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## WYOMING PENITENTIARY WORK RELEASE ACT

### *Derivation and History*

The rising cost of confinement, the growing exposure of inhumane conditions, and the demonstrable ineffectiveness of incarceration as a deterrent, has weakened the position of imprisonment as a legitimate response to criminal behavior.<sup>1</sup>

Traditionally, the second most reliable method to insure that one who has committed a crime will not repeat his performance was to lock him up. The first was to shoot him.<sup>2</sup> This thinking reflects a phenomenon that sociologist Erving Goffman<sup>3</sup> has identified as "ritual maintenance" *i.e.*, a universal feeling that when some sort of antisocial or disapproved act occurs, something must happen. However, there are alternatives to what "must" happen from mere punishment to sophisticated treatment. A wide range exists between these two extremes if an openness exists to consider them. The failure of the correctional system in effectively treating criminals has led to such an openness to reassess and redefine the entire concept of corrections.<sup>4</sup>

Thinking in terms of institutionalization as the basic technique in correctional treatment is being replaced by the theory that:

Institutions tend to isolate offenders from society, both physically and psychologically cutting them off from schools, jobs, families, and other supportive influences and increasing the probability that the label of "criminal" will be indelibly impressed upon them. The goal of reintegration is likely to be furthered much more readily by working with the offender in the community than by incarceration.<sup>5</sup>

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1. Davis, Gabel, Stiller & Torson, *Project: Temporary Release in New York State Correctional Facilities*, 38 ALB. L. REV. 693, 695 (1974); see also PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967) [hereinafter cited as CHALLENGE]; ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, CORRECTIONAL REFORMS—FOR A MORE PERFECT UNION, Pub. No. M-64 (1971).
2. Heller, *The Role of the Home and the Community*, 7 AM. CRIM. L.Q. 78 (1968).
3. See GOFFMAN, *ASYLUMS* (1961).
4. Note, *Community Based Corrections: Some Techniques Used as Substitutes for Imprisonment*, 2 CAP. U.L. REV. 101, 110 (1973).
5. CHALLENGE, *supra* note 1, at 165.

The term rehabilitation itself has been largely replaced by "reintegration", easing the transition of the inmate from his institutional existence back into the community.<sup>6</sup> Although, isolation, a traditional goal of institutionalization, does protect the community, it does so for a limited period of time only.<sup>7</sup> Most inmates are eventually released or paroled.

Work release, alternatively known as work-furlough, day-parole, out-mate program, intramural private employment or semi-liberty,<sup>9</sup> (distinguished from prison industry, prison camp, penal farms, conservation camps and the like) permits the offender to be released from direct prison supervision and control for the purpose of working for private employers on a regular basis while remaining in the institution or other facility of confinement after work and during week-ends.<sup>10</sup> Although the inmate usually leaves the "place of confinement" physically during these periods, responsibility for his custody formally remains with the institution.<sup>11</sup> In some cases the institution can delegate this responsibility.<sup>12</sup>

Work release is generally viewed by correctional officials as an intermediate step between full detention and full release.<sup>13</sup> Ideally, it provides a planned, gradual return to the community of selected inmates prior to the expiration of their legal sentences, thereby facilitating subsequent adjustment in the community to which they return.

One of the goals of work release is to alleviate unemployment among ex-convicts. A documented study of the relationship between unemployment rates and crime found evidence that crime rates were related directly to unemployment rates.<sup>14</sup> Other studies discovered that "parolees who worked consistently have lower rates of parole violation than those

6. Keldgord & Norris, *New Directions for Corrections*, 36 FED. PROBATION 3, 6 (1972).

7. Root, *State Work Release Programs: An Analysis of Operational Policies*, 37 FED. PROBATION 52, 55 (1973) [hereinafter cited as Root I].

8. 18 U.S.C. § 4082 (1970).

9. Root, *Work Release Legislation*, 36 FED. PROBATION 38 (1972) [hereinafter cited as Root II].

10. JOHNSON, CRIME, CORRECTIONS, AND SOCIETY 690 (rev. ed. 1968).

11. Singer & Wright, *Cost Analysis of Correctional Standards: Institutional-Based Programs and Parole*, in NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE (1976).

12. *Id.*

13. Johnson & Kotch, *Two Factors in Development of Work Release: Size and Location of Prisons*, J. CRIM. JUST., 43, 43-50 (1973).

14. Meltsher, Caplan & Lane, *An Act to Promote the Rehabilitation of Criminal Offenders in the State of New York*, 24 SYRACUSE L. REV. 885, 895-96 (1973).

who did not work or who worked sporadically.<sup>15</sup> The advantage of a felon having a job to continue after his release is magnified when one considers that "the highest percentage of post prison failures occur within six months after release, with the greater number taking place during the first sixty days."<sup>16</sup>

In some respects, work release may be a greater form of punishment than total incarceration. For eight hours a day the work releasee is treated as a normal human being and then returns to incarceration to be treated as "just another inmate". This contrast between freedom and incarceration enhances the inmates's realization of his predicament—getting a taste of freedom makes incarceration all the more painful.<sup>17</sup>

In 1957, the first work release program for felons was authorized in North Carolina.<sup>18</sup> Forty-one states now have statutory provision for adult felon participation.<sup>19</sup> Federal prisoners have been eligible for work release since 1965.<sup>20</sup> The state programs include as eligible both male and female inmates. Most of the laws follow the federal work release legislation. For this reason, similarities are present among sections of most states' legislation.

