

1944

## Current Notes

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## CURRENT NOTES

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**Report on Recent Parole Legislation**— The American Parole Association has issued this report as of September, 1943. It was prepared by Miss Helen D. Pigeon. Copies may be obtained from the Association at 135 East 15th St., New York City. The report consists in an analysis of recent legislation affecting parole in the various states. The following is an abbreviation of the introduction to the report:

In the past year approximately 92 bills on parole and closely related subjects were introduced in 29 state legislatures and the United States Congress. Of these 44 passed, 35 failed of passage, 7 were vetoed, 2 were given a pocket veto, 3 are pending and one act, the California Youth Authority, became effective. Two proposals for constitutional amendments are pending and one was rejected.

In general the legislative acts represent distinct gains on all fronts and point to several important trends. Failure to pass or a veto also meant success to the parole program in some instances.

In a few instances where there was no 1943 legislative session 1942 legislation is included.

The report was undertaken chiefly because of the wide interest in the use of parolees as war manpower, either in the armed forces or in farm and industrial labor. The situation is well stated in a paragraph of the California act, which reads:

"There are now many able-bodied men serving time in State prisons, county jails and city jails who, if given an opportunity to serve in the armed forces could materially assist the military manpower needs of this Nation. This legislation would not only provide men for armed service but would also provide a method of rehabilitation. Time is of the essence in providing manpower for the armed forces and this act should therefore go into effect immediately."

When Congress in 1941 amended the law forbidding enlistment into military service of a person convicted of a felony and permitted the Secretary of War to make exceptions in meritorious cases, the parole situation was immediately affected. The acute labor shortage is also an important factor. To meet the demand many states are finding it necessary to pass supplementary and enabling legislation. This report aims to make a permanent record of this legislation and to aid parole administrators who wish to profit from the experience of other states in framing new laws.

Leaders in the parole field see the situation not only as a call to patriotic service but also as an opportunity for permanent benefit. Participation in the war effort has therapeutic elements, with important lessons for peace-time practice, as reports on individual cases and the truly amazing statistics on successful adjustment already show.

In addition there is the chance to use constructively the public sympathy engendered by patriotic service to secure the tools and safeguards necessary to good parole. An excellent example is the changed attitude of many employers, once antagonistic, but now appreciative of this source of labor and of the farm and industrial training offered in the better class of penal institution.

Two states were not heard from. In 29 states and the federal government there was legislative activity, to a total of 92 acts, bills and resolutions. In 17 states and the District of Columbia there was no legislation. In a number of these states parole administrators reported that they possessed discretionary powers broad enough to meet the requirements for release and induction. This is in accord with the Principles of Parole adopted at the President's conference. It is interesting to note that considerable of the current legislation is concerned with the granting of the broader power recommended by the President.

Twenty-two legislative proposals related directly to the use of war manpower,

either in the armed forces or in farm and industrial labor or both. Many other acts and bills related to war manpower indirectly but were not so labeled. They liberalized eligibility, facilitated release and discharge, suspended supervision and broadened the powers of the paroling authority.

In most instances war manpower legislation was termed emergency and became effective immediately on passage. Often the provisions were temporary, applying only for the duration of the war or while a national emergency or labor shortage exists. In some states a special form of parole is specified. In California it is called "special service parole," in Kansas "conditional military pardon" and in Maryland "special conditional release."

The jurisdiction of these war measures varied considerably. In some states, as in California, Kansas and Wisconsin, they apply only to military service, while in others farm and defense labor are included. In Maryland there is an attempt to aid state institutions and agencies by supplying inmate labor when there are shortages. Some measures related only to state prisons while others included the jails.

There was obviously a desire to reward parolees successful in the service by discharge from parole, by pardon or by restoration of civil rights, usually contingent on honorable discharge from the armed forces. In Iowa it is mandatory for the Board of Parole to recommend pardon in such cases; in California parolees are eligible for full pardon; in Wisconsin the Governor may discharge from parole, such discharge to have the force of a pardon in restoring civil rights. In Massachusetts and New York these attempts seemed to infringe on the pardon power and were vetoed. In Kansas notice and publication of grants of clemency are waived.

