Journal of Criminal Law and Criminology

Volume 31
Issue 3 *September-October*

Article 3

Fall 1940

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The subject I am discussing in this article is one that has long been close to my heart, in fact one to which I have devoted the greater part of my life—that of the crime problem and youth, and the methods that we as society utilize in meeting it.

Just a few days ago I made a surprise visit as a member of the New York State Commission of Correction to one of the jails in an up-state county. As I walked into the section set aside for the detention of minors I was appalled at the dirt and filth which surrounded these youthful offenders. Here were several dozen new recruits in crime whose average age was probably around seventeen, herded into a section of the jail that would have been crowded with but half that number. All of them were being held either for the Grand Jury or awaiting trial, and in the meantime were exposed to the degrading influences of idleness and unsupervised activity. The floor of this particular section was covered with the litter and dirt of several days indicative of the carelessness of the boys. Here they were—many stripped to their waists—some in bare feet—playing cards or lounging about on mattresses moved from their cells onto the corridor floor. In fact, the mattresses practically covered the floor itself. Undoubtedly the subject of their idle conversation centered about the inevitable topics of crime and women. Surprisingly enough, the men's section of the jail was clean and in good order, and the women's section nothing short of immaculate. When questioned about this the Sheriff shrugged his shoulders and stated that, "Well, you know, the boys give us all our problems—they're the most difficult to handle."

The point is this—here were a number of youths in their most impressionable age, crowded into a jail that was unclean and lacking in direction and supervision. Innocent in the eyes of the law but held for indefinite periods awaiting disposition of their cases, these adolescents were learning more about crime through this experience than most of us will ever know.

The New York Law Society last month published a study entitled "The Forgotten Adolescent" in which 2,793 youths held in New York City Jails for the year ending June 30, 1938, were studied, and the amazing conclusion was reached that 78% of all adolescent defendants between the ages of 16 and 21 charged with felonies and serious misdemeanors in Manhattan, Brooklyn and Queens were committed to jail for failure to post the bail necessary for their temporary release. Yet 64% or 1,431, of these persons were ultimately discharged, acquitted, placed on pro-

[1] Address delivered before the Fifth Annual Conference of the Western Parole and Probation Association, Boise, Idaho, June 28, 1940.

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bation or given suspended sentences. The report states that of all those not ultimately sent to prison, 74% were, nevertheless, confined in jail awaiting disposition of their cases. This is all the more significant in view of the fact that four out every five adolescents arrested had no record of previous conflict with the law.

There are other alarming figures—given us by Dr. Thorsten Sellin of the University of Pennsylvania and Statistician for the Committee on Criminal Justice-Youth of the American Law Institute—which serve to illustrate my point. Youths between the ages of 15 and 21 constitute but 13% of our population above 15, but they are responsible for approximately 26% of our robberies and thefts, some 40% of our burglaries and account for nearly half of this country's automobile thefts. We also know that boys from the ages of 17 to 20 are arrested for serious crimes more than any other age group. The largest single age group of persons arrested is but 19, with 18 a close second.

Listen to this figure—108,857 youngsters not yet old enough to vote were arrested and fingerprinted last year, and it is safe to say that the majority were in some manner influenced by our jail system.[3]

I do not have to leave the confines of my own city to find what is probably one of the most outmoded and antiquated jails in the country. For years grand juries and numerous other official and semi-official bodies have cried aloud against the demoralizing atmosphere inherent in that jail, and if time permitted I would like to describe it in vivid manner tonight, but listen to what the New York Law Society's study has to say about it:

> "In one of the cell blocks, boys from 16 through 18 years of age—are kept on one tier; those from 19 to 21 on another, and those from 21 to 23 on a third. The cells are dreary, bleak and airless. . . . The only recreation in this building consists of a walk around the main corridor. . . . the inmates walk in one direction for three-quarters of an hour, a bell rings, they automatically turn around and walk for three-quarters of an hour in the opposite direction. *Their feet never seem to leave the ground as they walk. They just shuffle along, shoulders drooped, faces expressionless even when they are talking.*"

How long, in each case, does this go on? The study that I referred to previously found that of all adolescents committed to New York's jails in 1938, 50% were incarcerated more than 16 days and 25% for more than 44 days. *Remember, too, that four out of five had no previous arrest records!*

It is estimated, also, that there is one man in jail for every 225 persons over 16 years of age who are free.

