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ILLINOIS PENITENTIARY AND RELATED LAWS

W. ABRAHAM GOLDBERG¹

*Illinois Penitentiary and Related Laws*²

The consolidation of the penal units of the State, among other legislative enactments of the last session, marks a basic change in Illinois' attitude toward its criminal and defective delinquent groups. It has shifted the emphasis from the strictly legalistic to the behavior control of criminals. Responsibility for place and manner of incarceration has been transferred from the domain of the sentencing judge to the Department of Public Welfare. This is delegated to the Division of the Criminologist whose authority is here represented by the Mental Health Units at the two Diagnostic Depots, also established at this time. It is their duty to examine prisoners on admission and to recommend their placement on the basis of psychiatric, psychological and social information. The benefits of these technical aids are made available at the beginning of the prison term, when they can be of proved diagnostic value in training and discipline, instead of at the end of the minimum term as heretofore.

The law enhances the power and position of the psychiatrist in prison and acknowledges that type of training and personnel as necessary in penal control. Transfer and re-transfer of inmates between one institution and another, instead of being a complicated legal procedure, is now a matter of routine. The classification system which is set up, giving wide discretionary powers to the Department, is limited in scope only by the development of specialized institutions and intra-mural programs. The law simplifies penal administration by repealing many of the detailed regulations concerning prisoners and makes them matters of administration. This may, it is hoped, be the forerunner of a system wherein prison direction is not circumscribed by legal minutiae but is under the authority of behavior specialists. It may also thus point the way toward specialized prison management and trained personnel.

The Fifty-Eighth General Assembly of Illinois (1933) enacted into law seven bills relating to the penal and delinquent system of the State. These are Senate Bills Nos. 149, 560-564 and 582. They

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²Acknowledgement is made to Mrs. Sarah B. Schaar, Jewish Social Service Bureau, Chicago, for criticism and valuable comment.

consolidate into one the four penal institutions of the State (the penitentiaries at Joliet, Menard, the Reformatory at Pontiac and the Illinois Asylum for Insane Criminals at Chester). Basic changes are made: first, the commitment of offenders, insane convicts and of feeble-minded and mentally deficient persons to the Department of Public Welfare (hereafter called the Department); secondly, the mandatory classification of convicts, criminal insane, and feeble-minded and mentally deficient persons with authority to transfer and re-transfer these classes of public charges from one public institution to another, as determined by the law and by rules of the Department.

Senate Bill No. 560, a new measure, by section one, establishes "The Illinois Security Hospital"

for the care and custody of the mentally deficient or mentally diseased persons. For their care the Department is authorized to use the buildings and grounds of the Illinois Asylum for Insane Criminals.

Section Two. Within this hospital shall be confined:

- a. Every male indicted for a crime who cannot be tried because he is insane;
- b. Every insane, feeble-minded or mentally deficient person committed to the institution by a court of competent jurisdiction;
- q. Every feeble-minded or mentally deficient person committed to the Department by a court of competent jurisdiction whose history discloses a display of criminal tendencies and who upon examination under the direction of the Department has been found to be a fit subject for confinement here;
- d. Every insane, feeble-minded or mentally deficient person *now* confined in any State Hospital other than the Illinois Asylum for Insane Criminals, or in any State institution for the care of feeble-minded or mentally deficient persons whose history discloses a display of criminal tendencies and who, upon examination under the direction of the Department, is found to be a fit subject for confinement here;
- e. Every insane, feeble-minded or mentally deficient person hereafter committed to any State Hospital for the Insane or any State institution for the care of feeble-minded or mentally deficient persons whose history discloses a display of criminal tendencies and who, upon examination under the direction of the Department is found to be a fit subject for confinement here;
- f. Every male now confined in the Illinois Asylum for Insane Criminals who has been transferred thereto from any of the State Hospitals for the Insane or any State institution;³