15. *Id.*

16. Baker, *Preparing Prisoners for Their Return to the Community*, 30 FED. PROBATION 43 (1966).

17. Singer, *Psychological Studies of Punishment*, 58 CALIF. L. REV. 405, 429 (1970) (emphasis in original).

18. Root II, *supra* note 9, at 38.

19. The seven states without work release legislation for adult felons are Arizona, California, Georgia, Kentucky, Idaho, New Hampshire, Ohio, and Rhode Island; the following states have work release legislation for felons: ALA. CODE §§ 14-8-30 to 14-8-67 (Cum. Supp. 1977); ALASKA STAT. § 33.30.250 (1975); ARIZ. REV. STAT. ANN. §§ 31-331 to 31-336 (1976); ARK. STAT. ANN. § 46-117 (Supp. 1975); COLO. REV. STAT. ANN. § 16-11-212 (1973); CONN. GEN. STAT. ANN. § 18-100 (1975); DEL. CODE ANN. tit. 11, § 6533 (Cum. Supp. 1977); FLA. STAT. ANN. §§ 944.026 and 945.091 (Supp. 1977); HAWAII REV. STAT. § 353-22.5 (1976); ILL. ANN. STAT. ch. 38, § 1003-13-1 to 13-6 (1973 and 1977 Supp.); IND. STAT. ANN. § 11-7-9-1 to 11-7-9-11 (Burns 1973); IOWA CODE ANN. § 247A.1-247A.9 (Supp. 1977); KAN. STAT. ANN. § 75-5268 (1977); LA. REV. STAT. ANN. § 15:1111 (West Supp. 1977); ME. REV. STAT. ANN. tit. 34, § 527 (1964); MD. ANN. CODE ART. 27 § 700A (1976); MASS. ANN. LAWS ch. 127, § 90A (Cum. Supp. 1977); MICH. COMP. LAWS ANN. § 791.265a (Supp. 1977); MINN. STAT. ANN. § 241.26 (1972 and Cum. Supp. 1978); MISS. CODE ANN. § 47-5-161 to 5-169 (Supp. 1977); MO. ANN. STAT. § 216.224 (Vernon Supp. 1978); MONT. REV. CODES ANN. § 95-2217 to 2226.1 (1969 and 1977 Cum. Supp.); NEB. REV. STAT. § 83-184 (1976); NEV. REV. STAT. § 209.461 (1977); N.J. STAT. ANN. § 30:4-91.3 (Supp. 77-78); N.M. STAT. ANN. § 42-1-78 to 1-82 (1964 and Supp. 1965); N.Y. CORREC. LAW § 852-858 (McKinney Supp. 1978); N.C. GEN. STAT. § 148-32.1 (Cum. Supp. 1977); N.D. CENT. CODE § 12-48.1-01 to 48.1-04 (1976); OKLA. STAT. ANN. tit. 57, § 543 (Supp. 1978); ORE. REV. STAT. § 144.410 - 144.525 (1977); PA. STAT. ANN. tit. 61, § 1052-1054 (Cum. Supp. 1978); S.C. CODE ANN. § 24-3-210 (1976); S.D. COMPILED LAWS ANN. § 24-8-1 to 8-14 (Supp. 1967 and 1977); TENN. CODE ANN. § 41-1810 (1975); TEX. REV. CIV. STAT. ANN. art. 6166x-3 (Vernon Cum. Supp. 1978); UTAH CODE ANN. § 64-9a-1 to 9a-6 (Supp. 1977); VT. STAT. ANN. tit. 28, §§ 753-60 (Supp. 1977); VA. CODE ANN. § 53-38 (Cum. Supp. 1977); WASH. REV. CODE ANN. § 72.65.020-65-900 (Supp. 1976); WIS. STAT. ANN. § 56.065; and WYO. STAT. §§ 7-13-717 *et seq.* (1977).

20. 18 U.S.C. § 4082 (1970).

Work-release always involves release from custody in order to work in the community. All of the work release legislation authorizes release for educational and vocational training.<sup>21</sup>

A Maryland statute allows a work releasee to take weekend furloughs after completion of two months in the work release program.<sup>22</sup> Hawaii includes furloughs for "social re-orientation".<sup>23</sup> North Dakota authorizes release for an "educational or other rehabilitative program".<sup>24</sup> South Carolina allows furloughs for "any other compelling reason consistent with the public interest".<sup>25</sup>

One stated objective of work release legislation is that of rehabilitation through the development of job skills or by furthering the inmate's education, and developing within the participant a sense of responsibility.<sup>26</sup> Another objective is reintegration:

- (1) to ease the transition from prison to community;
- (2) to place the offender in a job he may retain after release;
- (3) to help support the inmate;
- (4) to help support the inmates' dependents;
- (5) to help determine the inmate's readiness for parole; and
- (6) to preserve family and community support.<sup>27</sup>

### *Administration of the Program*

Thirty-one of the forty-one states with work release programs for felons vest the power of selection of participants exclusively in the correctional authority which is also responsible for the implementation of the program itself.<sup>28</sup> In Iowa, the selection is made by a committee consisting of a parole

21. Root II, *supra* note 9, at 39.

22. MD. CODE ANN. art. 27, § 700A (b-1) (1976).

23. HAWAII REV. STAT. § 353.22.5 (1968).

24. N.D. CENT. CODE § 12-48.1-01 (1975).

25. S.C. CODE ANN. § 24-3-210(4) (1977).

26. Root II, *supra* note 9, at 38.

27. Note, *Community Based Corrections: Some Techniques Used as Substitutes for Imprisonment*, *supra* note 4, at 116.

28. See, for example, ARK. STAT. ANN. § 46-117 (Supp. 1975); CONN. GEN. STAT. ANN. § 18-100 (1975).

board, rehabilitation services and corrections representatives.<sup>29</sup> Some states authorize the Department of Corrections to make the final decision on recommendations from, or on advise and consent of the Board of Parole.<sup>30</sup> North Dakota places final approval in the Board of Parole.<sup>31</sup> In Montana, the Board of Pardons has sole responsibility for determining eligibility but final authority is in the Department of Corrections.<sup>32</sup> In Nevada, the Board of State Prison Commissioners and Director of the Department of Prisons share the responsibility.<sup>33</sup> In Colorado, the court determines placement and work release as a specific condition of parole.<sup>34</sup>

### *Selection of Participants*

Existing statutes limit the number of inmates who are eligible. Most states delegate the task to the discretion of the authority administering the program.<sup>35</sup>

Some states have statutory restrictions regarding sentences. Indiana and Mississippi, for example, require that a specified minimum portion of the sentence be served before the inmates can be eligible for work release.<sup>36</sup> Florida, Michigan and Nevada determine eligibility on the basis of the amount of time left to be served in the sentence.<sup>37</sup> North Carolina and Pennsylvania exclude lengthy sentences and life and death sentences.<sup>38</sup> Parole eligibility is a selection criterion in Minnesota, Montana and Wisconsin.<sup>39</sup>

