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PROCEEDINGS OF THE KANSAS STATE SOCIETY OF CRIMINAL LAW AND CRIMINOLOGY.

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The Kansas State Society of Criminal Law and Criminology was organized at Lawrence, Kansas, on May 17 and 18, 1912, under the auspices of the University of Kansas.

The morning of the first day was spent in the reception and registration of members, and the first session was held in the afternoon in Green Hall, the law building of the University, James W. Green of the School of Law presiding. After a brief address of welcome by Chancellor Frank Strong of the University and an explanation of the plan of the organization and its method of procedure by Professor William E. Higgins, two inspiring addresses were made, one by Col. Nathan William MacChesney, of Chicago, Illinois, sometime president of The American Institute of Criminal Law and Criminology, on "A Progressive Program of Criminal Reform," and the other by Rosseau A. Burch, Justice of the Supreme Court of Kansas.

On the conclusion of these addresses, the general meeting of the society was adjourned to permit the meeting of the following nine committees:

- Committee 1: Offenses and Their Prosecution;
- Committee 2: Trial Procedure;
- Committee 3: The Jury;
- Committee 4: The County Attorney;
- Committee 5: The Adult Offender;
- Committee 6: Juvenile Courts;
- Committee 7: The Criminal Insane;
- Committee 8: Appeals and Proceedings in Error;
- Committee 9: Causes and Preventions of Crime.

These committees continued in session for the afternoon and evening of the first day and until ten o'clock of the second, at which time they presented written reports upon the questions which had been submitted to them upon the program prepared prior to the meeting.

These reports may be summarized in five classes:

1. Propositions reported favorably with recommendation that they be drafted into bills for presentation to the next Legislature of Kansas;

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2. Propositions discussed and recommended for investigation by committees to report at the next annual meeting of the society;

3. Suggestions made in the reports or during the discussions thereon which may prove of value;

4. Propositions unfavorably reported;

5. Laws or practices of the State approved.

First: The following were recommended and adopted to be drafted into bills for legislation:

1. To provide a civil suit to recover a penalty for the infraction of the criminal law, where the offense does not involve moral turpitude or the wilful disregard of the rights of others;

2. To secure to cities of the state the power to provide the above proceedings;

3. A revision of the Crimes Act of the State;

4. To provide means by which all expert witnesses in criminal cases who receive compensation other than the statutory fees, shall be appointed by the Court, and their number limited and their compensation fixed by the Court.

5. To provide for expert alienists who shall be called to testify by the Court and not by either party to the controversy;

6. To change the time allowed for appeal to the Supreme Court from two years to one year;

7. To secure a small increase in the fund allowed for the supervision of persons on parole from the penal institutions;

8. After an investigation of the results of the laws of Indiana, Connecticut and Oregon relating to the sterilization of defective persons so far as concerns the causes and cure of crime, to draft a bill covering the same;

9. To provide for the inspection and condemnation of houses and their destruction when unfit for human habitation.

To the committee which is to formulate the last measure is referred the investigation of the question of housing and of family relationships and their relation to crime, with direction to report thereon at the next meeting.

Second: After recommendations of committees or after discussion thereof, the following were adopted for investigation by ad interim committees:

1. To details of a law by which the State may take the deposition of witnesses within the State, to be used either at the preliminary exami-

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nation or at the trial, in the event of the inability of the State to produce the witness;

2. To provide for the use, by the State, of depositions taken with the consent of the defendant;

3. To investigate an increase of the salaries of the County Attorney, on recommendation of the committee on the County Attorney that Section 3662 of the General Statutes of Kansas, 1909, be amended so as to increase the salaries fifty per cent;

4. To secure a classification of offenders and to provide for the segregation of the degenerate and vicious from the better grade of offenders;

5. To secure a habitual criminal law, keeping the habitual violator in confinement until cured;

6. To provide that prisoners should receive a share of their earnings, the same to go to their families or dependents. In case of young or unmarried prisoners (without families or dependents), the same to be held in trust by the Warden of the Penitentiary or the Superintendent of the Reformatory until invested or paid to the prisoner upon parole;

7. To investigate whether the parole board should consist of penitentiary officers familiar with the prisoner, or of a board appointed independent of the prisoner;

8. The organization and procedure of juvenile courts;

9. The treatment of juveniles on probation and parole;

10. Should the age limit be increased?

The committee on Juvenile Courts recommended that the age limit for introducing the offender to the Juvenile Court be increased to eighteen years, and that these courts be empowered to commit either to the industrial schools or to the industrial reformatory at their own discretion.

