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# A BILL AFFECTING PAROLE IN ILLINOIS: THE GOVERNOR'S VETO<sup>1</sup>

HENRY HORNER, GOVERNOR

Pursuant to section 16 of Article V of the Constitution of Illinois, I veto and herewith file in your office House Bill No. 382, entitled "An Act to amend Sections 2, 3 and 7 of 'An Act to revise the law in relation to the sentence and commitment of persons convicted of crime or offenses and providing for a system of parole and to repeal certain Acts and parts of Acts therein named,' approved June 25, 1917, as amended," together with my objection to the same, and the reasons for which I have vetoed this bill.

This bill in its final form as passed by the General Assembly, chiefly requires every trial court in criminal proceedings to fix the minimum and maximum sentence of imprisonment (in all cases except treason, murder, rape and kidnapping), the same as or within the minimum and maximum terms fixed by the indeterminate sentence law for the particular offense. In other words, under this bill the trial judge would be authorized to fix a minimum greater than the minimum provided by law and a maximum less than the maximum fixed by statute for the particular offense. This would practically nullify the indeterminate sentence law.

House Bill No. 381 which proposed a similar change in the present parole law and was limited to that very purpose was defeated in the House of Representatives.

The history of House Bill No. 382, during its legislative consideration is somewhat unusual. As originally introduced in the House of Representatives and passed by it, House Bill No. 382 amended sections 6 and 7 of the parole law for the sole purpose of prohibiting the State Parole Board, from questioning the indictment or other charge of crime or the sufficiency of the evidence to sustain the conviction. As a matter of practice, the Parole Board has not for years, questioned the indictment or the sufficiency of the convicting evidence. This bill as passed by the House also reaffirmed the law, which has been on the statute books for more than a decade, requiring the trial judge and state's attorney to furnish the Parole Board a statement of the facts and circumstances con-

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<sup>1</sup> Addressed to the Honorable, The Secretary of State, July 10, 1937.

stituting the crime for which the prisoner was convicted and all other information accessible to them, regarding the prior career of the prisoner, his habits, associates, disposition and reputation and any other circumstances which might tend to throw light upon the question as to whether the prisoner is capable of becoming a law abiding citizen.

With both of these provisions of House Bill 382 as passed by the House, I am in hearty accord. The Parole Board never was intended to sit as a court of review upon the merits of a judgment of guilty in a criminal case, and any attempt to do so would be a usurpation of judicial functions. There can be no objection whatever to a provision requiring that all relevant information concerning the crime, be furnished the Board to assist it in the proper discharge of the duties required of it by law. Had House Bill No. 382, as originally passed by the House, limited to purposes I have just stated, been adopted by the legislature, I would have approved it without hesitation. However, as finally enacted after amendment by the Senate, House Bill No. 382 shows a decided change. By Senate amendments, Section 6 was entirely eliminated and in its place appeared amendments to other sections, namely 2 and 3 of the parole act, containing the identical provisions of House Bill No. 381 which the House of Representatives had repudiated by its defeat of that bill. In these sections 2 and 3 occur the changes permitting courts to fix the minimum and maximum terms of imprisonment within the limits prescribed by the law for the particular offense. After this amendment to sections 2 and 3 was tacked on House Bill 382, by the Senate, the bill was sent back to the House, and on being read once there, the amendment was concurred in. This legislative procedure introduces a constitutional question as to the validity of this bill.

The constitution of Illinois requires in section 13 of Article IV that "Every bill shall be read at large three different days in each house, . . ." The Supreme Court of this State has ruled that this provision does not require the reading three times of amendments to bills, provided that the amendments were all germane to the act.

Of the original House Bill 382 as introduced in the House of Representatives, nothing remains except a minor provision that the Parole Board shall not pass upon the sufficiency of an indictment or the evidence to determine the propriety of a conviction—which whether or not expressly stated in the statutes, unquestionably is now the law, and is the practice of the Board.