While these war measures may overshadow others in interest they are equalled in importance by those affecting the basic structure of parole units. In 1942 Louisiana and Virginia created independent parole boards, Mississippi a Board of Pardons and Kentucky a Division of Probation and Parole. In 1943 Georgia and Oklahoma established independent boards and both states have pending, constitutional amendments which will give more complete powers to these boards. A federal bill aims to establish a new Board of Corrections which will absorb the powers of the Board of Parole and have some of the features of a Youth Authority. Bills establishing new units failed of passage in Colorado, Texas and Missouri. In all, 17 measures were introduced, of which 9 passed and 1 is pending. A variety of other measures related to function, salaries, qualifications and appointment of board members, but were not basic legislation.

In three states, Indiana, Pennsylvania and West Virginia, the measures were of the "ripper" variety and threatened the existence of units already functioning. Fortunately none of these passed, although Pennsylvania suffered casualties.

Several measures related to juvenile institutions and therefore affected juvenile parole, the most notable being the California Youth Authority, which sets up unitary control. The juvenile institution in Montana was transferred to the State Board of Education, while in Missouri an attempt to transfer juvenile institutions to the Social Security Commission failed.

In addition to the two general categories of war manpower and basic legislation there are a number of miscellaneous measures. Three concern the care of mental cases and inebriates, the California act being of interest because it gives the power to parole inebriates to medical authorities; two concern the appointment of commissions to study parole and related sources; several emphasize the classification of inmates as a basis for parole selection; and several reduce the point of eligibility in life sentences. The federal bill providing that all released prisoners are considered as on parole is a noteworthy step on the road to making parole the regular method of release.

A number of the measures show a tendency to offer rewards for a successful

parole experience and to eliminate disabilities. A Texas bill (vetoed) proposed reduction of sentence for parolees against whom no charge of misconduct was sustained, or who attended classes; a California bill aimed to remove the restrictions against the granting of old age pensions to parolees; a Maryland act forbade automatic disqualification of applicants for jobs in the state civil service because they were on parole; a Wisconsin act eliminated the guarantee of employment as a requisite of parole, which had worked hardship on older men; and an Iowa act, permitting the Board of Parole to release those against whom there were detainers, has cleared up injustices suffered by inmates who were forced to serve their full terms, even though the detainer was of slight importance.

Thus, despite a few casualties and several serious threats, the legislative measures produced in the past year were definitely on the plus side. Unquestionably much of the legislation which failed this year, favorable and otherwise, will be introduced again next year. Administrators in a number of states have already indicated their intention of preparing new bills, both war measures and basic legislation, and they can gain wisdom and encouragement from the history of the past year.

The (New York City) Mayor's Committee Reports on the Study of Sex Offenses—This report, that has been recently issued, covers the ten-year period, 1930-1939. It deals with nine specific types of sex crimes which came to the attention of the police, district attorneys and courts throughout New York City during that period.

#### FINDINGS

1. There was no wave of sex crime in New York City during the 1930's. Although sex crimes receive more public attention than other types of crime, they represent only a small fraction of the sum total coming to the attention of the Police Department.

2. There was an increase in the number of cases of rape, sodomy, impairing the morals of a minor, and indecent exposure, which came to the attention of the police in the later 1930's. The increase in New York City seemed to be part of a nationwide trend of increase in sex crime.

3. Unlike other types of crime the distribution of sex crimes tends to follow population lines. Thus, Kings, the most populous county of New York City, leads other counties in such sex crimes as rape and indecent exposure.

4. Most sex crimes are by first offenders. Of those convicted in the County Courts and the Court of General Sessions, 61% had no records, as against 39% with records. Offenders charged with sex felonies are less inclined to have records than other types of felons.

5. When sex offenders do have prior criminal records, it is usually for non-sexual crimes. Of 215 convicted offenders indicted for forcible rape who had prior criminal records, only 14% had records of arrests for prior sex crime.

6. Sex crime is not habitual behavior for the great majority of convicted sex offenders. Police Department fingerprint records disclose that only 7%, 40 out of 555 offenders convicted of sex crimes in 1930, were again arrested on the same charge during the period from 1930 to 1941.

7. There is no universal type of sex offender. He is drawn from all age groups and from all social and economic classes.

8. Youthful sex offenders, men between the ages of sixteen and thirty, are the most numerous. They account for 59% of the total convicted. Middle aged offenders between the ages of thirty-one and sixty represent 37% of the total. Men in the group over 60 years of age, were 4% of the total (201).