29. IOWA CODE ANN. § 247A.3 (Supp. 1977).

30. MISSISSIPPI, MISS. CODE ANN. § 47-5-161 to 47-5-169 (Supp. 1977); Nebraska, NEB. REV. STAT. § 83-184 (1976).

31. N.D. CENT. CODE § 12-18.1-02 (1975).

32. MONT. REV. CODES ANN. §§ 95-2221 (1) and (5) (Cum. Supp. 1977).

33. NEV. REV. STAT. § 209.461 (1977).

34. COLO. REV. STAT. ANN. § 16-11-212 (1973).

35. See, e.g., Colorado, COLO. REV. STAT. ANN. § 16-11-212 (1973); Delaware, DEL. CODE ANN. tit. 11, § 6533 (Cum. Supp. 1977).

36. IND. STAT. ANN. §§ 11-7-9-1 to 11-7-9-11 (Burns 1973) (serve one-fourth of sentence); MISS. CODE ANN. §§ 47-5-161 to 5-169 (Supp. 1977) (three-fourths of minimum sentence served).

37. FLA. STAT. ANN. §§ 944.026 and 945.091 (Supp. 1977) (less than one year left of sentence); MICH. COMP. LAWS ANN. § 791.265a (Supp. 1977) (less than 180 days of sentence left); NEV. REV. STAT. § 209.461 (1977) (last six months of sentence, excludes life sentence).

38. N.C. GEN. STAT. § 148-33.1 (Cum. Supp. 1975) (five year maximum sentences); PA. STAT. ANN. tit. 61, § 1052-1054 (Cum. Supp. 1977).

39. MINN. STAT. ANN. § 241.26 (1972 and Cum. Supp. 1978) (being considered and eligible for parole), MONT. REV. CODES ANN. §§ 95-2217 to 2226.1 (1969 and 1977 Cum. Supp.) (serve one-half of time necessary to be considered for parole), WIS. STAT. ANN. § 56065 (Supp. 1977) (must be eligible for parole if life sentence).

*Employment*

Employment is secured principally through the efforts of the correctional agency.<sup>40</sup> Because most of the programs were modeled after the federal work release plan, three conditions reappear in legislation throughout the country: First, certain skill areas are excluded from work release consideration if there is already a surplus of labor in that area. Secondly, working conditions and pay must be equal to civilian standards. Third, any unions involved must be consulted, and no work releasee can perform his duties during a labor dispute.<sup>41</sup>

Most states report that the chief obstacle to implementation of work release is the difficulty in finding employment for inmates.<sup>42</sup> General unemployment conditions in the economy, the tendency of correctional institutions to be isolated from population centers, and the tendency for inmates to lack vocational skills are some other obstacles.<sup>43</sup>

*Disposition of Wages*

Statutes, similar to federal work release legislation, designate the following purposes to which the wages must be allocated: Room and board, travel and incidental expenses, support of dependents, payments of fines and debts and savings for release.<sup>44</sup> Generally, the inmate's wages are turned over to the institution, when he is employed in the community, to control the disbursements. Variations in the order of disbursements reflect differences in the priorities of the legislatures. Some states leave disposition of the work releasee's wages up to the discretion of the administrative authority.<sup>45</sup>

*Housing*

Adequate housing is essential to a work release program since correctional institutions are usually located away from population centers.<sup>46</sup> Most work release legislation allows a state correctional facility to contract with other political sub-

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40. Johnson, *Report on an Innovation—State Work Release Programs*, 16 CRIME & DELINQUENCY 417, 418 (1970).

41. Root II, *supra* note 9, at 42; 18 U.S.C. § 4082 (1970).

42. Note, *Community Based Corrections: Some Techniques Used as Substitutes for Imprisonment*, *supra* note 4, at 117.

43. Johnson, *supra* note 40.

44. Root II, *supra* note 9, at 40-41.

45. See, e.g., Florida, FLA. STAT. ANN. §§ 944.026 and 945.091 (Supp. 1977).

46. Root I, *supra* note 7, at 55.

divisions for separate housing of work release participants.<sup>47</sup> Another housing arrangement authorizes the use and development of work release or community correction centers.<sup>48</sup>

### *Escape*

Any willful failure to return to the institution, or place of confinement, at the appointed time is regarded as the equivalent of escape by most states.<sup>49</sup> The majority of states treat the escape the same as any other escape from the custody of the penitentiary.<sup>50</sup> A number of states have classed such an escape as a felony.<sup>51</sup>

## THE WYOMING ACT

### *Derivation and History*

Work release began in Wyoming with a grant from the Governor's Committee on Criminal Administration.<sup>52</sup> The objective is to segregate potentially rehabilitative prisoners from "hard-core" inmates by placing them in communities, and thereby providing them with a transitional entrance into these communities.<sup>53</sup> On February 12, 1972, the first inmate was placed on the work release program. Rawlins and Casper were initial work release quarters and housed the first inmates.

The State Legislature passed the Wyoming Penitentiary Work Release Act in 1975, and amended it in 1976 and 1977. The major portion of the Wyoming Act<sup>54</sup> is similar to other state legislation on work release. The purpose of the Act<sup>55</sup> is "for the rehabilitation, education, and betterment of selected inmates." The state work release program allows eligible inmates to leave the correctional facility for the purpose of

47. Root II, *supra* note 9, at 41; see e.g., Alaska, ALASKA STAT. § 533.30.250 (1975); Colorado, COLO. REV. STAT. ANN. § 16-11-212 (1973).

48. Root II, *supra* note 9, at 41.

49. *Id.* at 42.

50. For example, see Alaska, ALASKA STAT. § 533.30.250 (1975); Colorado, COLO. REV. STAT. ANN. § 16-11-212 (1973).

51. See, e.g., New Mexico, N.M. STAT. ANN. §§ 42-1-78 to 42-1-82 (1964 and Supp. 1965); Washington, WASH. REV. CODE ANN. §§ 72.65.020 to 72.65.900 (Supp. 1976).

