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# INSTITUTIONS FOR DEFECTIVE DELINQUENTS

LOUIS N. ROBINSON<sup>1</sup>

There exists a widespread conviction that the delinquent group as a whole includes a class of persons, generally spoken of as defective delinquents, who should not be sent to our ordinary prisons but should be committed to special institutions built and administered to meet their peculiar needs.

The movement to separate and segregate this group from the general prison population has now developed to the point where it deserves our careful attention. New York has organized separate institutions for this class; Massachusetts has set aside for them a department in an existing institution; while New Jersey has also gone far in providing special care without complete segregation from other classes of prisoners. Under the wise leadership of Sanford Bates the federal government itself is now building an institution which, although not planned exclusively for the same types for which the three states mentioned have made special provision, is nevertheless labeled the "Federal Hospital for Defective Delinquents." Pennsylvania has in mind an institution somewhat on the New York style and there are small beginnings in other states which may develop into real efforts to differentiate in treatment between defective delinquents and other classes of prisoners.<sup>2</sup> It is important, however, to note at the outset that there is not a perfect understanding or agreement as to what constitutes a "defective delinquent." The term has no uniform meaning at present, and indeed several more years of experimental work with so-called defective delinquents may be necessary before a clear-cut definition emerges.

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<sup>2</sup>The Virginia State Farm has a department for "Defective Misdemeanants," a term which is intended to cover the feeble-minded, the crippled, the tubercular, drug addicts, those suffering from venereal disease, alcoholics—in short, any misdemeanant who is not suited to work in the road camps. Defective delinquents, in the sense in which that phrase will be defined in this paper, undoubtedly find their way to the Farm, but it cannot be considered as a specialized institution for their particular benefit. The misdemeanant department deserves study as a practical attempt to eliminate county jails (for any but temporary detention purposes) rather than as an attempt to segregate offenders of low intelligence. Cf. S. P. Davies, *Social Control of the Mentally Deficient* (New York, 1930), p. 144; *Handbook of American Prisons and Reformatories: 1929*, p. 950.

## DEFINITION AND COMMITMENT OF DEFECTIVE DELINQUENTS

*In New York*

The Institution for Defective Delinquents at Napanoch, New York, was opened in 1921 and was the first attempt in this country to segregate completely—*i. e.*, in a separate institution of their own—prisoners who were not insane and yet could not be classed as mentally normal. Napanoch takes men only. Defective delinquent women had in 1920 been provided with quarters in a section of the New York State Reformatory for Women at Bedford Hills,<sup>3</sup> and in 1931 the Albion State Training School was given over to the use of this group and renamed the Institution for Mentally Defective Women. (Mentally normal inmates of the old Training School were transferred to the Reformatory for Women, which now houses none of the defective delinquent group.) In January, 1932, the Legislature authorized the establishment of a new institution for defective delinquent men,<sup>4</sup> to supplement Napanoch, which is overcrowded and has a waiting list. The type of offender who may be committed as a "defective delinquent" in the state of New York is a "mental defective over sixteen years of age convicted of a criminal offense."<sup>5</sup> This basic definition applies to both men and women, and involves three factors—mental status, criminal status and age.

The minimum age of sixteen is the same as the maximum limit set for juvenile court jurisdiction in New York.<sup>6</sup> In other words, a youngster who is still eligible for handling by the juvenile court instead of the criminal court cannot be committed as a defective delinquent, no matter what his mental status. There is no maximum age limit for commitments to Napanoch and Albion.<sup>7</sup>

"Criminal offense" is taken to mean "crime" as defined by the New York Penal Law, namely, "an act or omission forbidden by law,"<sup>8</sup> and includes both felonies and misdemeanors. Thus any infraction of the law, from murder to violation of traffic rules, may legally be part of the basis of commitment as a defective delinquent.

<sup>3</sup>State Commission of Prisons, *28th Annual Report* (1922), p. 116; also *Salient Facts About the New York State Reformatory for Women* (1926), p. 9; and Davies, *op. cit.*, p. 138.

<sup>4</sup>Senate Bill No. 59 (session of 1932), sec. 15.

<sup>5</sup>*Consolidated Laws*, ch. 43 (Correction Law), secs. 438 and 451, as amended by 1931 Legislature, *Laws of 1931*, ch. 456 and 459.

<sup>6</sup>Freda Ring Lyman, *Analysis and Tabular Summary of State Laws Relating to Jurisdiction in Children's Cases* (Washington, 1930; Children's Bureau Chart No. 17), p. 22.

<sup>7</sup>Letter from Commissioner Walter N. Thayer, Jr., December 22, 1931.

<sup>8</sup>*Consolidated Laws*, ch. 40, sec. 2.

However, the provision for transferring to Napanoch or Albion any person serving sentence in a penal or correctional institution and found to be mentally defective expressly excepts prisoners guilty of first-degree murder.

It was formerly possible for a mental defective to be committed *prior to conviction*, and merely upon charge of or arraignment for crime. This was designed to expedite court proceedings and cut down on expenses, also<sup>9</sup> to avoid stigmatizing with a prison sentence individuals who were so defective as to be quite irresponsible. But apparently the provision was—

“subject to a certain amount of abuse . . . when feeble-minded individuals were haled into court on a trumped-up charge for the purpose of relieving their friends or the community of the responsibility for their care and supervision.”<sup>10</sup>

In any event, the 1931 Legislature made *conviction a prerequisite for commitment*. One conviction suffices: it is not necessary for an individual to be a recidivist.

The only statutory definition of “mental defective” in the Correction Law is contained in the provision for mental examinations, which must show—

“that the alleged mental defect of the person examined is of such a nature that, for his own welfare and the welfare of others, he should be placed in the institution for defective delinquents . . . .”<sup>11</sup>

But in the Mental Hygiene Law the term is defined thus:

“3. ‘Mental defective’ means any person afflicted with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself and his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care and who is not insane or of unsound mind to such an extent as to require his commitment to an institution for the insane . . . .”<sup>12</sup>

Since, therefore, a defective delinquent is a “mental defective over sixteen years of age convicted of a criminal offense,” the definition plainly includes the feeble-minded (or mentally sub-normal) individual who gets into trouble with the law, even though it does not go into technical details about intelligence quotients, mental age and

<sup>9</sup>Thayer, “Institutions for Defective Delinquents,” *Penal Affairs*, No. 22 (May, 1930) p. 6. State Commission of Prisons, *29th Annual Report* (1923), p. 132.