The burning question that this situation raises is—how long will the people of this nation allow this unintelligent and illogical procedure to continue?

Here and there over the country definite action has been indicated, but in the majority of jurisdictions we still throw our youth into jail where everything that is degrading and demoralizing manifests itself through later criminal behavior. Consultation of the records of numerous prisons and reformatories substantiate this immediately

[3] This figure from Federal Bureau of Investigation.

as, for example, it does in Michigan where 63% of the jail population are repeaters, or in Washington, D. C., where 70% are repeaters, or in Louisiana, where 80% have had previous jail experiences. Consider the fact that far too many jails house the young and old—the diseased and the well—the novice and the hardened convict—and one can only express amazement that the statistics are not more startling.

I raised the question a moment ago as to how long the people intend to continue the present haphazard system which deliberately forces youth into crime and perpetuates the vicious circle of arrest, conviction, imprisonment — arrest, conviction, imprisonment. With your permission I want to make my own reply to that question by discussing with you the efforts of the Committee on Youth Justice of the American Law Institute. The Committee has worked with diligence and care for over a year and has drafted two model acts, one, the "Youth Correction Authority Act," and the other the "Youth Court Act." I might add at this point that the American Law Institute is composed of hundreds of leading lawyers, judges and professors of law in the United States, and that it has obtained the full confidence of the legal profession and the public generally. For many years the Institute concerned itself with the field of civil law, but in 1934 called together a number of leading lawyers, criminologists, sociologists and others to discuss the status of criminal law with a view to rewriting portions of it to fit the demand of the times. Following on the heels of the comprehensive report made by this group, the Institute called together a body of advisers, consisting of lawyers, judges, sociologists, penologists, and others, to draft model statutes for the consideration of the various state legislatures, designed for a sane and intelligent procedure of handling the youthful offender. I have deemed it a great honor and privilege to have served as a member of that advisory group, and I feel that it is important to give you the names of the entire membership.

Dean William Draper Lewis, Director of the American Law Institute, and former dean of the Law School of the University of Pennsylvania, Chairman; Professor John B. Waite of the University of Michigan Law School was designated as Reporter, and the advisers are as follows:

Curtis Bok, President Judge of the Court of Common Pleas, Philadelphia, Pa.
Sheldon Glueck, Harvard University Law School, Cambridge, Mass.
Leonard V. Harrison, Community Service Society, New York City.
Dr. William Healy, Director, Judge Baker Guidance Center, Boston, Mass.
Edwin R. Keedy, University of Pennsylvania Law School, Philadelphia, Pa.
Austin H. MacCormick, Executive Director, The Osborne Association, New York City.
William E. Mikell, University of Pennsylvania Law School, Philadelphia, Pa.
Thorsten Sellin, Department of Sociology, University of Pennsylvania, Philadelphia, Pa.
Joseph N. Ulman, Judge, Supreme Bench of Baltimore City, Baltimore, Md., and myself as General Secretary of the American Prison Association, New York City.

This group of advisers, after months of painstaking work, submitted its find-

ings to the council of the American Law Institute, composed of thirty-four lawyers, judges and others of national reputation. The Council adopted the "Youth Correction Authority Act" and this later was accepted at the Annual Meeting of the members of the Institute. This means that the act had to run the gamut of scrutiny of a membership of 700 lawyers, judges and other persons of national reputation. "The Youth Court Act" was referred by the Annual Meeting back to the Council for minor revisions. It is important to emphasize again that any products of the Law Institute's various committees that reach the final stage can be stamped as nearly letter perfect. It must meet with the rigid standards of specialists and acknowledged experts, and lawyers and judges from all over the country are called upon to give their stamp of approval. I make mention of this in order that you will appreciate the fact that the work of the Institute is not without thoroughness and care.

