

LAW ENFORCEMENT MANAGEMENT INSTITUTE

ALTERNATIVES TO INCARCERATION

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338

PROBATION AND OTHER ALTERNATIVES TO INCARCERATION

With the advent of prison and jail overcrowding in the early 1990's, alternatives to incarceration became a topic of great interest to facility administrators and tax payers. The costs of incarcerating individuals is ever increasing and fewer empty jail beds are available. "The U. S. correction system has felt the effect of many developments over the past 20 years. But perhaps no event has challenged the system more than the social, economic, and political consequences of prison crowding" (Baer, 1989). To meet the needs of society in rehabilitating/punishing those convicted of major or violent crimes, and insure that the offender spends an adequate amount of time behind bars, a means of providing rehabilitation and or punishment for those that commit lesser crimes must be found and implemented.

"As of January 1988, many state's corrections, to include the District of Columbia, were under a court order to the inmate population" (Id). Texas was under the Ruiz decision, placing thousands of offenders on waiting lists to be transported to state prisons. This situation overburdened county jails, imposing on them the responsibility of housing state prisoners, and leaving little room for the offenders awaiting trial or those sentenced to county jail. This situation produced increased operating and construction costs, not to mention unsafe working environments for correction officers (Id).

A community, to accept alternatives to incarceration, must feel the punishment fits the crime. At very least, the community must feel they are getting the most for their tax dollars. To

accomplish an effective remedial action, the community must be enlightened as to what alternatives can be utilized, in order to meet the need for sanctions without filling jail beds. "When we think of security for offenders we tend to think of conventional means. For example, big concrete bastille, steel gates and leg irons. But the community is more interested in security at all levels of the criminal justice system, to include community corrections" (Bennett 92).

The most desirous and currently most prevalent alternative to incarceration is probation. Probation, as we know it, has its roots in Old English Law and was originally referred to as the "Benefit of Clergy" (Killinger and Cromwell, 1974). It was a primary device to avoid capital punishment (id). Probation has taken on a new dimension from Old English Law, in that it now is a tool allowing offenders to re-assimilate back into the community from whence they came. In Texas, both felony and misdemeanor offenders may be placed on probation. During fiscal 1991, almost 468,200 offenders were supervised through some type of probationary program. Of this total, about 211,000 were felony offenders, while 257,000 were misdemeanor offenders. Misdemeanor offenders still make up the majority of Texas probationers, but felons share has risen in recent years (Texas Board of Pardons and Paroles, 1991).

Probation is granted by the courts once pre-sentencing is completed. To avoid revocation of probation, and thus, a trip to jail, a probationer must comply with certain specified criteria. Probation can take several forms, including: pretrial intervention, deferred adjudication, regular probation, driving while intoxicated probation, shock probation or boot camp. Probation can take two forms: non adjudicated or adjudicated probation (Anderson, 1994). These two topics

will be covered in more detail later in this article. Pretrial intervention involves an offender being placed on a form of probation prior to appearing in court. Pretrial intervention generally is the result of a plea bargain, where the offender pleads guilty, usually to a lesser offense, without going to jail.

Deferred adjudication is frequently utilized for lesser offenses or for a first time offender. The offender is placed on a set time period of probation and, if all requirements are met, the offender's record is cleared of any convictions. This affords the first time offender an opportunity for rehabilitation without many of the negative consequences related to a criminal record (Anderson, 1994).

Regular probation, which consists of being put on probation for a set period of time, if the offender meets all requirements, he or she is released from probation but maintains their criminal record. This type of probation is used for an individual that has a history of committing minor offenses and then commits a felony. "A candidate for probation is not really a bad sort, but does need to be shaken back to the reality of not committing offenses against the public" (Dunn, 1994).

Another alternative is Shock probation, which is one of the newest forms of probation. An offender sentenced to Shock probation receives a prison sentence, generally for a period of 60 to 90 days. It is a form of reality shock therapy for those that have never been to prison but have committed repeated minor offenses or more major offense. The offenses considered for shock probation generally do not involve horrific crimes that would cause a public outcry. Once

the required 60 to 90 days is over, the probationer is released and returned to the community to finish out a period of regular probation (Anderson, 1994).