11. For the purpose of providing better service and increased remuneration, the Senate Bill was endorsed providing for a County Court, sitting continuously in each county, combining the functions of Civil, Criminal, Probate and Juvenile Courts. (But see the action of the Society recommending the appointment of a special committee to investigate and to report upon the entire fee system in the Juvenile and other Courts having jurisdiction of offenses.)

12. Whether some means should not be devised to compel counsel for the accused, upon the arraignment, to plead specially the defense of "insanity" when the mental disorder is known to such counsel;

13. The adoption of the following statutory provision:

"The Supreme Court, without ordering a new trial, shall have the power to direct the trial court from which the appeal is taken to take additional evidence, the defendant being present, to make findings of fact and transmit the same, together with the evidence, to the Supreme Court, as now provided by law for a transcript of the evidence, such additional evidence being for the purpose of sustaining a verdict wherever the error complained of is lack of proof of some matter capable of proof by record or other incontrovertible evidence, defective certification, or failure to lay the proper foundation for evidence which can, in fact, without involving some question for the jury, be shown to have been defective."

14. To amend Article 3, Section 3, of the Constitution, by inserting the words "and in injunctions brought by the State," and the words "which may include provisions for review of questions of law reserved by the State in criminal cases, whether the accused has been convicted or acquitted," so that the section shall read as follows:

"3. The Supreme Court shall have original jurisdiction in proceedings in *quo warranto*, *mandamus*, *habeas corpus*, and in injunctions brought by the State, and such appellate jurisdiction as may be provided by law, which may include provision for review of questions of law reserved by the State in criminal cases, whether the accused has been convicted or acquitted."

15. The adoption of the following statutory provision:

"The trial court may submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and such court and the Supreme Court, to which the case may thereafter be taken, shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, as its judgment upon such point reserved may require;"

16. To investigate sanitation in relation to the diminution of crime;

17. How may ordinary court methods be supplemented by additional efforts to discover the causes of irresponsibility or of criminal tendencies?

Third: Suggestions made in reports or during discussions:

1. To employ in every school system a man to have charge of instruction in hygiene, physical and medical examination of school children, health conditions in school buildings, physical exercise, playgrounds, play, athletics, care of backward children, truancy, and probation cases;

2. That advantage be taken of the statute of this State providing for county detention homes, to be used for the temporary care of dependent children, and also for the temporary custody of delinquent children, who cannot be sufficiently watched or controlled in their own homes, and for whom, nevertheless, it is not clear that a prolonged confinement in the industrial school or in the industrial reformatory is necessary;

3. The social supervision of boys' clubs, fraternities, gangs, amusement halls, and the establishment of playgrounds and other kinds of amusements for all classes, and provision for industrial education;

4. The codification of all laws affecting juvenile offenders;

(Remark—May not this be confined to those laws which touch the care and custody of juvenile offenders both before and after their apprehension?)

5. Do the delinquency laws adequately provide for the sightless child?

6. What provision may be made for the care of the delinquent child in his own home?

Fourth: The following were unfavorably reported by committees:

1. The appointment of the County Attorney by the Court;

2. Whether the issue of "insanity" and of "not guilty" shall not be tried by the same jury, and, if the verdict be "not guilty, being insane," whether the accused shall not be committed to a State hospital to be treated until, after re-examination he shall be discharged as sane, provided it be further found that a recurrence of insanity will not result in acts, which, but for insanity, would constitute a crime?

The above was reported unfavorably because the committee believed that the provision was no improvement upon the present law of Kansas.

3. To establish a State commission of specialists on mental diseases with absolute permission in the State and in the accused to call one expert each.

4. Whether it might not be practicable to co-ordinate with organizations in other states to secure laws by which the testimony of non-resident witnesses may be obtained in criminal cases?