The "Youth Correction Authority Act" concerns the treatment of youthful offenders *after* conviction, and the "Youth Court Act" relates to the treatment of young offenders through the steps leading to conviction or acquittal. It is well to stress the fact that the two are companion acts, one supplementing the other, but neither dependent upon the enactment of the other. The "Youth Correction Authority Act" does not interfere with the process of arrest, accusation and conviction. It does, however, affect the so-called post-conviction process and provides for commitments to a "Youth Correction Authority" of convicted persons under twenty-one years of age at the time of their apprehension. The procedure advocated is not revolutionary, in fact, a good part of it is already the law in many areas. From a realistic point of view, the new act is designed to protect society from the depredations of the repeater who all too frequently has enlarged his repertoire of crime as a result of the system which we countenance today. In few words, the new act provides for the segregation of offenders so long as may be necessary in the best interests of the public, and by establishing on a firm footing the idea of rehabilitation. Far too little of our present procedure actually bears any relation to the practical value of rehabilitation. In order that the rehabilitative angle may take precedence the Act provides for a Youth Correction Authority—a body with limited yet appropriate powers to ascertain or determine the proper procedure in each individual case.

The purpose of the Act as stated in the Act itself reads, in part:[4]

> "The purpose of this act is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of violation of law. . . ."

The Youth Correction Authority is designed to consist of three full-time members, appointed by the Governor, for terms of nine years, removable by procedure similar to that by which judges of the highest court are re-

[4] Article I—Section 1—Page 1—Proof copy.

moved. Original appointments are for varying terms in order that the future will not witness a total change of personnel at any one time. It is the intention of the model act that each state set up its own qualifications "most conducive to efficient administration in view of the conditions prevailing in the state."[5] The basic functions of the Authority are organization, administration, and determination of policies, and not necessarily the dealing with individual offenders. This is delegated to trained specialists employed by the Authority. The important requisite of the Authority is awareness and "understanding of the basic problems of correction and segregation and a practical ability to carry solution of those problems into effect."[6] It is quite evident, therefore, that the membership of the authority should be representative of legal and administrative ability, educational experience, and knowledge and experience in the study of the young offender and in his proper treatment.

Now that the authority has been figuratively set up, let us consider for a moment that part of the model act having to do with commitments to the Youth Correction Authority. In the first place the act provides that "no person may be committed to the Authority until the Authority has certified in writing to the Governor that it has approved or established places of preliminary detention and places for examination and study of persons committed."[7]

It will be noted that this section of the Act is of major significance in that it makes provision for improved conditions of detention. At the opening of these remarks I described to you a scene that confronted me in one of our jails only a few weeks ago. Were this act on the Statute books of New York, conditions such as those mentioned would be rectified before being approved by the Authority as a fit place for the detention of adolescents.

The Act does not necessarily indicate the need for the expenditure of large sums of money for new institutions. This is not the intention at all. It does mean, however, that existing facilities must be improved, if necessary, before being certified by the Authority. I personally believe that this particular function of the Authority is sufficient justification for its adoption. My nearly thirty years of experience with detention institutions and jails has stamped indelibly in my mind the fact that the majority of them are nothing but "schools of crime." A good part of our present procedure is, in many respects, totally without purpose—discounting, of course, the fact that society is temporarily protected through segregation of offenders.

Let me quote to you a statement by Tom Joad in "The Grapes of Wrath," Many commentators have referred to this same quotation, but it frankly hits the nail on the head. Tom Joad, after a long period in a penal institution says:

> "The thing that give me the mos' trouble was, it didn't make no sense. You don't look for no sense when light-

[5] Article II—Section 8—Page 6—Proof copy.
[6] Article II—Section 8—Page 7—Proof copy.
[7] Article III—Section 11—Page 9—Proof copy.