³Pursuant to sec. 9, ch. 23 (par. 142: "An Act to provide for the location, erection and management of an asylum for insane criminals," approved June 1,

- g. Every insane, feeble-minded or mentally deficient person who, while an inmate of any State Hospital for the Insane or any State institution for the care of the feeble-minded or mentally deficient persons, has committed any crime of violence or any act of arson or unlawful burning or attempting to do so;
- h. Every insane, feeble-minded or mentally deficient person who, having escaped from any State Hospital for the Insane or any State institution for the care of feeble-minded or mentally deficient persons and before he has been returned thereto, has committed any crime of violence or any act of arson or unlawful burning;
- i. Every male person designated by the Department for confinement in the Illinois Security Hospital.⁴

Section Three.

In the case of any male person hereafter adjudged lunatic or insane while a charge of the commission of a crime is pending against him and before he has been put to trial for such crime, the court upon adjudication of insanity shall commit him to the Department for confinement in the institution hereby established.

Section Four.

The Department is authorized to transfer to the Illinois Security Hospital all persons now confined in the Illinois Asylum for Insane Criminals who come within class (f) of section two of this Act as well as all persons now or hereafter confined in any State Hospital for the Insane or any State institution for the care of the feeble-minded or mentally deficient persons who now or hereafter come within any class designated in clauses (a), (d), (e), (g) and (h) of section two.

Section Five.

If and when it appears to the satisfaction of the Department that any person confined in the Illinois Security Hospital is not or has ceased to be such a source of danger to the public as to require his subjection to the regimen of the said hospital, the Department is hereby authorized to transfer such person to any State Hospital for the Insane or any State institution for the care of feeble-minded or mentally deficient persons, according as the nature of the individual may require.

Section Six.

The Department, except where otherwise provided by law, shall have and shall exercise the same rights and powers in the conduct of the Illinois Security Hospital as those with which it is now vested by law

1889. (Persons transferred to Chester from any State Hospital or feeble-minded institution who are guilty of homicide, rape, arson, robbery armed and who are dangerous to others and all insane persons committing or attempting to commit homicide, rape, arson or robbery armed while under treatment in a State Hospital or institution.) (1923 Cahill.)

⁴By authority of sec. 12 (par. 621) ch. 38, 1923 Cahill, of Division II of "An Act to revise the law in relation to criminal jurisprudence" approved March 27, 1874, as amended and as further amended by Senate Bill No. 564, 58th General Assembly, 1933. *See below.*

with respect to the State Hospitals for the Insane or the State institutions for the care of the feeble-minded or mentally deficient persons.

Senate Bill No. 582 relates to the feeble-minded. In the main it copies the provisions of the old law.⁵ It differs in the substitution of "Department of Public Welfare" for "Board of Administration" in various sections. Section Nine authorizes the court to commit a feeble-minded person to a private institution or "to the Department for care, custody, and treatment" (in lieu of commitment to a specified institution). The new Act clothes the Department with the powers and duties formerly bestowed upon the Superintendent or Managing Officer of the public institution for the feeble-minded.

Section Twelve contains the following added provisions:

When any feeble-minded person is received by the Department following commitment as provided by this Act, the Department shall adopt and carry out such method for the care, custody and treatment of such feeble-minded person as the Department may deem best for the protection of society and the welfare of such person. The Department shall have the power to place such person in any institution adapted to the care of feeble-minded persons under its control, and to transfer any such person from one institution to another, as the nature, characteristics, and conduct of such feeble-minded persons may require. Any feeble-minded person who may have been convicted of crime, or adjudged delinquent by a court of competent jurisdiction, may be kept by the Department in a secure place within the walled enclosure, and any feeble-minded person whom the Department shall deem dangerous to other persons shall be so kept in such a secure place in order to prevent his escape and protect society.

Section Fifteen.