<sup>10</sup>Thayer, *op. cit.*, p. 5.

<sup>11</sup>*Consolidated Laws*, ch. 43, sec. 444.

<sup>12</sup>*Ibid.*, ch. 27 sec. 2.

so on. It may include, of course, those defectives who are abnormal as well as subnormal—i. e., those who are of psychopathic personality in addition to being feeble-minded. But the definition does *not* include psychopathic offenders whose intelligence is average or above average—although such persons frequently prove most troublesome and difficult in a prison régime.

Before proceeding to discuss the type of person actually received at Napanoch, it will be well to explain the commitment procedure. Commitment may take place in two ways—directly from court, and by transfer.

The law prescribes the same method of court commitment for both men and women, so the clause governing commitments to Napanoch will serve to outline the procedure:

"A male mental defective over sixteen years of age convicted of a criminal offense may be committed to the state institution for defective delinquents at Napanoch, upon a certificate of mental defect by two qualified examiners, or a qualified examiner and a qualified psychologist, made after an examination by them of the alleged mental defective."<sup>13</sup>

Since the law fails to specify who shall have the power to initiate proceedings, we have inquired about current practice on this point, and find that while either the judge, the prosecuting attorney or counsel for the defense may ask for a mental examination, defense counsel is frequently the one who does so.<sup>14</sup> It is evident from a reading of the early reports of Napanoch that the courts were slow to make use of the direct commitment, for it took five years and considerable publicity work by members of the institutional staff to bring direct commitments up to 61 per cent of total annual commitments (1926).<sup>15</sup> This was partly due to the expense involved in examination fees, which ranged anywhere from \$25 to \$250, and which many a county judge hesitated to add to the local tax bill.<sup>16</sup>

The examination itself is governed by the law in some detail. First of all, it may be conducted by two "qualified examiners" or by one qualified examiner and one "qualified psychologist" but not by two qualified psychologists. A "qualified examiner" in mental defect is a—

"reputable physician, a graduate of an incorporated medical college, duly licensed to practice medicine in this state, who shall have been in the

<sup>13</sup>*Ibid.*, ch. 43, sec. 438.

<sup>14</sup>Letter from Commissioner Thayer, December 22, 1931.

<sup>15</sup>Institution for Defective Delinquents, *Annual Report of the Superintendent* (1922), p. 10; *4th Annual Report of the Board of Managers* (1926), p. 7; *5th Annual Report* (1927), p. 9.

<sup>16</sup>State Commission of Prisons, *29th Annual Report* (1923), p. 132.

actual practice of his profession for at least three years at the time of his certification as such."<sup>17</sup>

A "qualified psychologist" is a person who has—

"had two full years of post graduate study in psychology at an incorporated university or college and three years of actual clinical experience at the time of his certification . . . ."<sup>18</sup>

To be authorized to act officially, the facts upon which these qualifications are based must be "certified by a judge of a court of record in a form prescribed by the commissioner" of mental hygiene, whose department keeps a record of all persons so authorized.<sup>19</sup> The examination must have been made within sixty days preceding the order of commitment, "unless made on order of the court," and the examiners must not be related to the person studied.<sup>20</sup> If they find mental defect, they shall make out a certificate in a form prescribed by the commissioner of correction and approved by the commissioner of mental hygiene, to show (as already quoted)—

"that the alleged mental defect of the person examined is of such a nature that, for his own welfare and the welfare of others, he should be placed in the institution for defective delinquents, at Napanoch . . . ."<sup>21</sup>

The commitment is indefinite, as Commissioner Thayer has repeatedly stated,<sup>22</sup> although the law does not say that in so many words. As a sidelight on the indefinite commitment, it is illuminating to recall that in the beginning Napanoch was under the control of the State Commission for Mental Defectives, which served as board of managers. The Department of Correction now has jurisdiction, but the fact that the institution was originally managed by a group affiliated with mental hygiene rather than with penology indicates that the commitment was regarded from a viewpoint more like that governing a commitment for insanity than that governing a commitment to prison.

The second way in which commitment may be made is by transfer. Offenders may be transferred to Napanoch from either state or local peno-correctional institutions, provided certain requirements

<sup>17</sup>*Consolidated Laws*, ch. 27, sec. 19.

<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*, ch. 43, sec. 444.

<sup>21</sup>*Ibid.*

<sup>22</sup>"The Defective Delinquent: His Care and Training," paper read at Annual State Conference of Charities and Corrections, Bridgeport, Connecticut, May 6, 1924, p. 3; "The Penology of Tomorrow," American Prison Association, *Proceedings* (1925), pp. 252-3; "Institutions for Defective Delinquents," p. 5.

are fulfilled, but *individuals are no longer transferred from institutions for the feeble-minded*. In the original law there was no clause either permitting or forbidding expressly the transfer of individuals from the state schools for defectives,<sup>23</sup> and in the beginning such transfers were made.<sup>24</sup> The present law rules them out by dropping the provision for commitment upon charge of, or arraignment for, crime, prior to conviction. Until 1931, women who were inmates of state schools for mental defectives and who were over sixteen and charged with a criminal offense might upon court order be transferred to the division for defective delinquent women.<sup>25</sup> This provision, consistently enough, was dropped by the new 1931 law governing commitments and transfers to Albion.<sup>26</sup>

The method of transfer from state penal and correctional institutions is specified in detail:

"Whenever the physician of any state prison, reformatory or penitentiary shall certify to the warden or superintendent thereof that a male prisoner confined therein and sentenced thereto for a felony, except murder in the first degree, is in his opinion, a mental defective, such warden or superintendent shall notify the commissioner of correction thereof. The commissioner shall cause such prisoner to be examined in the manner provided . . . [for court commitments]. If such prisoner is found to be a mental defective, the warden or superintendent shall cause such prisoner to be transferred to Napanoch, and delivered to the superintendent thereof. Such superintendent shall receive the prisoner into such institution and retain him there until legally discharged . . . ."<sup>27</sup>

We notice at once the exception in the case of prisoners serving sentence for first-degree murder, which seems inconsistent with the provisions for direct commitment from court.