52. Flier, Wyoming, Penitentiary Work Release: An Evaluation (Dec. 1975) (unpublished thesis in Department of Psychology at University of Wyoming).

53. GOVERNOR'S PLANNING COMMITTEE ON CRIMINAL ADMINISTRATION, COMMUNITY BASED TREATMENT, A NEW APPROACH TO CORRECTIONS IN WYOMING 16-17 (1974).

54. WYO. STAT. §§ 7-13-717 to 7-13-727 (1977).

55. WYO. STAT. § 7-13-719(a) (1977).



“gainful work” in the community, including vocational training and other educational and rehabilitation activity.<sup>56</sup> Privileges are increased according to length of successful performance in the program,<sup>57</sup> and vary depending on inmate progress, *i.e.*, level of demonstrated self-control.<sup>58</sup>

Presently, work release programs in Wyoming are located in Campbell County at Gillette, Natrona County at Casper, Carbon County at Rawlins, Fremont County at Riverton and Lincoln County at Kemmerer.

In February 1977, a program began at the Goodwill Industries, in Cheyenne. However, no inmates have been placed in this program as of this writing.<sup>59</sup> The responsibility for the “establishment, regulation, and control” of the program along with the authority to make administrative rules and regulations of the work release program falls on the Warden of the penitentiary with the “advice and consent” of the State Board of Charities and Reform.<sup>60</sup>

#### *Administration of the Program*

The consideration of an inmate for work release usually originates with the inmate himself. The inmate volunteers for the program and then completes an application for review by the Classification Committee. Ideally, the evaluation or classification committee making the final selection would be composed of prison staff members from treatment, administration and security, along with a qualified citizen-at-large to allow for some impartiality in screening. However, in Wyoming the committee is composed of prison employees who forward their recommendations to the Warden. He may, then, in his discretion, present the recommendation to the Board of Charities and Reform for final approval.

An inmate is not considered for work release until he has a job arranged,<sup>61</sup> and suitable facilities for his quartering and confining along with proper supervision are available.<sup>62</sup> Although it is the Warden of the state penitentiary who is re-

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56. WYO. STAT. § 7-13-718(a)(i) (1977).

57. Flier, *supra* note 52, at 17.

58. Personal interviews with Wyoming Corrections Administrator (May 1977).

59. Personal interviews with Wyoming Corrections Administrator (May 1977).

60. WYO. STAT. § 7-13-720(a) (1977).

61. Personal interviews with Wyoming Corrections Administrator (May 1977).

62. WYO. STAT. § 7-13-722 (1977).

sponsible for providing for the supervision of work release participants and securing the employment and vocational training opportunities for the inmate,<sup>63</sup> he may delegate these duties.<sup>64</sup> In actuality, jobs are usually procured by the inmate himself, with the aid of the work release supervisor or prison staff if needed.<sup>65</sup> No action is taken until receipt of the recommendation from the Warden.<sup>66</sup> Thereafter, the Board of Charities and Reform has final responsibility for selection of work release candidates and can approve, reject, modify or defer action on the recommendation.<sup>67</sup>

In order for the work release privilege to be granted to an inmate, the recommendation must receive a majority vote of the Board of Charities and Reform members and be forwarded to the prison administration.<sup>68</sup> The Warden then adopts a work release plan which constitutes an extension of the limits of confinement beyond the penitentiary and includes the terms and conditions of the individual work release plan indicating where the inmate shall be assigned and maintained or confined while in the program when not engaged in work release employment.<sup>69</sup> The inmate must sign a copy of the plan thereby agreeing to be bound by all the terms and conditions thereof.<sup>70</sup> A copy of the signed plan is then delivered to the office of the Board of Charities and Reform.

Presently, the plan in use is very sketchy, lacking specific behavioral objectives and professional guidance for deficiency areas experienced by the inmates. Ideally, the Wyoming Work Release program should be structured to allow the participant to meet with the selection committee and to develop a more individualized plan for increasing personal responsibility and community contact. The program would involve progressive rehabilitative program stages and would identify deficiencies and construct behavioral goals around the deficiencies by detailing highly specified objectives for the individual inmate in the areas of education, skill training, treatment, behavior, work assignments or other objectives. In this way, for exam-

63. WYO. STAT. § 7-13-720 (1977).

64. WYO. STAT. § 7-13-720 (1977).

65. Personal interviews with Wyoming Corrections Administrator (May 1977).

66. WYO. STAT. § 7-13-719(b) (1977).

67. WYO. STAT. § 7-13-719(b) (1977).

68. WYO. STAT. § 7-13-719(b) (1977).

69. WYO. STAT. § 7-13-719(b) (1977).

70. WYO. STAT. § 7-13-719(b) (1977).

ple, a sex offender, drug abuser or alcoholic, needing highly structured and monitored activities with special daily professional guidance would be able to participate in the work release program. Wyoming statistics show that ninety percent of work release violations are alcohol related, confirming the need for a highly structured and behavior-oriented program.

Presently, inmates on work release are minimally monitored by the work release supervisors, their employers and, in some instances, local law enforcement officials.<sup>71</sup> Accordingly, the only supervision a work release participant receives is the monitoring of his departure and return from work, his known associations, employment progress, wages, and violations if any. No specific behavioral problems the inmate suffers from are dealt with, thereby limiting the suitability of certain inmates for work release.

During an initial "probation period", participants are allowed to leave their residence only for work. Generally within two or three weeks, they are allowed unsupervised evenings.<sup>72</sup> All participants must contact the coordinator whenever they move from one place to another, as their whereabouts are to be known at all times.<sup>73</sup> Privileges for work releasees generally include family visits. Some privilege experimentation has included the following: family visits external to the work release quarters, attending church, attending one movie per week, attending community service programs (Jaycees, church activities, YMCA, etc.), and living arrangements external to the work release center itself. Generally, however, unsupervised time away from the work release quarters is avoided as much as possible.<sup>74</sup>

The work release program does not provide a wide range of program options to the inmate. If a work release participant wants to attend the University of Wyoming or work in a training program, he is obligated to pay for all costs. If he cannot afford whatever activity he is applying for, he cannot participate. Therefore, an inmate who may need training the most may *not* receive it because of lack of funds within the

71. Personal Interviews with Wyoming Corrections Administrator (May 1977).

72. Flier, *supra* note 52, at 16.

73. *Id.* at 17.

