

Spring 1927

## Legislation in 1926

E. R. Cass

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

E. R. Cass, Legislation in 1926, 18 *Am. Inst. Crim. L. & Criminology* 92 (1927-1928)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

## LEGISLATION IN 1926

E. R. CASS<sup>1</sup>

The requirements of the recent constitutional amendment reorganizing the state government and consolidating the state departments, in so far as they relate to some of the correctional machinery in the state, are perhaps not generally known in detail. Therefore, a brief statement leading up to the establishment of a state department of correction, and the merging of other agencies into the department, is set forth below.

The organization of a state department of correction was urged more than twenty years ago. Central control of some of the custodial and penal institutions of the state was urged for decades before the term "department of correction" was used. The amendment consolidating the state departments originated in the constitutional convention of 1915 in a form considerably different from the one in which it was finally passed. After the defeat of the new constitution nothing was done in a large way until Governor Smith, in 1919, appointed the Reconstruction Commission to study the scattered and top heavy organization of the existing state government. The Reconstruction Commission made an exhaustive investigation of the defects in the existing structure of the state government, and recommended a complete change. One of the three recommendations was a constitutional amendment providing for the consolidation of the departments. This amendment and the other two, were repeatedly introduced in the legislature from 1920 on. The reorganization amendment, consolidating the departments, was approved by the people in the fall of 1925. In keeping with the constitutional requirements the 1926 legislature passed the necessary legislation for the new structure of departmental state government.

Beginning January, 1927, there will be eighteen civil departments in the state government, one of which will be a state department of correction, which will be headed by a commissioner of correction, who shall be appointed by the governor, by and with the advice and consent of the Senate, and hold office until the end of the term of the governor by whom he was appointed. However, the law also provides that the present superintendent of state prisons shall be the commissioner of correction, and shall hold office until the expiration of

---

<sup>1</sup>General Secretary, The Prison Association of New York.

his present term. This general provision was made to apply to all the existing heads of departments.

The commissioner of correction will be charged with the administration of the affairs of the department of correction, and will be directly responsible to the governor. His department will be divided as follows: (1) Division of Administration; (2) Division of Prison Industries; (3) Division of Parole; (4) Division of Probation. The commissioner will have two assistants, who are to be appointed by him, one of whom will be designated as the first assistant commissioner, and the other, the second assistant commissioner. The first assistant commissioner is to be the deputy commissioner of correction, and is to be head of the Division of Administration. The second assistant commissioner is to be the head of the Division of Prison Industries. The Division of Parole is to be headed by the Board of Parole for State Prisons. However, it is provided that the commissioner of correction, with the approval of the governor, may abolish such board and establish in its place such other board or boards, or such procedure, as he may deem necessary to carry out the powers and duties of such parole board. The Division of Probation is to be headed by the State Probation Commission. The commission is to be constituted as now provided by law, except that the state commission of correction is to designate one of its own members to be a member of the State Probation Commission in lieu of a member formerly designated as such by the State Commission of Prisons. The State Probation Commission, as head of the Division of Probation, is required to exercise the powers and perform the duties of the present State Probation Commission.

The chapter establishing the State Department of Correction also provides for a State Commission of Correction, the chairman of which shall be the head of the State Department of Correction. The State Commission of Correction displaces the State Commission of Prisons, and is required to visit and inspect the state prisons and other institutions such as the county jails, penitentiaries, police lock-ups, all of which activity is very much under the control of the head of the State Department of Correction, which means that to some extent the head of the State Department of Correction will be in a position to control the inspection and investigation of institutions for the administration of which he will be held responsible. Under the old law the State Commission of Prisons was a free lance state inspecting and investigating body, with the result that at any time it could direct the inspection or investigation of the state prisons and other

penal and correctional institutions in the state. Such freedom of investigation and inspection can, however, be seriously curtailed at the will of the head of the new State Department of Correction.

The new law provides that the wardens of the State prisons shall be appointed by the commissioner of correction, and that every such warden shall be in a competitive class of the civil service.

The New York State Reformatory at Elmira, the New York State Reformatory for Women at Bedford Hills, and the Albion State Training School, are to be under the control of the State Department of Correction. The board of managers of each of these institutions is to be known as the board of visitors, and is given certain powers such as the visitation and inspection of the institution, and the making of general rules, subject to the approval of the commissioner of correction. The board of visitors of each reformatory may adopt rules for the parole and discharge of its prisoners consistent with the law and subject to the approval of the commissioner of correction. In the event of a disagreement in this respect the approval of the governor can be sought.

The Dannemora State Hospital is placed under the jurisdiction of the Department of Correction. The Hospital for the Criminal Insane at Matteawan,\* heretofore under the jurisdiction of the Prison Department, is transferred to a new department, known as the Department of Mental Hygiene. The Institution for Defective Delinquents at Napanoch,\* now under the control of the State Commission for Mental Defectives, will be under the control of the Department of Mental Hygiene after January 1st.