The transfer procedure for defective offenders sentenced to local institutions is not governed with nearly so much precision:

"A male over sixteen years of age convicted of a misdemeanor and confined therefor in a penitentiary, reformatory or other penal or correctional institution, who is found to be a mental defective, may be transferred by the superintendent or other officer in charge thereof to such institution at Napanoch, for care, treatment, training and custody, with the consent and upon the order of the commissioner of correction, made upon the application of such superintendent or other officer and upon a

<sup>23</sup>*Laws of 1921*, ch. 483, secs. 14-22.

<sup>24</sup>Cf. Institution for Defective Delinquents, *Annual Report* (1923), p. 19; *2nd Annual Report* (1924), p. 19.

<sup>25</sup>*Consolidated Laws*, ch. 43, sec. 306, before amendment by 1931 Legislature.

<sup>26</sup>*Laws of 1931*, ch. 456.

<sup>27</sup>*Consolidated Laws*, ch. 43, sec. 439.

certificate of mental defect made as above provided [*i. e.*, as provided for court commitments].<sup>28</sup>

It is not entirely clear how the misdemeanant is found to be defective in the first place. Probably the local warden calls to the attention of the Commissioner of Correction those individuals whom he thinks may be defective—a procedure which makes it possible that many cases may be overlooked. Or it may be that the members of the State Commission of Correction are relied upon to point out cases of defect noticed during inspection trips.<sup>29</sup> No matter whose the initiative, however, if the local officer in charge does make application for a transfer, then the usual examination must be made.

The procedure for transferring women from any kind of peno-correctional institution to Albion is the same as that for transferring men to Napanoch.<sup>30</sup>

Prisoners *transferred* to either place may be returned to the institution of original jurisdiction if found to be or if they become unsuitable for the specialized institution.<sup>31</sup> On the other hand, if kept at the special institution until the expiration of their original sentences, they would have to be released regardless of their danger to the community. The statute recognizes this possibility, and in such cases the superintendent is directed to proceed as follows:

"When the term of a prisoner confined in such institution . . . has expired, and, in the opinion of the superintendent thereof such prisoner is a mental defective, the superintendent shall apply to a judge of a court of record to cause an examination to be made of such person, by two qualified examiners, other than a physician connected with such institution, or by one such qualified examiner and one psychologist . . . [to] be designated by the judge to whom application is made. Such examiners, or examiner and psychologist, if satisfied, after a personal examination, that such prisoner is a mental defective, shall make a certificate to that effect in the form and manner prescribed . . . [*i. e.*, for court commitment]. Such superintendent shall apply to a judge of a court of record for an order authorizing him to retain such prisoner at the institution, accompanying such application with such certificate of mental defect. Such judge, if satisfied that such prisoner is a mental defective, shall issue an order of retention, and such superintendent shall thereupon retain the prisoner at the institution until discharged as provided by law . . . ."<sup>32</sup>

<sup>28</sup>*Ibid.*, sec. 438.

<sup>29</sup>The Commission of Prisons (forerunner of the present Commission) stated in 1922 that its members had "for years past" noticed such cases in the various institutions and had therefore been active in urging the law which established Napanoch. Cf. *28 Annual Report*, p. 116.

<sup>30</sup>*Consolidated Laws*, ch. 43, sec. 451.

<sup>31</sup>*Ibid.*, sec. 442.

<sup>32</sup>*Ibid.*, sec. 440.



Thus transfers as well as direct commitments can be (and usually are) brought under the power of the indefinite commitment.

Our inquiry into the definition of "defective delinquent" as the term is used in New York leads us next to ask just what kinds of individuals are actually to be found at Napanoch and Albion. As already noted, the legal definition is rather flexible, permitting the commitment of two general types: 1) feeble-minded or mentally subnormal delinquents; 2) delinquents who are both subnormal and abnormal (psychopathic)—*i. e.*, who show a combination of mental defect and mental disease—but excepting cases of mental disease which are sufficiently acute to be classed as insane, and excepting psychopathic personalities of good intelligence. Types 1 and 2 should be kept in mind in analyzing the various definitions of "defective delinquent" in the other jurisdictions to be considered.

We should note that Napanoch originally received more transfers than direct commitments, and that the transfers were from schools for the feeble-minded as well as from prisons and reformatories. This resulted in a collection of heterogeneous types which were consequently hard to handle. The following account of the situation is from a report made by the State Commission of Prisons (now the State Commission of Correction) subsequent to its annual inspection of the institution in 1923:

"During the first year after the institution was opened, out of 409 commitments and transfers 117 former inmates of the Rome State Custodial School were committed to this institution by court order. Disorderly inmates were charged with delinquency and brought within the letter of the law. Youths who were committed to the Rome school by county authorities turned up in the institution at Napanoch to the dismay and distress of parents and relatives.

"A large proportion of the population was transferred from state prisons and reformatories. They had all been convicted of felonies; many of them were hardened criminals. The mingling of the Rome Custodial defectives with defective delinquents of such habits appeared to the Commission of Prisons to be unwise and not within the spirit of the law. The issue emerged whether this institution was established for the custodial care, exclusively, of defective delinquents committed from localities or transferred from penal and correctional institutions, or whether it was also intended to be a disciplinary institution for the disorderly inmates of institutions for non-delinquent defectives.

"The State Commission of Prisons took the former position and objected to the presence of such a large number of Rome Custodial inmates. It claimed that institutions for non-delinquent defectives should discipline their disorderly inmates, and that only inmates who commit crimes similar to those which are prosecuted by local criminal authorities should be received in the institution at Napanoch. After conferences

with the Board of Managers of the Institution for Defective Delinquents an understanding was reached to exclude the inmates of custodial institutions for non-delinquent defectives unless they come within the above delinquent class.