> nin' kills a cow, or it comes up a flood. That's jus' the way things is. But when a bunch of men take an' lock you up four years, it ought to have some meaning. Men is supposed to think things out. Here they put me in, an' keep me an' feed me four years. That ought to either make me so I won't do her again, or else punish me so I'll be afraid to do her again. . . but if Herb or anybody else come for me, I'd do her again. Do her before I could figure her out. Specially if I was drunk. That sort of senselessness kind a worries a man."

To Tom Joad—or the average man—detention should mean more than the safe-keeping behind bars.

To this end the Act provides that no youth can merely be committed to prison. The judge, unless he discharges the youth or sentences him to payment of a fine, must commit him to the Correction Authority, which body is given power to decide what treatment is most suitable under the circumstances. Involved in this power is the opportunity to call upon "a unified program of correctional treatment in contrast with the prevailing practice of having a variety of agencies—including jails, prisons, parole and probation departments—concerned at different times in uncoordinated effort to deal with an offender."[8] This last sentence has been taken from the printed comment of the group of advisers.

It should be understood that if the crime for which the youthful offender is convicted is punishable by death or life imprisonment in the case of an adult, then this act does not alter its application to a youth. Should, however, a youth condemned to death or the recipient of a sentence of life imprisonment be commuted, the Authority shall then assume control over him.

It is of interest to note that the Act provides for other means of control during the pre-trial period than imprisonment in a detention institution, in that it permits a judge to release offenders on bail, personal recognizance, or other supervision. Thus, we see that in appropriate cases detention in institutions can be completely avoided.

The Youth Correction Authority is empowered to make and enforce rules appropriate to its most effective operation. The Authority may establish and operate a treatment and training service, and is authorized to make use of "law enforcement, detention, probation, parole, medical, educational, correctional, segregative, and other facilities, institutions, and agencies."[9] The Act does not, of course, give the Authority control over these facilities but it does, on the other hand, afford opportunity for effective integration of existing methods.

Following the commitment of an offender to an institution, the Authority retains control over the length of time to be served. Commitment is for treatment, and the Authority determines its success—or failure—in each case.

The Act takes into consideration the current practice of trial judges giving so-called indeterminate sentences, that is, sentences with a minimum and maximum term specified by law. It is recognized, of course, that a long period of

[8] Introductory explanation—page XV—Proof copy.

[9] Article IV—Section 25—Page 22—Proof copy.

confinement may be just as harmful to rehabilitation as a period of too short a duration, therefore the Act is so designed to eliminate the necessity of giving a youthful burglar ten years, or an automobile thief five years merely because the law stipulates a certain punishment for a specified crime. With the true indeterminate sentence—the release date under supervision to be adjudged by the Authority—the prospects of lasting rehabilitation are broadened. Several states already provide for the true indeterminate sentence, through the parole boards, including Utah, Washington, Minnesota, Georgia, California, and others.[10] Thus we see that the Act encourages the extension of practices already utilized by several states.

Another section of the Youth Correction Authority Act provides that:

"When a person has been committed to the Authority it may

(a) permit him his liberty under supervision and upon such conditions as it believes conducive to law-abiding conduct;
(b) order his confinement under such conditions as it believes best designed for the protection of the public;
(c) order reconfinement or renewed release under supervision as often as conditions indicate to be desirable;
(d) revoke or modify any order except an order of discharge as often as conditions indicate to be desirable;
(e) discharge him from its control when it is satisfied that such discharge is consistent with the protection of the public."[11]

By virtue of this section the Authority is empowered to either commit to an institution, or to utilize the facilities of parole or probation, and the basic principle inherent in the plan is to promote the efficiency of the variety of treatment procedures under the responsibility of the Authority.