9. The crimes of statutory and forcible rape, abduction and seduction, were committed for the most part by younger offenders (men under thirty-one years of age). Older offenders were mostly involved in the crimes of incest, carnal abuse, impairing the morals of a minor, sodomy and indecent exposure.

10. Of the convicted offenders 80% were white; 20% of other races.

11. Single men predominated among those convicted of sex crimes; 60% of the total; 26% were married; 14% had been married but were either separated from their wives, divorced or widowed at the time their crimes were committed.

12. The foreign born accounted for but 27% of the offenders.

13. Only 2% of offenders had been in the City less than one year.

14. Ten per cent of the offenders had completed their high school education; 1% had a college or professional education; 36% had completed only their elementary schooling.

15. Most sex offenders were employed but in low income occupations, at the time of the commission of their crime.

16. The general impression which emerges from reading the probation reports is that most female victims came from low-income groups and from disorganized neighborhoods and families.

17. The victims are of all ages. Most victims of sex felonies in the Court of General Sessions and the County Courts were females. Sixty-three per cent of these victims were over fourteen years of age. Two-thirds of the male victims in the same courts were fourteen years of age or under.

18. Physical damage to the victim occurred in 1215 felony cases. Pregnancy resulted in approximately 700 of these cases. Venereal diseases and other injuries were also frequent concomitants of the sex crime.

19. The Penal Law provisions relating to sexual tampering with children or otherwise impairing their morals need revision. The various provisions of the Penal Law are not consistent with respect to the age of the child protected. In considering the crimes of carnal abuse and otherwise impairing the morals of a minor, the age limit is taken as sixteen; as to statutory rape or abduction, the age limit is eighteen. Only in respect to carnal abuse is there a differentiation as to seriousness of the crime, depending upon age. Carnal abuse of a child under ten is a felony, of a child over ten, a misdemeanor. There are no such distinctions respecting impairment of the morals of a minor, which is a misdemeanor, though the same gross sexual acts may be involved in this crime as in that of carnal abuse. Nor is there any distinction as to the age of the victim of statutory rape. All sexual intercourse with girls under the age of eighteen is a felony.

Nor does the Penal Law sufficiently take into account the age or character of the offender in differentiating the seriousness of the crimes. Sexual acts between adolescents are placed on a par with sexual assaults by mature men. Only in respect to carnal abuse is there a distinction as to seriousness of the crime depending upon whether the culprit is a first offender or a repeater. Impairing the morals of a minor includes gross sexual acts upon a child as well as minor infractions which have no relation to sex.

20. The sex crime problem of the Court of General Sessions and the County Courts is not one essentially of the rapist who seeks to impose his will upon a female by force and violence. Nor is it essentially the problem of the sodomist who seeks to satisfy his passion by unnatural methods. Illicit intercourse between members of the same family, punishable as incest, also plays a minor role in the sex problem confronting the courts. Over half of the sex offenders (59%) convicted in the Court of General Sessions and the County Courts were charged with statutory rape, which involved a normal act of sexual intercourse with a girl who was under the statutory age.

21. In the Court of General Sessions and the County Courts in the years 1930-9, 3,295 offenders were charged with sex offenses. Of this number 1,140 or 35% were convicted of felonies. The balance, 2,155 or 65%, were convicted of misdemeanors. In the statutory rape cases, 1,554 out of 1,948, or 80%, were convicted of misdemeanors.

22. A majority of the sex offenders in the Court of General Sessions and the

County Courts (1,891 out of 3,295, or 57%) were convicted of the misdemeanor of assault in the third degree.

23. In the Court of General Sessions and the County Courts during the years 1930-9, 13% (422 out of 3,295) of the offenders were convicted after trial; whereas 87% (2,873) entered pleas of guilty.

24. In three-fourths of the felony cases where a plea of guilty was entered (2,118 or 74%), the plea was to a misdemeanor. Nine per cent of those who were tried, were convicted of misdemeanors, the remainder of felonies.

25. The entry of a plea of guilty of a misdemeanor on a sex felony charge cuts the maximum range of punishment from a possible twenty or ten years to an indeterminate sentence of three years imprisonment.

26. In the Court of Special Sessions 26% of the convictions on charges of impairing morals, and 31% of convictions of indecent exposure were the result of pleas of guilty. In the Court of General Sessions and the County Courts the pleas of guilty amounted to 87%.