"The total number of Rome Custodial inmates sent to the institution at Napanoch was 133; 64 have been transferred back; 12 have been paroled or discharged, leaving 57 still in the institution. Most of them have been in the institution over a year and are reported to be of the same general character as the other inmates. During the past year only 15 have been received from the Rome Custodial School."<sup>33</sup>

One point of policy was thus settled, and since 1924 transfers have been made from the peno-correctional group rather than from the state training schools.

But the staff was still forced to accept through direct commitments many individuals whom it did not consider suitable for the institution. Transfers could be returned, but it was not until 1931 that the law was amended to permit individuals erroneously committed to be returned to court with or without the consent of the committing judge.<sup>34</sup> Irrespective of psychopathic complications, the undesirables were chiefly of two kinds—those who were too subnormal and those who were not subnormal enough. The second group are what Thayer describes as a "high borderline type"—with IQ's between .70 and .90, which means that their intelligence is sufficient for them to be handled elsewhere without undue complications. In Thayer's words:

"It is . . . important that the staff be able to detect in each inmate a definite degree of impaired responsibility due to intellectual subnormality, and that the responsible person accused of crime should not be permitted to take refuge behind a plea of mental deficiency in order to protect himself from the consequences of his criminal act."<sup>35</sup>

At the other extreme are those very defective individuals who are classed as idiots or imbeciles. Thayer felt, along with the state commission of prisons, that such persons were quite out of place at Napanoch:

"One difficulty with the New York State law is that low-grade individuals arrested for minor offenses—and who, because of their very low grade of intelligence, should not be considered even partially responsible for their acts—are sometimes committed to Napanoch by the courts, either through ignorance of the purpose of the institution or because of the overcrowded condition of the state schools for defectives."<sup>36</sup>

<sup>33</sup>*Twenty-ninth Annual Report (1923)*, p. 132.

<sup>34</sup>*Consolidated Laws*, ch. 43, sec. 442.

<sup>35</sup>"Institutions for Defective Delinquents," p. 11.

<sup>36</sup>"Six Years' Experience with the Defective Delinquent," pp. 10-11.

So we may say that Napanoch has received, involuntarily, two marginal groups which it does not consider as "defective delinquents," strictly speaking.

In 1926 the median mental age of 540 individuals then held at Napanoch was found to be "9.19 years by the Terman revision of the Binet-Simon psychometric test." There were 23 borderline cases, 366 morons, 150 imbeciles and 1 idiot; median performance capacity according to Pintner-Patterson tests was 9.3 years.<sup>37</sup> Thus the two marginal intelligence groups not wanted by the staff appear in the 540 cases.

"In the subsequent psychiatric study of the same group it was shown that the group could quite readily be divided into three subgroups. The first consisted of those with a mental age above 11.2 years, in which it was evident that the intelligence defect had ceased to be prominent and that the predominating factor was that of personality and conduct disorder."<sup>38</sup>

This evidently describes the high borderline type whose admission to institutions for defective delinquents is deprecated by Thayer, and constitutes the first marginal group.

"In the second subgroup we found essential characteristics which were sufficiently constant to denote a definite type, which we have chosen to call the true defective delinquent, the upper limit of intelligence being 11.2 years with the lower limit being approximately between 6 and 7 years. Below this latter limit was a group composed of palpably feeble-minded persons who might preferably be termed delinquent defectives because of the predominance of mental defect as compared to delinquent tendencies."<sup>39</sup>

The "palpably feeble-minded persons" constitute the second of the marginal groups which Thayer and his staff came to consider unsuitable for Napanoch.

The "true defective delinquent," then, according to Napanoch's experience and standards, is a delinquent with a mental age somewhere between 6 and 11.2 years (Terman revision of Binet-Simon tests). This emphasizes to some extent the delinquency factor and makes the mental status subordinate:

"There is a large group of the criminal class whose intelligence level would never become a matter of investigation were it not for the delinquent traits manifested by them. The delinquency is the predominating characteristic and were it not for the recidivism manifested these

<sup>37</sup>Institution for Defective Delinquents, *5th Annual Report* (1927), p. 12.

<sup>38</sup>*Ibid.*

<sup>39</sup>*Ibid.*

individuals would rarely become charges of society. In this type, although we confess that the deficiency is primary from a chronological standpoint, we believe the individual should be termed a delinquent and that the intelligence defect is of secondary importance, when the welfare of society is considered."<sup>40</sup>

So far we have emphasized the matter of subnormal intelligence in the Napanoch population, but we have not meant to imply that all individuals received at Napanoch belonged in Type 1 (*i. e.*, were mentally subnormal to a greater or less degree, without abnormal complications). What about the psychopathic side? The difficulties in the way of clear-cut classifications are illustrated by the fact that 85 per cent of the 540 individuals "showed the characteristic reactions of the psychopathic personality."<sup>41</sup> The upper marginal group which presented but a small degree (if any) of mental defect but which suffered from "personality and conduct disorder" may be classed as purely psychopathic (or mentally *abnormal*)—a type not included in the legal definition of a defective delinquent. Yet that marginal group did not constitute anywhere near 85 per cent of the whole group, which means that a large proportion of the "true defective delinquents" were psychopathic as well as defective—abnormal as well as subnormal, which is our description of Type 2.

No such detailed data are available for the population of the Division for Defective Delinquent Women during its ten or eleven years of operation at Bedford. But the whole trend of the law reorganizing the treatment of such women and providing them with a separate institution at Albion is toward greater conformity with the law and practice under which Napanoch operates. It seems safe to say that conditions at Napanoch represent fairly well the state's policy concerning defective delinquents.

At Napanoch, then, to repeat, that policy has tended to exclude, so far as possible, the very low-grade and the very high-grade feeble-minded delinquents and to make the institution a place for feeble-minded delinquents of medium-grade intelligence who come direct from the courts upon conviction for crime or are transferred from peno-correctional institutions, and most of whom are also, seemingly, of psychopathic personality.