74. *Id.*

Work Release Program. Ideally, the Act would authorize the penal institution to subsidize work release programs to allow for a wider range of activities and plans for education and training.

The present program should allow for continued adjustments in the individual's plan, providing for additional but limited freedom with a transition to a lower level of custody and an increase in personal responsibility and community involvement.<sup>75</sup> Similarly, at regular intervals, each work releasee's status should be reviewed. If he has adjusted constructively and no strong reasons exist to the contrary, further favorable adjustments should be made in which he would be given added responsibility for monitoring his own behavior. Accordingly, a work release participant should move from (a) initial maximum structure and specific contingencies involving few outside privileges and minimal contact with community participants in institutional programs to (b) lesser degrees of structure in institutional programs and more involvement in community programs involving both citizens and offenders, to (c) partial-release programs under which he would sleep in the institution but have maximum participation in institutional and outside activities involving community residents, to (d) residence in a community-based facility,<sup>76</sup> to (e) residence in the community at the place of his choice with moderate supervision, and finally, (f) the last level of autonomy would approximate that of a citizen who lives in a rooming house, resulting in release from correctional supervision.<sup>77</sup>

This sort of highly structured step system, separated into numerous stages based on program readiness, is not common among any of the present state work release programs. Most, including the Wyoming program, tend to emphasize either immediate autonomy, or, at the other extreme, strict enforcement of rules and regulations organized around prison environments. In both cases the incentive structure is static.

One of the greatest difficulties with the institutionalization of criminals is evaluating "readiness for release." Tradi-

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75. See KILLINGER & CROMWELL JR., *ALTERNATIVES TO IMPRISONMENT, CORRECTIONS IN THE COMMUNITY* 3 (1974) [hereinafter cited as KILLINGER].

76. Community-based facilities are small, minimum security facilities located in and around the urban centers where the participant originally resided.

77. See note 75.

tionally, officials relied on an offender's verbalization of contrition, strong desires to change, and agreement with staff values as he perceives them.<sup>78</sup> This is the ultimate "con game" involving extremely high stakes.<sup>79</sup> Corrections must acknowledge that the only reasonable way to assess an individual's "readiness" for a particular program is to allow him progressively more responsibility and choice under controlled conditions. The present either/or approach should be modified greatly.<sup>80</sup> The offender should be given gradual responsibility and subsequent freedoms until parole or outright release, thus, each new decrease in control is a test for eventual release.

### *Selection of Participants*

"Work Release" means a program whereby eligible "inmates" incarcerated in a "penitentiary" may be released to employment in the community.<sup>81</sup> The Wyoming Act defines "inmate" as a person confined in a penitentiary.<sup>82</sup> "Penitentiary" means the Wyoming State Penitentiary at Rawlins, the state penitentiary farms, and any other places within or outside the State of Wyoming where male and female convicts are confined for felony convictions. During 1972-74 no restrictions existed as to what type of prisoners could be admitted to work release.<sup>83</sup> Presently, the Act excludes from participation any inmate who has been sentenced to death, convicted of first degree murder, is serving a term for life imprisonment, or has any legal proceedings pending which could affect his status as an inmate.<sup>84</sup>

The Act does not mention sexual crimes, violent crimes other than first degree murder, organized crime, narcotics sale or use, serious emotional or personality defects. Nor does it specify the portion of the sentence to be served before eligible or the maximum period of time remaining until release before eligible. However, the lack of adequately supervised programs leads to some inmates falling within the above categories being denied consideration.

78. KILLINGER, *supra* note 75, at 151.

79. *Id.*

80. *Id.*

81. WYO. STAT. § 7-13-718(a)(v) (1977).

82. WYO. STAT. § 7-13-718(a)(ii) (1977).

83. Personal interviews with Wyoming Corrections Administrator (May 1977).

84. WYO. STAT. § 7-13-721 (1977).

When an inmate is sentenced to the penitentiary, his classification determines his security and program status. The Inmate Rules and Regulations stipulate that "classification" is contingent on a number of factors—psychological, social, educational and intellectual—along with job skills, nature of offense, prison behavior, etc. The three security classifications are maximum (segregation, Cell block "C"); holding inmates who are *not* eligible for work release; medium (cell blocks "A" and "B"); and minimum (trustees and those living outside prison walls on prison grounds or on the State Farm). Both medium and minimum security inmates are eligible for work release.<sup>86</sup> Other than the above, eligibility requirements for work release are indistinct, opening the door to arbitrariness. Inmates and others have complained that work release candidates are chosen not so much for their rehabilitative potential as for their willingness to divulge information and get along with prison officials.<sup>87</sup> No written criteria exists for determining who is an appropriate candidate or what selection policies must be followed. The Board of Charities and Reform is merely directed by the Act to "study the inmate's conduct, attitude and behavior within the penitentiary, his criminal history and all other pertinent case history material" in order to determine "whether or not the work release program will be of benefit to the public and to the inmate" and "whether or not . . . the inmate will honor his trust as a work release participant."<sup>88</sup>

To improve the present program, the selection policy should be made more comprehensive, clarified and included in the Work Release Rules and Regulations. The work release selection criteria needs to include suitability and acceptability for work release.<sup>89</sup> An inmate should be classified according to mental and behavior states rather than by crime. Presently, the only consideration is eligibility. However, not all persons found to be eligible are proper subjects for work release.<sup>90</sup>

85. Personal Interviews with Wyoming Corrections Administrator (May 1977).

86. *Id.*

87. Memo from Wyoming Corrections Administrator to the Board of Charities and Reform (April 14, 1976) (on file with Board of Charities and Reform in Cheyenne, Wyoming).

88. WYO. STAT. § 7-13-719(b) (1977).

89. Memo from Corrections Administrator to Secretary, Board of Charities and Reform (April 14, 1976) (on file with Board of Charities and Reform in Cheyenne, Wyoming).

