of administrator—a wise policy in that it provides for an appropriate consideration of factors peculiar to the given community. As a result, small counties may be able to adopt a work release program which would not otherwise be possible under rigid state requirements. The requirement of a full-time administrator, for example, would be out of the question for small counties. It is noteworthy here that the statewide system in North Carolina seems to be moving along quite well.<sup>37</sup> As we move toward increasing cooperation between counties, an inter-county administration system may be worthy of experimentation in other states as well.

<sup>37</sup> In North Carolina the "work release" program is administered entirely by the State Prison Department. County sheriffs are not involved. This is made possible by virtue of the fact that in North Carolina most misdemeanants are sentenced to the State Prison Department. Information provided by Mr. Garland B. Daniel, Supervisor of Prison Job Placements, Prison Department, Raleigh, North Carolina. The recently enacted Maryland law similarly provides for state-wide administration. See *supra* note 17a.

Should separate jail facilities be provided for work release prisoners? Positions on this question vary; most, however, see an imperative need for separate housing. The Wisconsin Service Association, while recognizing the confronting difficulties, takes a definite stand in favor of separate facilities. Certainly "work releasers" do not require traditional confinement, and separate facilities help to reduce the need for security safeguards made necessary by intermingling the two groups of prisoners. But need the implementation of work release necessarily await separate housing facilities? It is the feeling of this writer that a county need not await the ideal to implement the law. The decision must be made at the local level and take into account the existing jail facilities as well as the availability of the personnel necessary to carry out the program.

These are but several of the many problems encountered in the implementation of work release programs. Other problems include the extensive bookkeeping necessary in collecting and disbursing the inmate's wages, the development of a standardized basis of record keeping, the development of reciprocal provisions between counties, the education of the public to the advantages of the program, and the provision of adequate casework services in helping both the prisoner and his family.

#### WORK RELEASE AND PUNISHMENT

Cursory observation reveals the potential advantages of work release. Further inspection suggests that work release may be one of the more fruitful methods of implementing the "integrative" or "inclusive" theory of punishment. The "integrative" theory recognizes that in the punishment of the criminal, society demands the fulfillment of a number of functions, namely, deterrence, rehabilitation and retribution; further, this position maintains that under sound penal-correctional practice, it is both necessary and possible to work toward the fulfillment of these multiple functions.<sup>38</sup> Attention will now be given to work release viewed within this context.

The rehabilitative function as well as the pecuniary advantages of the program have been discussed elsewhere.<sup>39</sup> Of major importance is the fact that the prisoner is able to retain some degree

<sup>38</sup> See CALDWELL, *CRIMINOLOGY* ch. 18 (1956); HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* ch. 9 (2d ed. 1960).

<sup>39</sup> See Powers, *supra* note 23; WISCONSIN SERVICE ASS'N, *op. cit. supra* note 20.

of self-respect because he remains a self-supporting and contributing member of society. The implications of these values alone make the program worthwhile in terms of the rehabilitative function of punishment.

In addition, work release informs the offender that the community means business. The nights and week ends in the cell provide ample opportunity for penitence and self-castigation while also helping meet the public's demand that prisoners not be "coddled" and that they receive their just desert. Clearly, work release prisoners bear the stigma of the criminal label. Viewed in terms of retribution, when it is remembered that most work release inmates are misdemeanants, the work release sentence is sound.

The deterrent function also appears to be served by the work release sentence. Bearing more stigma than probation and involving additional punishment in that the individual is removed from society for the greater portion of the week, such a sentence should well be sufficient to cause the potential repeater to think twice.

Viewed within the context of the "integrative"

theory of punishment, work release programs are worthy of serious exploration.

#### CONCLUSION

What does the future hold for work release? Work release is sound penology, and it is heartening to observe evidences of growing interest in the program. Maryland and Indiana have recently passed work release laws, and work release bills were introduced in the recent sessions of the Florida and Iowa legislatures. Recently the Cook County Illinois Chapter of the League of Women Voters has become interested in work release. On May 14, 1962, E. H. Shomo, CBS Radio Vice President and General Manager of WBBM Radio Chicago, spoke in favor of implementing a work release program in Illinois. The National Jail Association at a regional forum in Sioux City, Iowa, in 1962, gave attention to the subject.<sup>40</sup> These concrete examples of interest in work release are encouraging, and there are undoubtedly more. Hopefully, this growing interest will continue to result in both new state statutes and greater use of existing provisions.

<sup>40</sup> Reported in the Des Moines Register, May 3, 1962.