No parole or leave of absence shall be granted to any feeble-minded person in the custody of the Department whom the Department considers a dangerous person to be at large and no parole or leave of absence shall be granted to any other person in the custody of the Department except for good cause, etc. . . .

Section Twenty-Four has the following added sentence:

If any feeble-minded person shall escape from the custody of the Department, it shall be the duty of the proper officers of the Department to apprehend and retake such person and return him to the custody of the Department at the expense of the Department.

All references in the original act to "private institutions for the feeble-minded" remain as heretofore. The changes made are only with reference to those feeble-minded persons committed as public charges to the Department for confinement in a public institution. The De-

⁵Pars. 166-193, ch. 23 (1923 Cahill).

partment is also given authority to place any such person in any institution for the feeble-minded which it has provided and may transfer and re-transfer from one unit to another by Departmental order instead of returning him to the committing court for a change in the original order.

Senate Bill No. 560 gives the Department authority to transfer out of the Security Hospital any persons confined there who are no longer a source of danger to the public to any other State Hospital for the Insane or to an institution for the care of the feeble-minded or mentally deficient persons.

Senate Bill No. 562, by section one, consolidates the following penal institutions into the "Illinois State Penitentiary": The penitentiaries at Joliet and Menard, the Reformatory at Pontiac, and the Illinois Asylum for Insane Criminals at Chester. Together these units are to be denominated "the penitentiary system."

Section Two. The State Asylum for Insane Criminals is to be known as "The Psychiatric Division of the Illinois State Penitentiary." For the remainder of the penal population included here, the Department is authorized to create as many divisions as it

may deem expedient in the light of considerations relating to the age and character of the inmates, the necessity of preserving first offenders from contact with recidivists, and such other criteria as may be dictated by penological science.

Until otherwise determined by the Department, there shall be one division for the confinement of recidivists who are not feeble-minded with continuing criminal tendencies or insane, another division for the confinement of adult first offenders who are not feeble-minded with continuing criminal tendencies or insane, and a third division for the confinement of youthful offenders who are not feeble-minded with continuing criminal tendencies or insane.

The distribution of convicted persons among the divisions other than the Psychiatric Division shall be wholly within the control of the Department. The Divisions other than the Psychiatric Division which may thus be created by the Department may be located respectively in any part of the consolidated penitentiary system, according as the Department shall determine.

The above section aims to classify those inmates, not feeble-minded with continuing criminal tendencies or insane, into the provisional groupings of recidivist, adult first offender and youthful offender. The Department may alter these groupings as it deems expedient and make others. The law limits the Department only with

respect to the separation of the insane criminal and defective delinquent from the remainder of the penal population.

Section Three. Instead of judicial determination of the place of confinement, heretofore the duty of the committing judge, the new statute provides for all commitments to be made to the Illinois State Penitentiary.

Section Four. The Department shall set the age limits in the assignment of "youthful offenders" and may change them from time to time as experience or administration may dictate. This eliminates the provisions of the old law wherein the committing judge had the discretion of sentencing youthful offenders, convicted of certain crimes, to the Reformatory instead of the Penitentiary.

Section Five. "Diagnostic Depots" or receiving stations are to be established at a place or places in the penal system where the offender shall be subjected to an examination, under the direction of the Department, to determine the appropriate division of confinement. Psychological, physical and psychiatric examinations, as well as sociological inquiry, are included in this program.

Section Six. The Department shall have full power to transfer prisoners from one division to another as often as the nature of the individual case or the exigencies of administration may require.