90. *Id.*

Some possess personal characteristics or are subject to environmental pressures which render them incapable of using or benefiting from work release.<sup>91</sup> Others may be insufficiently motivated to put forth the effort. Such applicants need to be identified by staff and denied work release application until these disqualifying factors no longer exist.<sup>92</sup> In assessing suitability, the staff needs to address five basic questions:

- (1) Does the applicant want to work?
- (2) Does he have the capacity to do so?
- (3) Will the applicant escape and/or commit another offense while in the community?
- (4) Can he be expected to benefit from work release more than any other cause of action?
- (5) Does he have, in writing, a job offer from a bona fide employer?<sup>93</sup>

Finally, some applicants, deemed both eligible and suitable may *not* be acceptable. Such factors as probable adverse public reaction, lack of available housing and unemployability may result in decisions to deny work release candidacy.

### *Employment*

In many states, the chief obstacle to implementation of a work release program is the difficulty in finding employment for inmates.<sup>94</sup> This problem is not present in Wyoming since the state has one of the lowest unemployment rates in the nation.

The Act provides that program participants receive compensation at the same rate as other employees in like positions.<sup>95</sup> Employment restrictions similar to federal legislation and other state legislation contained in the Act indicate that work release employment is forbidden in a skilled labor field where a surplus of labor exists, or where a labor dispute is in progress.<sup>96</sup>

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91. *Id.*

92. *Id.*

93. *Id.*

94. Personal Interviews with Wyoming Corrections Administrator (May 1977).

95. WYO. STAT. § 7-13-723(c) (1977).

96. WYO. STAT. §§ 7-13-723(a) and (b) (1977).

*Disposition of Wages*

Once he receives a pay check, the work releasee is required to submit it to the work release supervisor who forwards the check to the penitentiary for processing.<sup>97</sup> Disbursements are made for the room and board charges of the inmate, travel and incidental expenses related to work release.<sup>98</sup> Inmates who have family responsibilities are required to provide financial support for their family members.<sup>99</sup> Deductions are also made for payment of fines, restitution, and lawful personal debts and obligations of the inmate.<sup>100</sup> The amount allotted to each category is left to the discretion of the official in charge. The balance is retained in the inmate's account to be paid to him upon parole or discharge.<sup>101</sup>

Garnishment, attachment or execution of the inmate's earnings if forbidden by the Act.<sup>102</sup> Moreover, an inmate may not incur a debt without permission of the Warden or his designee.<sup>103</sup> An inmate on work release is allowed to carry fifteen dollars on his person.<sup>104</sup>

A problem may exist with disbursement of wages. Because disbursement is entirely the discretion of the prison official in charge, there is the possibility for misapplication of the inmate's wages. To alleviate this problem, the Act should require the work release rules and regulations to adopt a specified rate of deductions for the disbursements mentioned in the Act. The Act should also specify the procedures and conditions for *restitution to victims* as part of the inmates reintegration program. In this way he is not only punished but also responsible for his behavior.

*Housing*

The Act provides that the Warden "with the approval of the State Board of Charities and Reform," may "designate and adopt facilities" of state institutions where "feasible" for the purpose of housing and confining inmates on work re-

97. WYO. STAT. § 7-13-724 (1977).

98. WYO. STAT. §§ 7-13-724(a)(i) and (ii) (1977).

99. WYO. STAT. § 7-13-724(a)(iii) (1977).

100. WYO. STAT. §§ 7-13-724(a)(iv) and (v) (1977).

101. WYO. STAT. § 7-13-724(a)(vi) (1977).

102. WYO. STAT. § 7-13-724(b) (1977).

103. WYO. STAT. § 7-13-724(c) (1977).

104. Personal Interviews with Wyoming Corrections Administrator (May 1977).



lease.<sup>105</sup> The Warden may also contract for other facilities, "including city and county jails."<sup>106</sup> Therefore, when an inmate on work release is not working at his employment or engaged in educational training, he may be confined in the penitentiary, other state institution or other facility designated for the quartering and confining of work release inmates.<sup>107</sup> Presently, quarters for inmates at Rawlins consist of rooms located in a building (guards' quarters) situated east of the prison administration building (minimum security section of the prison). This facility incorporates separate rooms with bed, desk, chairs, closet, and personal items (radio, television, stereo set, etc.) belonging to the inmate on work release. This facility was remodeled in 1974-1975 and utilizes a common shower room and toilet. This housing unit accommodates six work release participants.<sup>108</sup>

At Casper the work release facilities consist of a remodeled apartment located in the Natrona County Court House (in the jail area) and include a dormitory, living area, two bedrooms, and a common shower room and toilet. This facility houses eight inmates.<sup>109</sup>

In Campbell County at Gillette quarters exist in the new Campbell County Court House in the form of an apartment located on the ground floor of that building. The apartment consists of a living area/dining room, shower/toilet, and two bedrooms capable of housing a total of four work release participants.<sup>110</sup>

County jails at Lander and Kemmerer have also been used on occasion to house work release participants. In January 1977, work release quarters were developed in Cheyenne at the Goodwill Industry.<sup>111</sup>

Adequate and sufficient housing is needed to accommodate a program with multi-levels of freedom and responsibility. Prison systems with many small units, widely distributed are best suited for the implementation of work release programs and subsequent expansion.<sup>112</sup>

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105. WYO. STAT. § 7-13-722 (1977).