27. In many of the misdemeanor cases in Special Sessions in which the charge was impairing the morals of a minor, a felony charge for rape, sodomy, carnal abuse or incest might have been made.

28. Most sex offenders convicted in the Court of General Sessions and the County Courts (64%) were sentenced to some form of institutional confinement. The Penitentiary and the State Prison were the two major institutions to which sex offenders were sentenced. Of the convicted offenders in these Courts, 27% were placed on probation and 9% received suspended sentences.

29. Of the offenders indicted for rape in the second degree (statutory rape), half were placed on probation or received a suspended sentence. But the courts reacted much more vigorously against convicted offenders who had been charged with such crimes as forcible rape, incest, sodomy and carnal abuse.

30. The Court of Special Sessions punished no other misdemeanor so severely as that of impairing the morals of a minor. Thirty-seven per cent of the offenders convicted of this crime during 1930-9 received the maximum sentence that could be imposed—an indeterminate sentence up to three years in the New York City Penitentiary. Seventy-three per cent of these offenders were sentenced to some form of institutional confinement. Only 27% were placed on probation or given a suspended sentence.

31. The major type of sentence in cases of indecent exposure in Special Sessions is a term of imprisonment up to six months in the Workhouse or the City Prison. Forty-six per cent of the convicted offenders received this sentence. An additional 38% were either placed on probation or received a suspended sentence.

32. The age of the victim of the sex crime is a definite factor in determining the sentence imposed on the offender. In general, the younger the victim, the more severe the sentence. Only 12% of the offenders who tampered with children twelve years of age or under were placed on probation or received a suspended sentence, as compared with 42% of those who tampered with older victims.

33. There is a definite relationship between the age of the offender and the sentence imposed. The younger the offender, the more likely he is to receive probation or a suspended sentence. Conversely, the older the offender, the more likely he is to be sentenced to an institution. Forty per cent of the offenders between 41-50 years of age, for example, were sentenced to State Prison, as compared with only 16% of those between the ages of 16 and 25.

#### RECOMMENDATIONS.

1. A law should be enacted which would make it possible to keep convicted psychopathic sex offenders who can not be at large with reasonably safety to the public, in institutional confinement even after the expiration of sentence. This

would make it possible to retain custody over abnormal sex offenders who are neither mentally defective nor insane, but who, because of constitutional penchants for abnormal methods of satisfying sexual passions, are dangerous to be at large. This law could be implemented by a provision requiring psychiatric examination and report on all sex offenders who are sentenced to some form of institutional confinement. If such report definitely shows that these offenders are still dangerous, steps should be taken to have them retained in custody until appropriate medical and psychiatric examinations indicate that they can be released without danger to the public.

2. The crimes of impairing the morals of a minor and carnal abuse should be combined into one. All sexual tampering with the body of a child and all sexual misbehavior with a child, short of rape or sodomy, should be included in it. The merger could avoid the deficiencies and inconsistencies of present statutes in that:

(a) It could make all sexual misbehavior and tampering with children under ten a felony. At the present time, only carnal abuse of a child under ten is a felony (sec. 483-a Penal Law). The impairment of the morals of a minor is now a misdemeanor irrespective of the age of the child.

(b) It would make all persons who misbehave sexually with children guilty of felonies, where they have previously been convicted of similar crimes. At the present time, only the carnal abuse section of the Penal Law has such a provision.

3. Medical and psychiatric examinations for all sex offenders should be had before sentence. In few criminologic situations is it so necessary to obtain an understanding of the entire personality of the offender before disposition as in respect to sex criminals. A considerable proportion of sex offenders are abnormal. The degree of their abnormality and their dangerousness to the community, as well as their treatment needs, can be revealed by medical and psychiatric examination.

4. Where the offender is charged with a sex felony, a pre-pleading investigation of the circumstances surrounding the offense and the character, personality and prior record of the offender should be made before a plea of guilty to a misdemeanor is accepted. The defendant's consent should be obtained before such investigation is made. If the inquiry shows that the offender has an inclination to commit sex crimes, or if the facts surrounding the offense do not warrant the relatively lenient treatment inherent in a conviction of misdemeanor, a plea of guilty to a misdemeanor should not be accepted and the defendant should be ordered to stand trial on the felony indictment.