#### *In Massachusetts*

The Massachusetts approach to the problem is not, at first glance, radically different from the New York attitude, but the policy actually

<sup>40</sup>Thayer, "Institutional Training of the Defective Delinquent," reprinted from American Association for the Study of the Feeble-Minded, *Proceedings* (1925); pp. 2-3.

<sup>41</sup>Institution for Defective Delinquents, *5th Annual Report*, p. 13.

followed has resulted in a situation strikingly different in some respects.

Legislation first recognized the existence of defective delinquents as a separate class in 1911, when a commitment procedure was outlined and special departments were authorized for the class of offender then newly defined. Save for a brief and unsuccessful attempt (not long after the law was passed) to establish a department for delinquent boys at the Massachusetts reformatory,<sup>42</sup> the legislation was not used until 1922, when the present department for men was established at the State Farm, Bridgewater; the women's department was opened there in 1926. In the meantime the law underwent considerable amendment, but the tone of the first statute and many essential points embodied in it have persisted down to date. It will be instructive to follow the development of the present legal definition, and to begin by quoting the original law:

"If in any case where a court might by way of final disposition commit an offender to the state prison, the reformatory for women, or any jail or house of correction, or to the Massachusetts reformatory, the state farm, or to the industrial school for boys, the industrial school for girls, the Lyman school, any truant school, or the custody of the state board of charity, for an offense not punishable by death or imprisonment for life, it shall appear that the offender has committed the offense with which he is charged, is mentally defective, and is not a proper subject for the schools for the feeble-minded, or for commitment as an insane person, the court may commit such offender to a department for defective delinquents, hereafter established, according to the age and sex of the defendant as hereinafter provided."<sup>43</sup>

In 1921 the law was refurbished preparatory to putting it into practice at last, and at that time a previous-conviction provision was inserted:

"If . . . it appears that the defendant, within a period of three years, has been found guilty of an offense for which he might have been committed to any institution above named, or to the custody of the department of public welfare, or that he has been adjudged a juvenile delinquent, and that he is mentally defective, . . . etc."<sup>44</sup>

After several years' experience with the Bridgewater groups, the law was further amended (1928) to its present form, and now it again allows commitment as a defective delinquent on first offense if the court feels that the individual has a tendency to recidivism of a serious type:

<sup>42</sup>Letter from Hon. Sanford Bates, Director of the U. S. Bureau of Prisons, and formerly Commissioner of Correction for Massachusetts; March 21, 1932.

<sup>43</sup>*Acts and Resolves of 1911*, ch. 595, sec. 1.

<sup>44</sup>*Acts and Resolves 1921*, ch. 270, sec. 1.

"At any time prior to the final disposition of a case in which the court might commit an offender to the state prison, the reformatory for women, any jail or house of correction, the Massachusetts reformatory, the state farm, the industrial school for boys, the industrial school for girls, the Lyman school, any county training school, or to the custody of the department of public welfare, for any offense not punishable by death or imprisonment for life, a district attorney, probation officer, or officer of the department of correction, public welfare or mental diseases may file in court an application for the commitment of the defendant in such a case to a department for defective delinquents established under sections one hundred seventeen and one hundred twenty-four. . . . On the filing of such application the court may continue the original case from time to time to await disposition thereof. If, on a hearing on an application for commitment as a defective delinquent, the court finds the defendant to be mentally defective and, after examination into his record, character and personality, that he has shown himself to be an habitual delinquent or shows tendencies toward becoming such and that such delinquency is or may become a menace to the public, and that he is not a proper subject for the schools for the feeble-minded or for commitment as an insane person, the court shall make and record a finding to the effect that the defendant is a defective delinquent and may commit him to such a department for defective delinquents according to his age and sex, as hereinafter provided."<sup>45</sup>

Thus, with this one exception of recidivism or tendencies towards it, the legal definition of a defective delinquent is substantially the same as it was in 1911. Like the New York law, it involves mental status and criminal status, but there is no mention of any age limit.

As a matter of fact, administrative policy at first limited commitments "to cases over 18 and under 25,"<sup>46</sup> and although this ruling has since been relaxed, over half of the defective delinquents newly admitted each year at the State Farm are as a rule in the 14-to-20 age group.<sup>47</sup> Mr. Bates explains this situation by the fact that there are relatively few offenses committed by defective delinquents of middle age in Massachusetts: by that time in their lives, such persons "apparently either die or get comfortably ensconced in an institution of one kind or another. At any rate, they do not bother the community."<sup>48</sup>

<sup>45</sup>*General Laws*, ch. 123, sec. 113 (as amended by *Acts and Resolves of 1928*, ch. 333).

<sup>46</sup>Letter from Mr. Bates, March 21, 1932.

<sup>47</sup>In the year ending September 30, 1925, 57 per cent of the new commitments (25 out of a total of 44) were over 16 and under 21; in the similar period for 1926, 62 per cent (48 out of 77) of new commitments were over 15 and under 21; in 1927, 58 per cent (49 out of 84) were over 16 and under 21; in 1928, 55 per cent (42 out of 76) were over 14 and under 21; in 1929, 49 per cent (34 out of 70) were over 14 and under 21; in 1930, 58 per cent (33 out of 57) were over 14 and under 21. Cf. Commissioner of Correction, *Annual Reports*: 1925, p. 72; 1926, p. 68; 1927, p. 76; 1928, p. 91; 1929, p. 86; 1930, p. 95.

<sup>48</sup>Letter of March 21, 1932.

Criminal status involves the emphasis upon recidivism. A first offender may not be committed as a defective delinquent unless he appears to be a potential repeater, and a dangerous one at that. An offender who already has a delinquency record is, one might say, highly eligible for this type of commitment, which may be made either before or after conviction—in fact, “*at any time prior to the final disposition*” of the case. Always, however, persons accused of an offense punishable by death or life imprisonment are excluded. (In New York, as already noticed, this exception applies to transfers only, not to court commitments.)