Section Seven designates those inmates who shall be confined in the Psychiatric Division:

- a. All males now inmates of the State Asylum for Insane Criminals;
- b. All male convicts who, upon examination under the direction of the Department are determined to be insane or to be feebleminded with continuing criminal tendencies;
- c. All male convicts who at any time during their imprisonment in the penitentiary shall be determined by the Department to be feebleminded with continuing criminal tendencies or insane;
- d. All male persons acquitted of crime because of insanity or charged as criminal while lunatic or insane and who has not entirely and permanently recovered his sanity;
- e. All male persons who become insane after conviction of crime and before sentence or execution of sentence.⁶

Section Eight. The Department shall make inquiry and shall examine from time to time all inmates of the penitentiary system to determine whether they have become insane or are feebleminded

⁶Female insane criminals are now sent to the Kankakee State Hospital for the Insane (S. B. No. 390, 56th General Assembly, 1929, amending sec. 42, ch. 108, 1923 Cahill, of "An Act to provide for the management of the Illinois State Penitentiary at Joliet," approved June 16, 1871, as amended.

with continuing criminal tendencies and, in event of such finding, shall transfer them to the Psychiatric Division.

Section Nine. The Department shall make examinations from time to time of inmates of the Psychiatric Division to determine whether they have recovered their sanity and, if so, shall transfer them to such other division of the penitentiary system as the Department feels appropriate.

Sections Ten and Eleven provide that the Psychiatric Division shall be housed in the grounds now used by the Southern Illinois Penitentiary at Menard, and the buildings and grounds of the State Asylum for Insane Criminals at Chester shall be used for the Illinois Security Hospital.

Section Twelve gives the powers previously delegated to the penitentiaries at Joliet and Menard and the Reformatory at Pontiac to the Department.

Senate Bill No. 561⁷ changes the place of commitment to the Illinois State Penitentiary as a unit. It adds "the reformatory for women" which is the first specific recognition of this institution in the penal code. This bill omits the provisions of the former law which makes sentence to the penitentiary mandatory for offenders 21 years of age and over who have been convicted of robbery with a gun or burglary.⁸ It also omits that part of section 798 of the above chapter which permits a judge to sentence to the reformatory those males, 16 to 21 years of age, convicted of offenses punishable by imprisonment in the county jail.

The usual provisions for male offenders between the ages of 10 and 16 years (except those convicted of a capital offense) and females between the ages of 10 and 18 years, authorizing their commitment to any other institution which may be provided for them by law, are retained.⁹

Senate Bill No. 563 amends the laws re "Lunatics"¹⁰ by substituting "The Department of Public Welfare" for "Superintendent of a State Hospital" and the words "is committed to the said Department for confinement in the Illinois Security Hospital" for "is committed to a State Hospital."

Senate Bill No. 564 amends the criminal code.¹¹ It substitutes for "the court shall cause such person to be taken to a State Hospi-

⁷Amending secs. 795-804, and repealing secs. 805-810, ch. 38, Criminal Code, 1923 Cahill.

⁸Clause 5, sec. 797, ch. 38, 1923 Cahill.

⁹Section 797, ch. 38, 1923 Cahill.

¹⁰Sec. 38, ch. 85, 1923 Cahill.

¹¹Sec. 12 (par. 621), ch. 38, 1923 Cahill.

tal for the Insane" the words "the court shall commit such person to the Department of Public Welfare to be placed in an appropriate institution for the custody and treatment of the insane."

The following paragraph is added:

Provided that where the act so charged as criminal is one which, if the person committing it had been sane at the time of its commission would have been murder, rape, robbery while armed or arson or an attempt to commit any of the offenses last named, or assault with intent to commit murder, rape, robbery armed and such person is a male, it *shall* be the duty of the Department, under such commitment, to confine such person in the Psychiatric Division of the Illinois State Penitentiary.

In all other cases where the act so committed would, if the person so committing it had been sane at the time of its commission, have been punishable by death or imprisonment in the penitentiary, and such person is a male, it *shall be in the discretion* of the Department to confine such person in the Psychiatric Division of the Illinois State Penitentiary.