All the functions, powers, and duties of the secretary of state in relation to criminal statistics are assigned and transferred to the Department of Correction.

Now let us pass to legislation intended to reduce crime. The action of the 1926 legislature was a response to a popular demand that something be written into law and be administered for the protection of society, and not, as has been hinted regarding enactments of previous years, for the protection of the law-breaker, particularly the professional criminal.

The more conspicuous activity was projected through the Joint Legislative Committee on the Co-ordination of Civil and Criminal Practice Acts authorized by the 1925 legislature, and more widely known as the Baumes Committee. However, it should be kept in mind

---

\*Later legislation places Matteawan and Napanoch in the State Department of Correction.

that the ideas in the bills sponsored by the committee were by no means wholly original with the committee, but represented in part the contributions of individual legislators, judges, district attorneys, lawyers, public spirited citizens, and organizations directly or indirectly interested in the administration of criminal justice.

The following chapters represent bills introduced by the legislative committee above referred to, and individual members of the legislature, and are presented in the logical order of criminal court procedure.

The first is Chapter 608, which adds a new section to the Penal Law, making it a misdemeanor for any physician, or for any person in charge of a hospital or like institution, to fail at once to report to the police any case treated for pistol or gun shot wounds. An observance of this law will lessen the opportunity for the escape of criminals wounded in the committing of a crime.

Another attempt toward the perfecting of a system of keeping criminal records in the state was indicated in the enactment of Chapter 702, which provides that there shall be continued in the office of the State Superintendent of Prisons a bureau for the keeping of records to aid in the identification and detection of criminals. While the new law does not establish something that has not in part existed before, its requirements will add considerably to the amount of information heretofore received by the central bureau, and will in that way make the bureau a substantial source of reliable information for the police, courts, institutions, and other agencies. It should be noted that while this legislation will strengthen the system of identification in the State of New York, nevertheless until there is systematic cooperation between the states of the Union and the Central Bureau of Criminal Identification in Washington, D. C., there will be ample opportunity for the professional criminal to operate throughout the country.

Considerable legislation was enacted to curb the abuses of the bail system. Chapter 419, amending Section 552 of, and adding Section 552-a to, the Code of Criminal Procedure, provides, for the first time legally, for the taking of finger prints on arrest and before conviction. This is a decided advance toward the detection of the frequent offender. Further, it advances another step in the prosecution of crime, namely the letting to bail. The purpose of Chapter 419 is to prevent the bailing of professional criminals or other frequent offenders who may be dangerous to the public while on bail. The act makes for this protection by providing that if the person arrested is charged with a felony, or with an attempt to commit a felony, or with one of the following misdemeanors or offenses, he shall be first

of all fingerprinted, and his record, if any, brought to the notice of the judge or magistrate to whom he makes application for bail. If there is good reason to believe that he has been previously convicted, he may not be bailed by a magistrate. The misdemeanors or offenses referred to above are commonly identified with habitual or professional crime. They are as follows: illegally using, carrying, or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; "jostling" or pocket picking, and illegal possession of drugs. If a person accused has a previous record he may, nevertheless, be set free on bail by a judge of the Supreme Court, of General Sessions, or of a county court, provided his record is first submitted to the judge. However, with the information relative to previous crime before a judge it is likely that he will be extremely cautious in assuming the responsibility of releasing a person on bail. The same Chapter also provides that if a criminal is charged with any of the misdemeanors or other offenses set forth above he can no longer be bailed out before the police lieutenant in the station house, as was formerly his right in the case of charges lower in grade than felonies. This is an important change.

A companion measure to Chapter 419 is Chapter 421, which amends the Inferior Criminal Courts Act applicable to New York City, so as to prevent magistrates from claiming the powers of higher judges, which this act formerly gave them in bail matters.

Chapter 418 also deals with bail, and adds another safeguard in taking bail by adding a new Section known as 544-c to the Code of Criminal Procedure. It has been frequently observed that the surety company agent, or the private individual offering to go bail, has arranged for protection against loss, in the event that the accused person disappears, by taking stolen goods or the proceeds thereof. The new law provides that an applicant who desires to go bail for another must make an affidavit disclosing the nature of any security given, or promised, as well as the identity of any person agreeing to indemnify the maker of the bond against loss. Any indemnity not set forth in the affidavit may not be availed of in case of loss, nor shall any action lie against an indemnitor not revealed by the affidavit.

A further effort to check the abuses of the bail system is represented in Chapter 478, which changes Section 595 of the Code of Criminal Procedure to the extent of compelling the district attorney to enforce a forfeiture of bail for non-appearance within sixty days after the adjournment of the court which declared the forfeiture, instead of vaguely permitting the district attorney to en-

force the forfeiture at any time, as has been the usual practice. The same Chapter also amends Section 598 by limiting the time within which forfeitures may be remitted to one year from the time they were declared.