Before discussing the factor of mental status, in which we are primarily interested, it will be expedient to outline commitment and transfer procedures as briefly as possible.

Commitment is indefinite,<sup>49</sup> and may be made directly from court or by transfer. When made from court, the procedure is carefully detailed by law, in the clause already quoted. Authority to initiate proceedings is given specifically to several classes of persons, namely, district attorneys, probation officers, officers of the department of correction, officers of the department of public welfare, and officers of the department of mental diseases, any one of whom may file an application for commitment of the individual in question. The court is given wide discretion in the hearing, but there is a proviso for examination:

“No person shall be committed to a department for defective delinquents . . . unless there has been filed with the judge a certificate by two physicians qualified as provided in section fifty-three that such person is mentally defective. . . . The fees of the certifying physicians shall be of the amount and paid in the manner provided for like service in sections three to one hundred and twelve, inclusive.”<sup>50</sup>

The sections referred to are those concerning commitment for insanity, and the clauses governing physicians’ qualifications and fees are as follows:

“No physician shall make a certificate of insanity . . . unless he makes oath that he is a graduate of a legally chartered medical school or college, that he has been in the actual practice of medicine for three years since his graduation and for three years last preceding the making of said oath, and that he is registered as a physician in accordance with chapter one hundred twelve, nor unless his standing, character and professional knowledge of insanity are satisfactory to the judge.”<sup>51</sup>

“. . . The fee for each physician making a certificate shall be four dollars, and twenty cents for each mile traveled one way.”<sup>52</sup>

<sup>49</sup>*General Laws*, ch. 123, sec. 117.

<sup>50</sup>*Ibid.*, sec. 115.

<sup>51</sup>*Ibid.*, sec. 53.

<sup>52</sup>*Ibid.*, sec. 73.

Recalling the New York law on the matter of examinations, we notice at once that only physicians may act as examiners; there is no provision for collaboration by a psychologist. On the other hand, the qualifications for an examiner seem less strict than the New York requirements, under which a doctor cannot serve as an examiner without certifying to his qualifications before a judge in a court of record. Also, the fact that the judge must be satisfied as to an examiner's "standing, character and professional knowledge" is a precaution which cuts both ways—not only may the judge reject unsuitable examiners, but if he chooses he may equally reject or disregard well qualified physicians in favor of one who meets the bare legal requirement. And that requirement is certainly none too high, considering the complexity of the very specialized subject of mental defect and disease and the competence of the average physician. The department of correction attempts to set a good standard for examiners by sending to each court a list "of accredited psychiatrists" whom it (the department) considers competent to serve in the capacity of examiner.<sup>53</sup> The size of the fee is a point to be noted in connection with the influence of expense on the slow growth of court commitments in New York. If examiners in most counties of the latter state were not to be had under a minimum of twenty-five dollars, one wonders about the quality of the psychiatric service obtainable in Massachusetts for four dollars plus traveling expenses. (However, it is possible that psychiatrists connected with mental hospitals are willing to offer their services at the low figure.<sup>54</sup> Yet the statutory provision of a set fee should eliminate uncertainty and unnecessary expense, and should also, if the amount is adequate, secure good service.

Assuming that the examiners bring in a positive report, the judge or justice in the case is the person who has the final say as to whether or not the defendant shall be committed as a defective delinquent, and all commitments are to "be made under an order signed by the justice making it."<sup>55</sup>

Transfers may be made from schools for the feeble-minded, or from any kind of penal or correctional institution—juvenile or adult, state or local. The method is elaborated in detail and we quote first the clause governing transfers from schools for defectives:

"If an inmate of a school for the feeble-minded persistently violates the regulations of the school, or conducts himself so indecently or im-

<sup>53</sup>Bates, "Practical Problems of the Defective Delinquent," reprinted from American Association for the Study of the Feeble-Minded, *Proceedings* (1928); p. 4.

<sup>54</sup>As suggested in memorandum from Mr. Frank Loveland, April 5, 1932.

<sup>55</sup>*General Laws*, ch. 123, sec. 122.



morally, or so grossly misbehaves as to render him an unfit subject for retention therein, the officer in charge shall make a report thereof to one of the judges mentioned [*i. e.*, 'a justice of the superior court, in any county, and either of the judges of probate for Suffolk county, the judge of probate for Nantucket county, or a justice or special justice of a district court, except the municipal court of the city of Boston']. The judge shall make inquiry into the facts and, if satisfied that such inmate is not a fit subject for retention in the school, shall order his removal to a department for defective delinquents, according to his age and sex, as hereinafter provided."<sup>56</sup>

Transfer from a penal or correctional institution involves an examination similar to that for court commitment, so it is not necessary to repeat all of the clause in question:

"If an offender while under commitment to any of the institutions named in the preceding section [*i. e.*, 'the state prison, the reformatory for women, any jail or house of correction, the Massachusetts reformatory, the state farm, the industrial school for boys, the industrial school for girls, the Lyman school, any county training school'] or to the department of public welfare persistently violates the regulations of the institution or department in whose custody he is, or conducts himself so indecently or immorally, or otherwise so grossly misbehaves as to render himself an unfit subject for retention in said institution or by said department, and it appears that such offender is mentally defective . . . and is not a proper subject for a school for the feeble-minded, a physician in attendance at any institution named in the preceding section or a physician employed by said department shall make a report thereof to the officer in charge of said institution or to the director of child guardianship, who shall transmit the same to one of the judges mentioned [see above]. The judge shall make inquiry into the facts and, if satisfied that the offender is mentally defective . . . and not a proper subject for a school for the feeble-minded, shall order his removal to a department for defective delinquents, . . . according to his age and sex as hereinafter provided."<sup>57</sup>

The Massachusetts statute contains no direct interpretation of the term "mental defective," so we are forced to search for one in the policy actually pursued by the state and in the comments of those concerned with working out that policy. In 1925 Sanford Bates, then commissioner of correction for Massachusetts, had this to say about the class of offender to whom the law gives the term "defective delinquent":

"For many years an agitation has persisted for the classification and segregation of a difficult group of mentally inferior criminals. This group does not belong in the prisons or reformatories of the State, as they are not amenable to the discipline of those institutions, and their repeated arrest and conviction for crimes of all sorts indicates delinquent tendencies which are not deterred by ordinary forms of punish-

<sup>56</sup>*Ibid.*, sec. 116.