106. WYO. STAT. § 7-13-722 (1977).

107. WYO. STAT. § 7-13-722 (1977).

108. Personal Interviews with Wyoming Corrections Administrator (May 1977).

109. *Id.*

110. *Id.*

111. *Id.*

112. See JOHNSON, PROGRESS REPORT ON WORK RELEASE IN U.S. (1972).

The Wyoming prison system has serious disadvantages in that it has very few prison units and poor geographical distribution in relation to the state's job market and community resources. Community-based housing distributed throughout the state could best accommodate the program. (The Act authorizes such community-based housing.)<sup>113</sup> To be a proving ground, the program must allow for the exercising of personal responsibility. If every movement of the participant is strictly monitored throughout his work release experience, he will not learn to deal with his environment in a constructive way nor have the opportunity to break the dependencies which have been developed in the institution. Work release should challenge the participant and support his efforts to adjust to the pressures and temptations of the noninstitutional world.<sup>114</sup>

### *Work Release Violations and Escape*

Privileges are revoked by the Board of Charities and Reform for violation of the work release plan terms and conditions or when the purposes of the plan are not being accomplished.<sup>115</sup> The revocation of privileges results in the inmate being returned to the penitentiary. Furthermore, the warden is authorized to return the inmate to the penitentiary on "any occurrence which changes the employment specified in the work release plan of the inmate, or otherwise affects the terms and conditions of the plan so as to defeat the purposes of the work release plan." In addition, the Act identifies the "intentional" failure of an inmate to report or return from either the place of employment or the designated place of confinement at the time prescribed in his work release plan as any other "escape from the custody" of the penitentiary.<sup>116</sup>

### DUE PROCESS CONSIDERATIONS

Work release is generally viewed by correctional officials as an intermediate step between full detention and full release. In fact, the Wyoming Penitentiary Work Release Act specifically states that "work release is not a parole."<sup>117</sup> As of the

113. WYO. STAT. § 7-13-722 (1977).

114. Root I, *supra* note 7, at 57.

115. WYO. STAT. § 7-13-719 (1977).

116. WYO. STAT. § 7-13-725 (1977).

117. WYO. STAT. § 7-13-718(a)(v) (1977).

1977 Amendment, the Parole Board has no role in the work release program. Accordingly, authority to revoke the work release privilege and return the inmate to the penitentiary is statutorily designated to the Board of Charities and Reform and the warden for violations of the terms and conditions of the work release plan or when the purposes of the plan are not being accomplished.<sup>118</sup>

The practice in Wyoming has been to revoke the work release privilege without a hearing. In light of the fourteenth amendment to the Constitution, prohibiting any state from depriving a person of life, liberty, or property without due process of law, the question arises whether the availability of due process protections apply to the revocation of work release privileges, and if so, what procedures are constitutionally required.

To determine whether an individual is entitled to due process protection, a court first must ascertain whether the challenged governmental action adversely affects an individual's life, liberty or property within the meaning of the due process clause. A finding that a protected interest is affected triggers the right to due process. In deciding the second inquiry—what procedures are required—the court must weigh the individual's interests in avoiding the governmentally inflicted loss against the competing governmental interests in the summary action.<sup>119</sup>

Liberty is usually the interest at stake in the prison environment. In accordance, in *Morrissey v. Brewer*,<sup>120</sup> the Supreme Court held a parolee's liberty interests are implicated in the revocation of his parole even though he technically remains in the legal custody of prison officials throughout his parole. The Court also found a revocation hearing is necessary to determine whether the parolee did in fact violate his parole, and, if so, what sanctions are appropriate.<sup>121</sup> In *Gagnon v. Scarpelli*,<sup>122</sup> the Court extended the procedural safeguards mandated by *Morrissey* to probation revocation hearings.

118. WYO. STAT. § 7-13-719 (1977).

119. See *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970).

120. 408 U.S. 471 (1972).

121. *Id.* at 484.

122. 411 U.S. 778 (1973).

Both *Morrissey* and *Gagnon* left unanswered the question whether those who are incarcerated at the time of a deprivation, such as the work releasee, are entitled to due process protections. Subsequently, in *Wolff v. McDonnell*<sup>123</sup> the Court held that a prisoner may not be deprived of good-time credits on the basis of alleged misconduct without minimal due process protections. The Court declared that due process is implicated whenever a "major change in the conditions of confinement" is imposed as a punishment for misconduct.<sup>124</sup> Recently, however, the Supreme Court, rejected the notion that every state action carrying adverse consequences for prison inmates automatically triggers due process rights and restricted the application of due process in some situations.<sup>125</sup>

In *Meachum v. Fano*, six Massachusetts inmates, who had allegedly participated in prison disturbances at a medium security institution, were transferred to maximum security institutions. Although recognizing that inter-institutional transfers to higher custody status may adversely affect both the terms and conditions of confinement, the Court held the transfers did not amount to a deprivation of liberty protected by the due process clause in the absence of a state law or practice conditioning transfers on serious misconduct.<sup>126</sup>

The Court in *Meachum* distinguished *Wolff* by emphasizing that the liberty interest in the latter did not originate in the Constitution. Rather, the liberty interest had its roots in state law, in which a prisoner had a statutory right to good-time, only to be forfeited for serious misbehavior.<sup>127</sup> Whereas, the governing state statute regarding inter-institutional transfers in *Meachum* extended quite broad discretionary powers to the prison officials. The Court stated in *Meachum* that "given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the state may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution."<sup>128</sup>

123. 418 U.S. 539 (1974).

124. *Id.* at 571-72 n.19.

125. See *Meachum v. Fano*, 427 U.S. 215 (1976); *Montayne v. Haymes*, 427 U.S. 236 (1976); *Moody v. Daggett*, \_\_\_ U.S. \_\_\_, 97 S.Ct. 274 (1976).

126. *Meachum v. Fano*, *supra* note 125, at 224-27.

127. *Id.*

128. *Id.*

Wyoming confers no statutory right to the inmate to participate in the work release program, thereby, the predicate for invoking the protection of the fourteenth amendment as construed and applied in *Wolff* is totally nonexistent. Lower courts are in accord that work release involves no liberty nor property interests, and work release is a privilege not a right.<sup>129</sup> Indeed, in *Durso v. Rowe*,<sup>130</sup> a state prisoner brought a civil rights action alleging his removal from a work release program without prior notice or a legally sufficient hearing violated his constitutional rights to due process. The court held the revocation of a prisoner's work release status was not a deprivation of a liberty protected by the due process clause.