Chapter 461 provides that when a number of defendants are jointly indicted for complicity in the same crime, they may be tried, all at one trial, or one at a time, in the discretion of the court. Previously each defendant had an absolute right to a separate trial, even though the evidence against each was the same. It has been observed that in some instances where a number of defendants were charged with the same crime, they would demand and stand separate trials, thereby necessitating considerable additional labor for the courts and the prosecutor's office, and unnecessary expense. Further, the acquittal of one of the group would sometimes be used to attempt a proof of the innocence of another.

Under Chapter 417, which amends Section 388 of the Code of Criminal Procedure, the district attorney is not now compelled to offer his evidence immediately after his opening address. Under the old procedure the defendant did not have to make his opening address until the prosecutor's evidence was actually presented. The disadvantage to the state was that the district attorney was entirely ignorant as to what the defense might be, and how to prepare his evidence to combat it. The advantage to the defendant was that his lawyer had opportunity to know not only what the district attorney expected to prove, but what he actually had proved, before proceeding with his side of the case. Under the new law each must state what he expects to prove before any evidence can be offered by either side; thus they are more likely to start on even terms.

In the hope that crime could be reduced by severer penalties, Chapter 436, amending Sections 407 and 2125 of the Penal Law, provides that the punishment for burglary and robbery shall be greater than heretofore, and also that the two crimes are equally punishable. Under the old law, the burglar, knowing that he could not get less than ten years for burglary, preferred to engage in robbery, for which he might get very much less. Under the new law burglary in the first degree carries a punishment of not less than fifteen years. The same applies to robbery in the first degree.

Chapter 707, amending Section 1308 of the Penal Law, is extremely important in that it makes the receiver of stolen goods, an essential ally to high crime, punishable as a felon, irrespective of the value of the goods. A sentence as high as twenty years might be

imposed, or a fine up to \$1,000, or both. The receiver of stolen goods, commonly known as a "fence," is a type of leech of which society might well be rid.

To reduce crime by armed persons, Chapter 705 was enacted, adding a new Section, 1944, to the Penal Law. This new section not only adds five to ten years to the first offense; ten to fifteen years to the second; fifteen to twenty-five for the third, and for a fourth twenty-five years to life, to the sentence usually applicable, but forbids probation, suspension of sentence, or release before the full term of a sentence.

Of particular importance are the provisions of Chapter 457, amending Sections 1941 and 1942 of the Penal Law, and adding a new Section, 1943. The first amendment, that to 1941, limits the effect of its companion section to felons only. Section 1942 is amended first so as to prevent a life sentence to a fourth offender from becoming subject to the jurisdiction of the parole board. Under this section before the amendment, a fourth offender would be eligible for consideration for release by the parole board after the expiration of the period of time equal to the maximum penalty prescribed for the fourth offense. Under this change a sentence for natural life means life imprisonment, except for the intervention of the governor through a commutation of sentence or a pardon. Another change by amending Section 1942 is that it nullifies the requirement that a repeated offender must be indicted as such to be sentenced as such. Section 1943 makes it lawful to change the sentence of one who was supposed to be a first offender at the time of his sentence, but who at any time later is shown to be a second offender.

Chapter 736 makes it clearly mandatory that the parole board shall examine into the previous life and record of those appearing for parole. The language of the statute before this amendment was clear to some as indicating that this examination should be made. However, there was doubt held by others, but since the amendment there can be no doubt as to what course should be pursued by the parole board in determining fitness for parole. The same Chapter also provides that a prisoner serving a definite sentence may earn a diminution of that only through a time credit of five days a month, to be known as commutation, as a reward for good behavior and satisfactory performance of duties assigned. Prior to this change in the law, definite sentence prisoners could earn a diminution of sentence through a term known as *compensation*, and also a term known as *commutation*, which in some instances gave them an advantage in greater time reduction over first offenders. For ex-

ample, a prisoner serving an indeterminate sentence, with a minimum of five years, would be required to stay in prison longer than a prisoner serving a definite sentence of five years, assuming, of course, that in both instances the full diminution of sentence was earned. Chapter 736 further provides that a prisoner serving a sentence for his natural life shall not have his term diminished either by commutation or compensation.

Chapters 469 and 737 provide that no person shall be released from a state prison who has served less than a year, and the provisions of Chapter 737 provide further that a prisoner receiving an indeterminate sentence shall serve a period of time equal to the minimum sentence imposed by the court, and that such minimum shall be served without any good conduct or good time credit that will reduce it. However, a person held after the expiration of the minimum may, through good conduct and willing performance of duties assigned, earn a reduction through commutation at the rate of five days a month. Heretofore a minimum sentence could be reduced by a time credit known as compensation, which in the case of a five year minimum, would reduce it to three years and nine months.

There are other changes relating to criminal court procedure and the administration of penal and correctional institutions, but those set forth above are the more important outstanding efforts to cope with the crime situation through legislative action.