Now a word about the age limits of the offenders affected by the Act— in the first place juvenile courts are not required by the proposed act to commit to the Authority,[12] but these courts *may* in their discretion, and with the approval of the Authority, commit offenders of sixteen years of age or over who have been under the jurisdiction of the juvenile court. By virtue of this provision the minimum age accepted by the Authority is sixteen. The Act further provides that the judge is to determine whether or not the offender was less than twenty-one years of age at the time of his apprehension. If the delinquent has not reached his twenty-first birthday, and unless he is convicted of a capital crime or merely fined or given a suspended sentence, he is to be committed to the Authority.[13] The Act stipulates that offenders assigned to the Authority who were less than eighteen at the time of commitment be discharged before the age of twenty-one is reached, and those who were eighteen or more at the time of commitment be discharged within a period of three years from the time of the commitment, *unless* the Authority has entered an order directing a longer period of control in the interest of the public welfare. There are, of course, occasional exceptions as provided by other

[10] Comment page 31-32—Proof copy.
[11] Article IV—Section 30—Page 34—Proof copy.
[12] Article III—Section 16—Page 16—Proof copy.
[13] Article III—Section 13—Page 11—Proof copy.

sections of the Act too detailed for discussion here.

If the Authority holds to the opinion that release of an offender from its control at the age limit would be harmful to the public welfare, an order directing continued control may be entered. The offender then has the privilege of reviewing his order through the courts, with the aid of counsel. The court is, naturally, in a position to rescind the order of the Authority, or it may affirm it. Consequently the offender *may* be held under the control of the Authority for an indefinite period, in fact, for the balance of his life if this be necessary.

Our good friend and learned scholar, Dr. William Healy of the Judge Baker Guidance Center, Boston, philosophized in this manner.

> "Long ago I was warned to remember that the criminal law embodies the wisdom of the ages. But does it do so if it in general flouts accumulated scientific knowledge, and if, in particular, it pays little attention to whether the offender will be made better or worse or whether society in the long-run will receive adequate protection when its statutory penalties are prescribed? Under statutory law of course it is the prerogative and duty of the judge to state specifically what should be done with an offender, but we can well query whether that is not simply through long continued custom and expediency rather than a matter involving the fundamental principles and philosophy of the law."

The second aspect of the American Law Institute's Committee's work was the Youth Court Act designed to either supplement the Youth Correction Authority Act that I have just outlined, or to be adopted as an independent Act. The Youth Court Act has been recommended for adoption by cities and districts faced with "sufficient youthful crime to justify the establishment of a special court to deal with it."[14] Thus it can be seen that the Correction Act relates to post-conviction procedure, and the Court Act to pre-conviction procedure. The Act sets up a court procedure and organization to assure a prompt and expeditious trial for youthful offenders, with the thought of improving the influences to which such persons are exposed during the pre-trial period, and to lessen the length of that period to the shortest practical duration.

I will not go into the details of this Act in view of its referral by the Law Institute's Annual Meeting back to the Council for minor technical revisions. Neither of these Acts are revolutionary —they are instead evolutionary and deserve the close examination of all persons desirous of increasing the effectiveness of existing facilities and the promotion of public safety through intelligent rehabilitation.

To summarize, these two acts provide for,

First, rapidity of trial and reduction of the pre-trial period.

Second, elimination of the degrading and demoralizing influences so often found in the average jail, where segregation and sanitation are merely words in a dictionary, through substitution of decent places of detention.

Third, a simplified legal procedure correlated with improved techniques

[14] Youth Court Act—Page 8—Introductory Explanation.

of pre-trial factors, including apprehension, investigation, etc.

Fourth, the extension of the true indeterminate sentence through the elimination of a good part of the judge's power of sentence.

Fifth, the establishment of a statewide coordinating agency to more effectively utilize existing facilities of treatment and to render decisions on the dispositions of cases, including methods of treatment.

Sixth, the assurance of an adequate and trained personnel—administrative as well as professional.

Let me anticipate a question which you undoubtedly have on your minds. This is all very interesting, but just how does it apply to some of our western states? Let us consider, for example, the State of Idaho. Surveys and reports of the Idaho situation have been made by experienced observers and some of their recommendations have advocated a central board of penal administration to be appointed by the Governor. These same experts advise that this board should concern itself with long-range planning, general policies and administrative supervision. Reconstruction of certain sections of the state penitentiary was recommended, together with the establishment of honor camps for the younger offender. Suggestions were made that additional rehabilitative facilities be included in some of the penal institutions, such as an educational director, a system of classification, and the consolidation of parole and probation services.