Senate Bill No. 149¹² amends the act providing for boarding out of inmates of State Hospitals by including "any inmate of the St. Charles School for Boys, the State Training School for Girls at Geneva, or any inmate or patient of any State charitable institution." The Department is empowered to make such placement (in lieu of the Board of the State institution). It further modifies the 1912 Act by permitting the Department to remove a patient or ward from any home "to the institution of which he was an inmate or patient before he was boarded out" or to another boarding home. The usual provisions are added for placement with "people of the same religious faith as the parents of the child or a child welfare agency controlled by persons of like religious faith."

No funds are made available by this bill for placement. Since appropriations to a State institution specify the use of such money, they cannot be used for other purposes. However, sanction has been obtained for the use of a contingent fund of the State for an experimental trial of boarding of St. Charles and Geneva inmates. (A similar bill was passed by the 1933 Legislature to apply to children at the Illinois Soldiers' and Sailors' Children's Home.)¹³

Aside from the specific provisions of these related enactments, several new viewpoints are presented in them. Among these are

¹²Par. 26, ch. 23 (1923 Cahill) "An Act to revise the laws relating to charities," approved June 11, 1912, as amended.

¹³S. B. No. 318, adding sec. 5a to ch. 23, "Charities Act," approved May 15, 1875, as amended. (1923 Cahill.)

transfers of inmates, classification and treatment of convicts and defective delinquents. These laws consolidate the male penal institutions into an integral whole, provide for the Illinois Security Hospital, and radically affect the feeble-minded and mentally deficient persons with continuing criminal tendencies.

These several bills consolidate the authority and responsibility for placement of inmates of these institutions in the hands of the Department of Public Welfare. Legislative limitations heretofore imposed have been removed in greater part, although the Department is still subject to some restrictive mandates of the law. All male convicts, guilty of a felony, become the sole responsibility of the Department. To these are added the "defective delinquent" and the feeble-minded and mentally deficient who present asocial behavior and the insane criminals.

The Department has delegated this task to one of its constituent divisions, that of the Criminologist. Prior to July 1, 1933, the duties of the Mental Health Units at the penal institutions have been to make psychological, psychiatric and sociological examinations of inmates for diagnostic purposes, and to report these findings, in an advisory capacity alone, to the Parole Board. Since the Parole Board hearing is usually at the end of one year's confinement, the treatment value of the diagnosis became materially less. If the examination revealed possible or acute states, treatment in the limited facilities of the present mental health units was possible. On occasion a transfer to Chester was effected; however, the over-taxed conditions at this hospital precluded its use in many instances. And it must be borne in mind that the legal procedure for such transfer was complex.

The new statutes make drastic revisions in these powers and duties. "Diagnostic Depots" or receiving stations are to be established at places in the penal system where the inmate, within a short period after admission, will be examined to determine his mental and physical health and development as well as his previous history. On the basis of this investigation, inmates will be classified and assigned to a particular division of the system. The law makes such examination obligatory. By this means the Mental Health Office is initially endowed with the rudiments of a treatment clinic and progresses from a purely diagnostic clinic to a treatment plan. The opportunity is here legally given to the Criminologist to put into practice what has heretofore been considered theory in most States and to base the penal system upon advancing psychiatric and penal information.

The present staffs of the several Mental Health Units are numerically inadequate to comply with the needs of such a law. Examinations must be made within a comparatively short time if the receiving stations are not to become clogged with inmates awaiting examination. This again calls for a sufficient number of physicians, psychologists and psychiatrists. It demands that an adequate sociological staff be maintained, both for duty at the Depot and in the field. No finer piece of practical research can be thought of than the initiation and smooth functioning of a Diagnostic Unit. In one sense the Division of the Criminologist can either justify or nullify its existence as a necessary State function dependent on whether it can and does, or cannot and does not, meet the challenge and opportunity afforded it.