The newest form of probation is the boot camp. In the 1950's and 1960's it was fairly common to hear that a judge had told someone brought before the bench, "Son, you've got a choice, you can either join the military and learn some discipline, or you can go to jail" (Lewis 1991). This is not offered today due to the stricter requirements for entrance in the military. Boot camp is intended to have the same affect on the young offenders, generally 17 to 25 year old's, that the military once had on offenders. Boot Camps are normally administered by the Texas Department of Criminal Justice, Community Justice Assistance Division, Adult Probation. The atmosphere is akin to that of a military boot camp. Structured activities and strict discipline are imposed on the offenders and programs such as educational classes, counseling sessions, or technical training are required (Id). Sentencing periods for boot camp differ, but normally range from 90 to 180 days. If the offender successfully completes the boot camp program, he or she is released back to the county jail for the judge to make a determination whether the individual should be placed on regular probation. It is not uncommon for a returning boot camper to remain in the confines of the county jail for between four to 10 days, awaiting the judge's decision. Once the decision is rendered the boot camper is placed on probation and released back into the community.

Conditions of probation vary with each case, what the probation department recommends and what the court determines to be the needs of each individual probationer. The terms of probation can range from merely reporting to the probation officer and paying a supervision fee,

to attending self help programs geared to assisting the offender with a social problem. All probationers are required to refrain from possessing a gun or a knife or other weapon outside of their home, and to remain out of any bar, tavern, lounge, or other similar place (260th Dist. Court Prob. Order, 1994). While the conditions of probation are not really difficult, many probationers fail and are re-incarcerated due to a probation violation. Many probationers commit technical violations which include the failure of a probationer to report to the probation department, or to pay restitution, fines, or supervision fees. When an offender is placed back in county jail awaiting a probation revocation hearing, jail overcrowding is exacerbated. If probation is revoked, the offender may be incarcerated in state prison for a period of time, thereby adding to the overcrowding problem in state facilities.

Case loads for probation officers are generally very high. Normally an officer handling those classified as minimal supervision probationers will handle 125 or more cases. Officers that handle cases classified as intensive supervision will generally carry a more limited case load of 45 to 50 (Anderson, 1994). The more limited case load is due to the requirement of constant supervision that may entail surveillance of each probationer. Requirements that officers make in home visits, as well as counsel the probationers, gives them little time to spend with each client (id).

Those offenders that have been placed on intensive supervision are required to abide by a more stringent set of guidelines in order to remain out of penal institutions than those classified as minimum supervision probationers. House arrest may be required. An offender placed on house arrest is not being afforded an opportunity to leave his or her residence for any reason (id).

His life, his total existence, is within the confines of the residence. Another condition that may be imposed on a probationer in the intensive supervision program is electronic monitoring. Electronic monitoring can be used in addition to house arrest or for a set period of the day, allowing the probationer to go to work, church, or to self help programs. "There are two basic type of electronic monitoring devices. The first type of device is a "continuous signaling device" which constantly monitors the presence of a probationer at a particular location. There is also the "programmed contact device" which will contact the probationer periodically to verify their presence" (Schmidt, 1991). At present, most of the equipment limits participation to those who have a telephone in their residence. The electronic monitoring program is a viable alternative that helps to ensure the availability of cell space for violent offenders and is part of an effective, afford- able, and truly conservative approach to law and order (Hale, 1991).

Another means of intensive probation is split sentencing, whereby the court orders a portion of the probation behind bars. Split sentencing is generally akin to the shock probation program with minor exceptions. The time incarcerated is, of course, determined by a judge or jury. The probationer generally has a criminal history, although again of a nonviolent nature. The probationer, once released from the penal institution, is placed on intensive probation and usually has to meet a number of constraints to remain out of prison.