<sup>57</sup>*Ibid.*, sec. 114.

ment. On the other hand, their presence in the schools for the feeble-minded is a disturbing influence and interferes materially with the proper care of the non-criminal feeble-minded. They are not insane, but are distinctly subnormal mentally.

"A law passed in 1911 labeled this class as 'defective delinquents' . . . ."<sup>58</sup>

Dr. Walter Fernald and other persons interested primarily in the problem presented by difficult cases in the schools for the feeble-minded were among the most active supporters of the 1911 law.<sup>59</sup> But it is evident that, just as in New York, the law was framed in the hope of relieving both the training schools and the peno-correctional institutions:

"The law of 1911 was intended to segregate the defective delinquent for special treatment—to classify, in a group less penal and more remedial in nature than the ordinary prison community, the offender who after careful examination gave evidence of mental defect that had led to criminality. This act was intended to eliminate from the institutions for the feeble-minded the incorrigible and disturbing individuals who made the administration of such institutions so difficult, and to remove from the reformatories and prisons those individuals upon whom, by reason of some mental or constitutional deficiency, prison discipline had . . . ."<sup>60</sup>

Nevertheless, in the beginning the commitment policy emphasized transfers from the training schools:

"It was early recognized by the Department of Correction that in order to keep the atmosphere of a school or remedial institution uppermost in the minds of the inmates and their friends, it was better not to make transfers directly from the prisons or reformatories to this group, and with two exceptions this has not been done. Wherever a case of defective delinquency occurs in a prison, therefore, it is felt to be better to allow the man to be discharged and later be committed to the Department for Defective Delinquents directly by the court."<sup>61</sup>

Furthermore, the schools for the feeble-minded were prepared to make transfers: they habitually studied and classified their charges and knew exactly which individuals to recommend for transfer.<sup>62</sup> The schools were, therefore, the first institutions to be relieved when the new departments for defective delinquents were opened<sup>63</sup>

Thus at the outset, in contrast to developments at Napanoch, we find Massachusetts emphasizing one phase of a dual policy of culling

<sup>58</sup>Commissioner of Correction, *Annual Report* (1925), p. 5.

<sup>59</sup>Letter from Commissioner A. Warren Stearns, January 19, 1932.

<sup>60</sup>Bates, "The Care of Defective Delinquents at Bridgewater, Massachusetts," *Mental Hygiene*, VIII (April, 1924), p. 530.

<sup>61</sup>*Ibid.*, p. 532.

<sup>62</sup>Memorandum from Mr. C. S. Ricker May 2, 1932.

<sup>63</sup>*Ibid.*

incurrigibles out of the training schools and defectives out of the prisons. After the schools for the feeble-minded had transferred their ready and waiting collection of difficult cases and the atmosphere of a training school had been well established in the new Department, transfers from the peno-correctional institutions were permitted in increasing numbers.<sup>64</sup> This second phase developed more rapidly as the penal administrators learned the value of studying their populations, especially the troublesome individuals.<sup>65</sup>

The shift of emphasis shows in the statistics of new commitments to the departments for defective delinquents from 1925 through 1930:

MASSACHUSETTS: COMMITMENTS TO DEPARTMENTS FOR DEFECTIVE DELINQUENTS, STATE FARM, 1925-30

Year Ending Sept. 30	Total New Commitments	From Courts	Total	Transfers			Source: Com- missioner of Correction <i>Annual Reports</i>
				From Adult Peno-Correctional Institutions	From Juve- nile Training Schools	From Schools for the Feeble-minded	
1925	44	26 59%	18 41%	1 6%	6 33%	11 61%	1925, p. 71
				of 18			
1926	78	17 22%	61 78%	15 25%	16 26%	30 49%	1926, p. 68
				of 61			
1927	84	27 32%	57* 68%	17 30%	20 36%	19 34%	1927, p. 75
				of 56			
1928	76	27 36%	49 64%	18 37%	10 20%	21 43%	1928, p. 91
				of 49			
1929	70	40 57%	30 43%	11 36.7%	11 36.7%	8 26.6%	1929, p. 86
				of 30			
1930	57	39 68%	18 32%	10 55%	3 17%	5 28%	1930, p. 94
				of 18			

\*Including 1 committed by Department of Welfare.

<sup>64</sup>Letter from Mr. Bates, March 21, 1932.

<sup>65</sup>Memorandum from Mr. Ricker, May 2, 1932.

The noticeable increase in the total in 1926 is due to the opening of the State Farm's department for defective delinquent women. After 1925 there is a steady increase in the percentage of court commitments and a corresponding drop in transfers. This is important, and indicates increasing familiarity, on the part of the courts, with the whole problem, yet without further data it tells us nothing about the mental types received. Considering transfers only, the percentage received from the schools for the feeble-minded drops from 61 to 28 while the percentage received from juvenile training schools varies, showing no definite trend but wavering from 33 in 1925 to 36.7 in 1929 and 17 in 1930. The percentage of total transfers received from penal and correctional institutions for adults rises enormously, from 6 to 55.