By the provisions of the law, all male convicts newly sentenced must be committed to the Illinois State Penitentiary. Sentencing judges are thus deprived of their discretionary power to commit to the Reformatory in lieu of the Penitentiary. This obviates the former fallacious practice of sending a youthful offender to Joliet because it has come to the judge's attention, by rumor or fact, that the Reformatory is "over-crowded" or its "discipline too lenient," etc. And hence, despite the intent of the law, there resulted such incidents as older prisoners going to the Reformatory and some offenders, as young as 15 or 16 years of age, being sent to the Penitentiary. The complexity of the former law concerning transfers from one penal abode to another prevented proper re-distribution of inmates. It is now the obligation of all judges to commit to the Penitentiary as a whole and the assignment to a particular unit becomes the duty of the Department of Public Welfare.

Beginning with July 1, 1933, the several units of the penal system are consolidated into the "Illinois State Penitentiary." The Department is authorized to create such divisions in the penal system as it deems needed. The law merely suggests in this connection, the separation of recidivists, adult first offenders and youthful offenders, all of them of normal mentality. The inmate group now confined at Chester becomes the nucleus of the Psychiatric Division of the Penitentiary. Future assignments to this Division are limited to insane convicts and persons convicted of serious crimes, i. e., murder, robbery while armed, arson, rape, or assault with intent to commit these offenses who have become insane after conviction and before sentence has been executed, as well as persons charged with these offenses who cannot be tried because insane.

The Department, in place of the Superintendent of a particular institution for the feeble-minded, is made guardian of all such persons committed to any public institutions.

The establishment of the Illinois Security Hospital provides for transfer to it of all feeble-minded and mentally deficient persons with continuing criminal tendencies who are now confined in the above places or who may be committed to them in the future. Included here are the "defective delinquents" (adjudged delinquent by a proper court, i. e., the Juvenile Court where there is one) committed to the Department and persons charged with felonies (other than those enumerated) who are not tried because insane. By these acts the population of the several institutions, the penal units, feeble-minded and insane hospitals, are to be sifted and more equitable placement made. This will obviate the periodic clamor of the press when an escaped inmate of an insane or feeble-minded institution commits another crime.

Close examination of the statutes relating to the Illinois Security Hospital and the Psychiatric Division of the Penitentiary shows these differences: the Security Hospital is proposed to receive all feeble-minded and mentally deficient persons with a previous history of repeated offenses and all defectives committed to it. The insane charged with less serious offenses may be sent here by the Department. The Psychiatric Division is generally for inmates of the present State Hospital for the Criminal Insane, all feeble-minded and mentally deficient persons now confined in or later committed to the penitentiary, and all persons convicted of crime who become insane after judgment but before execution of sentence and convicts who become insane after they have begun serving their sentences in the penitentiary. Persons charged with specific serious offenses but not tried because insane must be sent here. Hence, the broad distinction between the two is that non-convicts go to the Security Hospital and convicts to the Psychiatric Division.

Serious administrative problems can be foreseen in the congregation of feeble-minded, insane and defective delinquents of varying ages and necessarily varying personality and behavior manifestations in the Security Hospital.

One effect which the new legislation must have is to untangle inter-institutional transferring machinery. Responsibility for proper assignment is centered in the Criminologist and it is to be supposed that an administrative order, based on the recommendation of the Diagnostic Unit, of the Director of the Department of Public Welfare

will be executed by the transfer agent of the penitentiary and other units. This is a much simpler and more expeditious system than the previous one of many legal forms plus authorization of the committing judge.

The State, through the provision of examinations at the time of admission, has facilities for a physical check-up. This bears an importance equal to that of mental health and ought properly be centralized in the same unit. We include the hope of intensive medical treatment in the penal program, which is the avowed plan of the Federal penitentiary service. This then becomes another step in a co-ordinated plan of treatment—without which no classification system has vital value—which will insure that the penitentiary system advances from a place of confinement in congregate idleness to the status of a diagnostic and treatment institution. It calls for a planned program to be initiated with equally vigorous prosecution of the plan by the Divisions of both the Criminologist and the Superintendent of Prisons.