Fifth: The following provisions of the laws of Kansas were approved in answer to questions submitted to committees:

1. The determination of the sanity of the accused during the trial;

2. The segregation of the criminal insane for special treatment;

3. The present practice under the decision in *State v. Keehn*, 85 Kan. 765, by which it is made not only the right but the duty of the trial court to supplement counsel's examination of witnesses, whenever the interests of truth require.

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The following questions were either not reported or were reported without any recommendation:

1. Whether the rule should not be changed that forbids the court or jury from considering the failure of the defendant to testify, and that prohibits any reference to such failure by the prosecution;
2. Whether, to avoid delay, mistrial, or corruption, the law may not be amended so as to allow fourteen jurors to sit in a case, any twelve of whom may return a verdict;
3. Whether, to avoid delay due to sickness, or other incapacity of a single juror, the law may not be so amended as to permit less than twelve jurors to return a verdict;
4. Whether, to avoid mistrial, or corruption, the law may not be so amended in other ways than above, as to prevent a single obstinate or corrupt juror from forcing a compromise or from hanging the jury;
5. Whether, to avoid delay, mistrials, or miscarriages of justice, the law may not be amended so as to improve jury service and the quality of jurors by better provisions for their comfort;
6. Whether, in view of the advantage springing from the present practice of permitting convictions of lesser offenses included within a greater offense charged in the information, it might be possible to devise a new system of classification of offenses so as to extend this advantage;
7. What are the relative shares of native endowment and social environment in the tendency to crime?

This was reported as a very general proposition, requiring biological, psychological, and sociological investigation extending over a long period of time for which the committee makes no recommendation.

8. What are the principal noxious elements in the social environment?

This was reported without discussion or recommendation, but with the comment that among the noxious elements are bad housing and defective family life, the social evil, venereal diseases, intoxicating liquors and deleterious and noxious drugs. -

9. It was recommended that any investigation of a liquor policy in relation to crime should be deferred for the present.
10. What impulses in the adolescent are the basis of the offenses committed by him?

President, the Honorable C. A. Smart, Judge of the Fourth Judicial District; First Vice President, Sherman Elliott, Secretary of the State Board of Control; Second Vice President, J. K. Coddling, Warden of the State Penitentiary; Secretary, William E. Higgins, Professor of Pleading and Practice, University of Kansas. Additional members of

the Executive Board: W. H. Carruth, Vice-Chancellor of the University of Kansas; F. W. Blackman, Dean of the Graduate School of the University of Kansas; the Honorable J. C. Ruppenthal, Judge of the Twenty-third Judicial District; W. H. Charles, Superintendent of the Boys' Industrial School, and M. F. Amrine, Superintendent of the State Reformatory.

The Society then decided to meet next December, under the auspices of the University of Kansas, for the purpose of receiving reports of ad interim committees and preparing needed measures to submit to the next Legislature, which meets in January, 1913.

Resolutions (1) thanking Colonel Nathan William MacChesney and Justice R. A. Burch for their addresses and efforts during the sessions, (2) affiliating with the American Institute of Criminal Law and Criminology and directing the appointment of delegates to its next meeting in Milwaukee, and (3) requesting the Senators and Representatives to procure the publication of the statistics relating to criminals and crime as taken during the last census, were adopted.

The meeting closed with a dinner complimentary to the members, at which the following theme was discussed by the gentlemen named below:

"The relationship of the several callings or institutions to the united movement to secure improvement in criminal law and procedure and in the treatment of the dependent, the delinquent, and the criminal:"

1. Of the Public School men, M. E. Pearson, Superintendent of Public Schools of Kansas City, Kansas;
2. Of the Physician, Dr. H. C. Hopper, Lawrence;
3. Of the Probate Judge, the Honorable Hugh Means, Judge of the Juvenile Court of Douglas County;
4. Of the Heads of Charitable and Correctional Institutions, H. W. Charles, Superintendent of the Boys' Reformatory;
5. Of the Sociologist and Psychologist, Dean F. W. Blackmar, University of Kansas;
6. Of the County Attorney, E. T. Foote, County Attorney of Reno County;
7. Of the Attorney General, John S. Dawson, Attorney General;
8. Of the School of Law, James W. Green, Dean of the School of Law, University of Kansas;
9. Of the Lawyer, Colonel Nathan William MacChesney, Chicago, Ill.;
10. Of the University, W. H. Carruth, Vice-Chancellor of the University of Kansas.