The Senate, after House Bill No. 382 passed the House of Representatives, thus introduced by amendment, a definite change of our parole system. The jurisdiction of courts in imposing sentences was greatly enlarged. The Senate amendments entirely changing House Bill No. 382, were not read three times in the House. It may well be that the above quoted rule laid down by our Supreme Court, if applied to House Bill 382, would render it invalid. To run the risk of the constitutionality of such legislative procedure might hazard the incarceration of those prisoners sentenced under such a law.

The Attorney General did not pass upon the objections as to the legislative procedure which I have above mentioned. He did, however, advise me that other objections to the constitutionality of the bill, which were urged by opponents to it, were, in his opinion, not well taken.

I have heretofore discussed the questions of legality in connection with House Bill No. 382 because I have considered them. However, my veto of this bill is based, not upon its possible illegality, but upon my definite disapproval of its provisions. The views of many others in this State and Nation who are familiar with and have made an intensive study of the subject of criminal penalties are in agreement with my view in this respect.

For more than forty years, this State has incorporated in its system of criminal penalties, an indeterminate sentence law and a parole system, i. e., that the sentence for crimes be for an indeterminate period with release from incarceration from our penal institutions, upon the order of a State department other than the courts and supervision of the released person for a considerable period of time.

House Bill No. 382 leaves it to the option of any trial judge to make ineffective and inoperative the indeterminate sentence and the parole law. This bill does not even establish a uniform system of punishment throughout the State. One trial judge may decide that the parole system is desirable and continue the imposition of sentences for not less than the minimum term nor more than the maximum term provided by law for the particular crime. Another judge, under this bill, might impose practically determinate sentences in every case, taking from the Parole Board any discretion as to when a convicted person may properly be returned or denied a return to a place in society.

Under this bill the trial judge might fix a maximum sentence of one day in excess of the minimum sentence, thus releasing the prisoner without any supervision after he leaves the penitentiary. A court sentence of 6 years minimum to 9 years maximum might be imposed under this bill, which would, with "good time," allowed by law, earned from the maximum sentence result not in parole, but in absolute discharge at the expiration of six years. If the legislature, or the proponents of this bill, desire a repeal of the indeterminate sentence act and the abolition of our parole system, they should frankly say so. But the repeal of the parole system and the return to definite sentences, if deemed advisable, should be general and not left to the varying opinion of each of the many trial judges throughout the State.

Personally, I am opposed to the repeal of the parole system piece-meal or in toto. Notwithstanding the hue and cry of the moment it has proved its worth throughout our Nation. In ancient times, the theory of punishment was the revenge which society imposed for offenses against it. To this principle has been added in modern times a more practical and humane viewpoint, and we have incorporated into our penal system two other ideas, viz., that punishment should be imposed as a deterrent to other wrong-doers and, when possible, should seek to restore the offender as a useful and law-abiding member of society. Mankind's aim has been to act understandingly and progressively on this subject. House Bill 382 is a step backward.

Progress on the subject of penology demands two accomplishments in the treatment of offenders. First, that the prisoner is straightforwardly punished in accordance with the sentence imposed upon him for having committed the crime and that he knows this will follow his offense. Society is always entitled to that protection. Second, that, so far as the prisoner is capable of rehabilitation, the State ought to do what it can to fit him to resume his status as one of its members.

Each of these objectives presents a great problem. We all realize that it is sometimes difficult and in many cases impossible to turn men toward the law who have turned against it. All prisoners, except those sentenced for life as habitual criminals, are eligible for possible release at some time and some constituted authority must determine if and when that time for release has come. Seldom can the trial judge, however painstaking, determine, except by guess work, when the prisoner is sufficiently punished or when he will be

a fit person to be restored to society. It is the present record in Illinois that over eighty-five per cent of all parolees make good. Would you deny the more than eighty-five per cent who make good, an opportunity to go straight because a minority of less than fifteen per cent are incapable of rehabilitation or refuse to make good?