In an effort to reduce state prison overcrowding, the Texas Legislature has made several changes to our penal code, including introducing the fourth degree felony. With the enactment of this legislation, four important principles were considered: (1) the public safety, (2) the *rationality* of the system as it would be changed, (3) the *efficiency*, the more effective but less

costly means of incarcerating those committing more serious crimes rather than those committing the lesser crimes, and the (4) *efficacy* of the punishment system by increasing community corrections resources as much as the system can absorb (Texas Punishment Standards Recommendation, 1992). In affect, those being sent to prison for more serious crimes would be required to spend 50% of their sentence behind bars rather than the previous 13%. Those individuals sentenced for lesser, non serious crimes, would be afforded an opportunity to attend probation programs ranging from self help groups to community service programs.

The Texas Sheriff's Association, as well as other political groups considered friends of law enforcement, protested the enactment of the fourth degree felony as written (Sheriff Fontenot, 1995). The protest was based on a presumption that violators would be placed in county jails, thus over burdening county resources, and those not able to comply with the requirements of probation would be returned to county jail. The fourth degree felony as it stands, only imposes a county jail sentence that can be for as long as four years. Thus, the burden is placed on county jails to house inmates normally incarcerated in state prisons, a situation that cannot be anything less than disastrous to already strained county budgets.

Orange County, not unlike other counties in Texas, suffers from the "too many prisoners, too few beds" syndrome. The jail was built in the mid 1970's, and has been expanded several times. Expansion is becoming a never ending cycle. With courts sentencing offenders to state prisons daily, the day will soon come when there will be more inmates waiting transfer to state prison than are incarcerated in state prison. It appears that the prevailing attitude is, "if it ain't broke, don't fix it," rather than an attitude that preventative maintenance or repair will help

prevent problems that are sure to arise in the future. Action should be taken before the Texas Commission on Jail Standards pulls the jail certification, begins fining the counties and eventually closes the jails completely, before the necessary steps to reduce jail overcrowding are taken.

In Orange County, for example, if the jail were closed, the county could be required to house its' prisoners in other county jails, at a cost between \$35.00 and \$50.00 per day per inmate. Those type of expenditures would bankrupt most county coffers in a very short time.

The population of county jails has been steadily increasing over the past four years, at a rate of about 13 to 20 percent per year (Texas Commission on Jail Standards, 1992). With a daily average inmate population of over 200 inmates and over capacity, the only solution to remaining open and viable is to reduce the inmate population to the number of beds. To accomplish this, new facilities are required. The public collectively cringes at that idea and protests that they are already taxed to the limit. However, the construction of a minimum security facility, the cheapest type of correctional facility to build, would afford the sheriff's department the opportunity to classify and house those incarcerated for nonviolent, non-sexual, and non-drug dealing charges to be housed in the minimum security facility. There would be no necessity for thousand dollar jail doors, expensive locks, and forty five dollar keys with a minimum security facility. Regular doors and locks with regular keys could be used. In addition, a structure that does not require steel bar grates and sheet metal walls could be used. This type of facility could be the center for a multitude of programs administered by local government agencies, as well as local self help programs. It could be constructed with ample

room for training classrooms as well as rooms for counseling and staffing by case workers to allow them to adequately supervise their clients.

Certain offenders, meeting a set criteria, could be eligible for selection to participate in the pretrial Electronic Monitoring release program. Based on the same concept as probation, electronic monitoring would enable individuals selected to be fitted with a device that would be monitored by a receiver/transmitter hooked to their telephone. The offender would be afforded time away from the monitor for the purpose of going to work, attending church, or other required activities away from the residence. The offenders could also be required to attend self help programs to assist with any social problems that may have contributed to the crimes they were charged with, i.e., alcohol or drug dependency, family violence, etc. While out in the community, they would be able to continue to work and thus support their families, as well as pay supervision fees to help off set the cost of the program. This equipment would provide information about each offender's whereabouts, such as when the offender leaves for work, if the offender is late leaving home or work, or if the offender is not at home when required to be (Schmidt, 1991). This system could prove to be an effective tool, providing those offenders not requiring incarceration to receive supervision until they appear in court.