In view of such recommendations it seems to me that the Legislature of Idaho might well consider embarking upon the proposals of the American Law Institute in the treatment of the adolescent offender.

In reviewing the statistics relating to Idaho compiled by the Bureau of the Census[15] of the Department of Commerce for the year 1937, and released early this year, I note that 203 prisoners were admitted to Idaho penal institutions in 1937 and an equal number were discharged. Further examination of admittance statistics reveals that 136 of the 203 persons received had sentences ranging from ten to nineteen years, and 37 had sentences of from five to nine years duration. Of all persons so received the greater number, forty-four, were from 21 to 24 years of age. A further summary shows that 74 commitments—38% of the total —were from 18 to 24 years of age. Last —but certainly not least—50.7% of all male felony prisoners received by Idaho institutions during 1937 had prior experience in either a jail, juvenile institution or prison. There, in a few words, is your problem. Your problem is intensified by the fact that, according to the Bureau of the Census, "more defendants charged with major offenses were disposed of by the district courts of Idaho during the calendar year 1938 than in any of the three previous years."[16]

Now is your opportunity—and here is your challenge.

We New Yorkers always address groups in western states such as this

[15] "Prisoners in State and Federal Prisons and Reformatories—1937" Bureau of the Census, Department of Commerce.

[16] "Judicial Criminal Statistics—1938" Bureau of the Census, Department of Commerce.

with fear and trepidation lest we be classified as city-slickers and know-it-alls—but let me assure you that the know-it-all in the field of the treatment of the delinquent has not as yet made himself known. The answer cannot be given by one person or by any single group. It is a problem for *all* of *us*. Idaho, and other western states, are regarded generally as pioneer areas—and this is one of the reasons why I made this trip. Idaho can be truly a pioneer in the eyes of the nation if it were to consider the many advantages of the plan I discussed tonight. I do not come to you saying "why not follow in the footsteps of the Empire State of New York—or the Keystone State of Pennsylvania—or any other State?" —because these states have not progressed to the point where they can demonstrate the effectiveness of consolidation of treatment agencies. In this sense, then, Idaho has the opportunity to retain its reputation as a pioneer state. Pioneering in the more logical and more sensible methods of dealing with the adolescent delinquent —and pioneering in the more effective protection of society.

It is not contemplated that the plan outlined tonight is an attempt to improve or destroy any program, system or institution that uses recognized and acceptable standards. It is not designed to be a job-demolishing undertaking. Those who are doing commendable tasks in accordance with acceptable methods and standards should have no fear. The movement should not be anticipated as a setting-up of a meddling body, but should be understood as a means whereby there will result a fuller and more dispassionate consideration of the individual offender to the end that he will be exposed to the best kind of treatment, whether it be through probation, or an institutional program, and finally parole.

If it accomplishes nothing else it will serve to eliminate a situation which places undesirable material on probation and parole, as well as ascertaining the correct type of institution for each individual offender if this be necessary. For example, in my own state, 50% of the boys in Elmira Reformatory should never have been committed there because they are not capable of responding to the program of treatment. Some, instead, should be in one of the State prisons or some specialized institution such as those for mental defectives, the feeble-minded, and some day, I hope, an institution for the psychopathic delinquent—this mysterious group whose conduct is unpredictable and so frequently injurious to those with whom he comes into contact.

I would like to feel that I have left with you tonight a challenge. A challenge to you— the public—to recognize the need for coordinated services in the rehabilitation of the youthful offender. A challenge that here is a sane, logical and common-sense opportunity to take definite action in a field that is recognized as in need of change and improvement before it is too late—too late in the lives of those youthful offenders that today we do little more than waste and prepare for further criminal careers. In this democratic country we owe it to today's youth—and to ourselves—to do more for them when their mis-steps lead into conflict with the law.