No phase of governmental administration in the modern state is more difficult or requires more concentrated effort to see things clearly and to think about them reasonably than parole. The success of a parole system depends not only upon its administration but upon reasonable and informed public opinion. I would be less than candid if I did not say that in the parole program we do not rely greatly upon the prospect of "reforming" the professional law-breaker.

Effective parole makes it very plain to the prisoner that when he is released it is to his self-interest to go straight. Under determinate sentences he would be turned loose, at the prison gates a free agent, without supervision, to choose his course of future action upon the unregulated, unguided reasoning of his years in prison. It would be the unusual if he turned to anything other than the environment which would help to make him again an offender. Under parole if he behaves properly, if he works, if he goes straight, if he does not again violate the law or his parole agreement, he can keep out of the penitentiary. But any infraction of his parole agreement or any offense against the law makes him subject to be summarily returned to the penitentiary, without the expense incident to indictment, trial and conviction, appeal, and the long delays which have become a part of the enforcement of criminal laws.

I am not unmindful of recent criticism encouraged by some newspapers directed against the whole system of indeterminate sentences and discharge under parole. The press tells the public only of the paroled convict who goes wrong. Rarely is credit given for the vast majority of parolees who make good. They have dwelt upon instances of new crimes committed by parolees until there is a general, although unjust, impression that men of strong criminalistic tendencies are being released by our board of parolees as a frequent occurrence.

The proceedings and results of any good parole board, administered in a non-partisan spirit by men sustained in their independence, will answer such misconceptions conclusively. I repeat here what I said in my message to the legislature on January 11th last:

"True, mistakes of judgment by parole boards inevitably occur. Errors occur also occasionally in our judicial system but that is no justification for attacks generally upon our courts. I do not mean to say to you that our parole law is beyond improvement. There is much room for improvement of effective agencies for parole administration. No perfect system has yet been discovered for dealing with crime and criminals. We ought to have open minds always, ready to study and act upon all constructive suggestions that have for their purpose not only justice to offenders but also the protection of society. We should gladly welcome any changes in our laws which will improve our system of penology, yet I caution you against making any changes in our laws, under the hue and cry of the moment, which will deny to those who are worthy of it a fair chance for rehabilitation."

The suggestions of House Bill No. 382 are not, in my judgment, constructive.

Despite faults in administration, the record shows that the parole plan has contributed more toward the security of society than the fixed sentences that preceded it in the law of this State. In our State the administration of the present Board of Pardons and Paroles reveals that from January 1, 1933, to January 1, 1937, the total of parolees returned under new sentences in four years was only 4.46 per cent of those paroled during that time.

Parole is not leniency. It is not usually a remission of a sentence but is rather an extension of control; it is an "indispensable bridge" between the life the prisoner has lived without personal responsibility within prison walls and the normal law-abiding life with all its responsibilities he is to live outside.

No trial judge, no matter how competent, can accurately predict when any convicted person can be released with a reasonable prospect of safety to the public. A trial judge is required to hear nothing which does not bear upon the question of guilt as to the particular charge. In many instances he does not know of a former criminal record. It is impossible for the trial judge at the time of sentence to determine whether conviction and incarceration will bring about true repentance and a desire to abstain from law violation.

The prisoner's former life and his social history is frequently a closed book to the trial judge. If, in the trial of a case, he used a social service history report or gathered facts and circumstances regarding the prisoner that were not admissible as evidence during

the trial, and the sentence were based upon this knowledge, it is probable the case would be reversed for error. But even if the judge had complete information and a social diagnosis of the offender, it would be difficult for him to fix an accurate sentence. The effect of imprisonment is not the same on different men. One man might be sufficiently adjusted to be paroled within a comparatively short time; in the case of another individual, it might take years; in the case of still another he may never be qualified for release.

The question of his later behavior in prison could not be known to the judge. As a rule the trial court has little, if any, knowledge of the prisoner's mental condition and he could not know of any changes that might occur in the prisoner's mental condition during incarceration.