The holdings in *Meachum*, *Moody* and *Montayne* indicate the Supreme Court would affirm the decision in *Durso*. Both the *Meachum* and *Moody* majority opinions stressed the relationship between the need for prison security and a corresponding need for vesting prison officials with wide discretion.<sup>131</sup>

The Court stated in *Meachum* that "the federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States. . . . The individual States, of course, are free to follow another course, whether by statute, by rule or regulation or by interpretation of their own constitutions."<sup>132</sup> Correspondingly, the Court noted in *Montayne*, "as long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and are not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight."<sup>133</sup>

An argument generally expressed supporting the denial of due process protection with work release revocations is that the state has a proper interest in protecting the "rehabilitative" or "therapeutic" aspects of prison discipline itself. Ac-

129. See *Kennedy v. Meachum*, No. C 78-194 B (Wyo. 1976), indicating lack of liberty or property interest in work release; *Hagan v. Arizona Bd. of Pardons & Parole*, 501 P.2d 944 (Ariz. 1972); *Temple v. Smith*, 548 P.2d 1274 (Utah 1976); *Hale v. Davis*, 387 F. Supp. 408 (W.D. Va. 1974).

130. 430 F. Supp. 49 (N.D. Ill. 1977).

131. *Meachum v. Fano*, *supra* note 125, at 225; *Moody v. Daggett*, *supra* note 125, at 275.

132. *Meachum v. Fano*, *supra* note 125, at 229.

133. *Montayne v. Haymes*, *supra* note 125, at 242.

cordingly, the Supreme Court in *Gagnon v. Scarpelli*<sup>134</sup> limited the inmate's right to counsel in the prison discipline context on the theory that counsel might inject an "excessive degree of adversarial formality into prison relations, thereby undermining the putative rehabilitative quality of discipline."<sup>135</sup> More generally, however, the Supreme Court has not accepted the alleged rehabilitative effects of institutional discipline as a substitute for adequate procedural safeguards.<sup>136</sup> Due process protections, in fact, may directly promote the rehabilitative aims of prison punishment by convincing the inmate that he is being treated fairly.<sup>137</sup>

"No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to popular government, that justice has been done."<sup>138</sup> If the purposes of work release are rehabilitation and reintegration of an inmate into society, then to arbitrarily deny or revoke the work release privilege would frustrate these purposes by invoking a feeling of injustice and bitterness in the inmate toward society. The holding in *Meachum* could lead to such arbitrariness in prison officials. *Meachum* reflects an entitlement view of due process, resting on the notion that the requirement of due process presupposes the existence of an independent legal right held by an inmate. In the absence of an independently grounded legal right, the entitlement view provides no basis for invoking the fourteenth amendment's protection of liberty.

The problem for courts, under *Meachum*, is to construe a corrections statute and determine when it limits discretion of prison officials and when it does not. Justice Stevens noted in dissent, on the *Meachum* view, it is as if man were "a creature of the state" possessing only that autonomy which the state's positive law guarantees either explicitly or as interpreted by the courts. Such a limitation is utterly irreconcilable with the conception of man as possessing liberty defined

134. *Gagnon v. Scarpelli*, *supra* note 122.

135. *Id.* at 787-88.

136. *See Goss v. Lopez*, 419 U.S. 565 (1975).

137. *See Joint Anti-fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951).

138. *Id.* at 171-72 (Frankfurter, J., concurring).

not only by the state but also by "cardinal unalienable rights" deriving from broader principles of freedom in society.<sup>139</sup>

In light of *Meachum*, a hearing most likely is not required for a work release revocation. Nevertheless, to prevent arbitrariness and promote rehabilitation, grounds for revocation of the work release privilege should be specifically enumerated in the rules and regulations, or else the lack of a revocation hearing may prove to be a hindrance to the work release program rather than an advantage.

### CONCLUSION

Many work release programs, including Wyoming work release, are still in early stages of operation and have not undergone extensive evaluation. Conclusive evidence that work releasees have higher post release earnings and greater job procurements than other offenders or that their recidivism rates are lower is lacking. But work release is proving to have value in breaking down the isolation of the prison.<sup>140</sup> It is hoped information not presently available on the recidivist rate of the Wyoming work release program can be collected and studied to determine the rehabilitative effects of the program. Research is also needed on the selection process used in assigning offenders to work release programs, including examination of the recidivism rates of participants with different social and criminal histories. This will determine whether present selection criteria exclude the least desirable inmates and include those most desirable for the program, and if not, what factors might better determine acceptability. Most existing information on the effectiveness of nation-wide work release programs has used inadequate control groups (i.e., regular inmates who shared the same social and criminal background). Inmates chosen for work release are those deemed most qualified for the program; inmates excluded are those who present the greatest risk. In evaluating such a program, it is essential to select control groups using similar selection criteria. While the soundest evaluation procedure

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139. See *Meachum v. Fano*, *supra* note 125.

140. *Root I*, *supra* note 7, at 57.

would be to randomly assign inmates to the program, considering public safety and fairness to inmates, correctional officials are reluctant to do so.<sup>141</sup>

A sophisticated study conducted on misdemeanants in California<sup>142</sup> revealed a number of novel discoveries. The data strongly supported the contention that work release softens the impact of re-entering society after a period of incarceration. But, the fact that arrest rates were reliably different only in the first two years suggests the *benefits diminish over time*. Findings also indicate that although the transition from incarceration to freedom is easier for work releasees than for other inmates, the *first year after release* is still particularly difficult.<sup>143</sup> Unfortunately, work release does not completely eliminate re-entry problems; and perhaps a community-based *post* release program is indicated for some. Findings further evidenced that work release was more effective with younger, unmarried, unskilled workers.<sup>144</sup> The conclusion of the study was that work release is most beneficial to three classes of inmates:

- (1) inmates having the *highest risk of failure after release*;
- (2) inmates who are *least likely to succeed with regular treatment*; and
- (3) inmates possessing the *worst social and economic backgrounds*.<sup>145</sup>

These classes of inmates have usually been restricted from work release programs, which instead prefer the selection of "obviously" qualified inmates.

Unless the selection of participants is based on the needs of the individuals, not the institution, the work release rehabilitative potential will be greatly reduced and few long-term benefits will result. These findings warrant a re-evaluation of present work release selection and program development policies.

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141. Jeffrey & Woolpert, *Work Furlough as an Alternative to Incarceration: An Assessment of Its Effects on Recidivism and Social Cost*, 65 J. CRIM. L. & CRIMINOLOGY 405 (1974).

142. *Id.*

143. *Id.* at 409.

144. *Id.* at 411.

145. *Id.* at 413 (emphasis added).