Those staying within the required guidelines of the program could later be considered for another program that was adopted from the United Kingdom, Day Reporting, and is currently being utilized by such cities as Houston. "The day reporting center is a non- residential program providing supervision to offenders who would otherwise be incarcerated" (Larivee, 1990). An itinerary would be developed showing the required activities of each offender. Each offender

could report each morning prior to going to work and again after work. Those individuals sentenced to day reporting would also be better able to support their families, to help support the program financially, and to maintain their ties with the community. "Some participants of the program are still serving their sentences in the custody of the sheriff and the program is the final phase before total release into the community" (Enax and Coleman, 1990). While in the program, the offender can be required to attend counseling dealing with the problem that contributed to their criminal activity.

Another program that could be instituted would be the work release program. Individuals sentenced to work release would be required to reside in the minimum security facility during the non- working hours and released to go to work during the day. Although this would not be a solution to the overcrowding situation, it could be a starting point to help those individuals into one of the other less restrictive programs, eventually leading to a possible pretrial release or early probation (Ray, 1994).

Finally, there is one program that will not relieve overcrowding, but is popular with the general public. It is the work detail, where offenders eligible to be housed in the minimum security facility are allowed to do public service work. There are many projects that can be accomplished by the effective use of offender manpower, projects that provide a benefit to the community as well as visible proof of the benefits of offenders performing community service. The benefits of this program are obvious and beneficial to a smaller county's fiscal constraints because most maintenance requirements of a county are manpower intensive. However, with the

use of offender labor, the maintenance costs would be reduced to a manageable level, consisting of supervision, parts, and pieces (Id).

This author in no way wishes to advocate the reinstatement of highway chain gangs and slave field labor of the early 20th century. Many of the state institutions that raise their own food to augment the necessary food supplies do compensate the offenders. Small county facilities could easily emulate the state facilities. This could take the form of an hourly rate to be added to the offenders inmate commissary account. For example, the county could authorize \$.50 an hour for labor performed. If an offender works eight hours on a construction team in a community park, the offenders commissary account would be increased by \$4.00, with no actual money changing hands. This would take away the attitude of "I'm working for nothing" and reinforce the age old work ethic of a day's work for a day's pay.

While the public does not want increased taxes to build security facilities, the need to do so is there and will not diminish. Without adequate facilities, the Texas Jail Standards Commission will take action against the offending county. Whether it be the fining of the county government or closing the jail completely, some action will be taken. To accomplish the necessary construction, the public must be involved in the decision making process. The National Institution of Corrections, based in Boulder, Colorado, has formulated possible solutions to rectify overcrowding situations. One of their recommendations has been to develop a strong public relations campaign to encourage the public to learn about their jail facility. In Orange County, invitations to the general public have been made to tour the facility, to show the public that the Hollywood horror jails are just that, a thing of fiction.

Admittedly, jails are in the business of warehousing offenders awaiting trial or sentencing or serving a sentence. Jails also house those offenders awaiting transfer to state facilities. This does not make for a rehabilitative atmosphere. With the institution of pretrial release programs, offenders can receive rehabilitative counseling, assistance, or other aid that can be of benefit to them. The public should take an active interest in their local corrections facility because it is the most highly visible and most sorely needed service that a county provides. Members of the public can request and be granted a tour of the jail so that they can see how their tax dollars are being spent. Any person with common sense will be able to see if there is an overcrowding problem. When that inevitable question is asked, "Why are so many sleeping on the floor and what can you do about it?", the response is, we need a large enough facility to accommodate the ever increasing number of offenders.

The only way this can be accomplished is for the county to provide the fiscal support to build a facility, and the only way this money can be provided is by the raising of taxes. Many individuals will not complain if they are better informed about where their hard earned money is going. The liability created by overcrowding should generate active participation of all concerned in developing new and better ways to rehabilitate or punish.

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