In passing upon the question of whether or not a prisoner should be paroled or the length of time he should remain in the penitentiary, many factors are and must be considered. There must be known the crime, the facts and circumstances surrounding it, the statement of the trial judge and state's attorney, whether or not the crime was attended with kidnapping, shooting, attempted shooting, violence, attempted violence, or other brutality. But this alone is not sufficient. There must also be known the convicted person's previous criminal record, the nature of previous crimes committed and the facts and circumstances surrounding the previous crimes, whether or not the prisoner is a repeater of the same character of offense, the past life of the prisoner, his former reputation and work record, his conduct and work record while in prison, the reports of the mental health officers, the prison physician, the sociologist and actuary and the investigator, the adequacy of his punishment. The Parole Board must further ascertain the probabilities of his never again violating the law, the nature of the employment offered, the character and responsibility of the proposed sponsor, and the home to which it is intended the prisoner shall go, together with all other matters that in any way bear upon the question of the public welfare, as well as that of the prisoner. All these are strongly determining factors. As can be readily seen, many of these factors can not be made known to the trial judge at the time he must impose sentence.

One of the very forceful objections to determinate sentences by a trial court was the lack of uniformity in the penalties imposed for crimes of the same class. The records under such a law show an

astounding incongruity of sentences. For the same crime where the facts and circumstances are substantially the same, the sentence is frequently dependent upon the section of the State from which the prisoner happens to come and the judge or jury before whom he was tried. It is not unusual under a determinate sentence system for a first offender to receive a severe sentence and a second offender a comparatively light one. As a matter of fact, one of the prisoners now incarcerated in the penitentiary under a determinate sentence is serving a sentence of ninety-nine (99) years for a first offense. Another, with a previous record of incarceration in three penitentiaries, received a sentence of four years for the same offense under very similar circumstances. The records contain a large number of instances of a like character, where determinate sentences were imposed.

There is a popular impression fostered by newspaper stories, that under a parole system, convicted persons are released earlier than if they had received a definite sentence of years. As a matter of fact, the contrary is true. It can be shown conclusively that persons convicted of crime under our parole system serve longer sentences on the average than are imposed by trial judges where the latter are permitted to imprison for definite periods.

Persons on parole do commit crimes. They would also commit them if they had been released under a definite sentence. However, there is less chance of turning loose upon society an habitual criminal under a parole system than under a system where the trial court fixes the imprisonment. The ideal of course would be reached, if a Parole Board, in attempting the exceedingly difficult task of charting future human conduct, could achieve perfection.

The parole system is immeasurably superior than permitting the judge to fix definite sentences, because unconditional release at the end of such imprisonment does not permit any supervision of the convicted person after he leaves the penitentiary. A vast majority of enlightened and experienced public opinion subscribes to this view. Civic organizations do not favor House Bill No. 382 because it is well known that it would vitiate our indeterminate sentence law and would tend to scrap our parole law.

The views I have expressed here are not new. I have asserted them before. They heretofore have been stated by men and women who have devoted their lives to the study of penology and have had wide practical experience with the subject. The principle of this bill is opposed to the considered judgment of the great majority of

criminologists and the overwhelming portion of laymen who have given time and study to it. Many trial judges with great experience in criminal cases, the Chicago Citizens' Association, the Chicago Bar Association, The American Prison Association, The American Parole Association, The Chicago Crime Commission, The City Club, The Chicago Association of Commerce, and many other civic organizations, the Presidents of the large universities and the Deans of the leading law colleges of our State, the Illinois Citizens' Committee on Parole made up of officials from forty of the leading civic organizations and countless other prominent citizens have communicated to me their inflexible opposition to this bill and have urged me to veto it. They condemn it as a backward step in our system of punishment for crime.

Fortified by the corroborative opinion of these and others, forward-looking citizens and practical students and experts in criminology, I am thoroughly convinced that the principles embodied in House Bill No. 382 are unsound and for that reason, I veto and withhold my approval from it.