From the following excerpts, there now appears to be a definite feeling that the defective delinquent departments should not be an outlet for the schools, that the prisons are more in need of relief, and that the two transfer types do not mix. The first quotation is from the annual report submitted in 1929 by Dr. William T. Hanson, the medical director of the State Farm, after extensive experience with both the insane and the defective delinquent groups housed there:

"Commitments from the schools for the feeble-minded have dropped off considerably during the year. I firmly believe that we shouldn't get a commitment from any of the schools for the feeble-minded unless the boy or girl has become a serious menace to them. It seems to me that the only thing which should entitle the schools to commit to us, should be a major offense such as, setting fires, vicious assault with the possibility of serious injury or murder, and criminal assaults. It seems to me that the schools would be justified in sending such cases to us as we have stricter measures of discipline and closer confinement."<sup>68</sup>

The second quotation above is from the 1929 *Report* of the Commissioner of Correction, Dr. A. Warren Stearns, and well expresses the difficulties experienced from the beginning because of statutory and financial restrictions:

"The problem of the defective delinquents is one which needs attention. In the beginning it was proposed to segregate certain defective, incorrigible and especially dangerous criminals. As a makeshift, this group was added to the Bridgewater population. The provisions of this law have been so expanded that a considerable part of the population are transfers from the institutions for the feeble-minded. This does not in any sense assist in the control of the type of criminals for which such an institution was originally planned. Neither does it furnish an at-

<sup>68</sup>Cf. Commissioner of Correction, *Annual Report* (1929), p. 90.

mosphere where it seems proper to send dangerous, hardened, defective criminals. I would recommend that no further developments be made for the care of the defective delinquents until there is a more definite plan of procedure."<sup>67</sup>

Fully as important as the debatable point concerning sources of transfer is the matter of mental status. Whether commitment is from court or by transfer, what is the accepted dividing line between normal and subnormal? Is a given degree of intelligence the only criterion, or do abnormal factors—personality defects—enter in? The law says merely that an offender must be "mentally defective." How do the examiners and the courts interpret this phrase?

The psychologist at the State Farm, Mr. C. S. Ricker, informs us that the examiners in most cases of defective delinquency have used the Stanford revision of the Binet-Simon test and have tacitly accepted an intelligence quotient of .75—i. e., a mental age of 12 years—as the dividing line between normal and subnormal.<sup>68</sup> The State Farm staff concurs in this policy.

The average IQ of 538 defective delinquent boys received at the Farm over a period of ten years was 61.4.<sup>69</sup> Over a period of approximately five years, 139 girls admitted to the department for defective delinquents showed an average IQ of 65.8.<sup>70</sup>

We have no exact psychiatric data on the inmates of the two departments at Bridgewater. Mr. Ricker mentions the need for such information in his study of 37 girls paroled.<sup>71</sup> He sends us, however, an illuminating comment:

"We have a goodly proportion of psychopathic personalities in our present group of defective delinquents and they are the most unstable element in the department and constitute our worst behavior problems."<sup>72</sup>

The actual criterion for commitment as a defective delinquent, therefore, so far as mental status is concerned, is an IQ of .75, or mental age below 12 years. We have already noted that in practice (though not by specific statutory instructions) age limits of 14 and 25 are observed, that any transgression of the law short of murder is grounds for commitment, and that there is a tendency (not present in the New York law or practice) to emphasize the element of re-

<sup>67</sup>P. 4.

<sup>68</sup>Memorandum of May 2, 1932, quoting from Mr. Ricker's "Ten-Year Survey of Male Defective Delinquents," a study now in preparation.

<sup>69</sup>Letter from Mr. Ricker, May 16, 1932.

<sup>70</sup>C. S. Ricker, "A Brief Survey of Paroles and Returns Among Female Defective Delinquents," article to appear in *Journal of Juvenile Research*, October, 1932.

<sup>71</sup>*Ibid.*

<sup>72</sup>Memorandum of May 2, 1932.

idivism and to commit without requiring a definite conviction for a crime.

### *In New Jersey*

New Jersey has as yet no specialized institution for defective delinquents, in spite of the fact that classification of offenders has there been carried further than in any other state. The department of institutions and agencies has distinguished six major classes: difficult offenders, better offenders, the incapacitated, the psychotic and epileptic, the feeble-minded, and defective delinquents. The feeble-minded class includes high-grade imbeciles, morons and borderline cases, *all without psychopathic complications*. The defective delinquent class includes (1) cases of *subnormal mentality coupled with mental instability*, or, in other words, feeble-minded cases which are also psychopathic,<sup>73</sup> a group resembling quite closely the majority of the population at Naponoch; and (2) *intelligent offenders of unstable personality*.<sup>74</sup> Psychopathic defect is thus more important as a criterion than is the degree of intelligence.

New Jersey has tried the experiment of transferring simple feeble-minded delinquents from peno-correctional institutions to the state training schools for non-delinquent feeble-minded individuals; and defective delinquents—i. e., unstable, abnormal, feeble-minded offenders—have also been transferred to the state hospitals which treat mental cases.<sup>75</sup> Although some successful adjustments have resulted, the practice has been judged a failure on the whole, in as much as the delinquents usually proved themselves a disturbing element in their new environments.<sup>76</sup> Such being the case, those conversant with the problem have come to the—

“final conclusion that the treatment facilities for the psychopathic delinquent and the special training facilities for the feeble-minded delinquent ought to be provided in a separate institution for the defective

<sup>73</sup>Cf. William J. Ellis, “Classification as the Basis for Rehabilitation of Prisoners,” National Society of Penal Information, *News Bulletin*, II, No. 1 (February, 1931), 7-9; Ellen C. Potter, “The Influence of the Mental Hygiene Movement on Correctional Institutions,” *Prison Journal*, XI, No. 1 (January, 1931), 2.

<sup>74</sup>Letter from Dr. F. Lovell Bixby of the Department of Institutions and Agencies, April 5, 1932.

<sup>75</sup>Cf. Ellis, “Experience in Classifying Defective Delinquents and Some Results Effected by Transfer from Correctional Institutions to Hospitals and Institutions for Feeble-Minded,” reprinted from American Association for the Study of the Feeble-Minded from *Proceedings* (1924).

<sup>76</sup>Letters from Dr. Edgar A. Doll of the Vineland Training School, December 18, 1931, and from Dr. F. Lovell Bixby of the Department of Institutions and Agencies, December 22, 1931.

delinquents of both classes where treatment, training and correction could all be provided under one institutional roof."<sup>77</sup>

The term "psychopathic delinquent" is here used "without reference to intelligence level,"<sup>78</sup> so that the suggested institution would handle not only the two types we have already distinguished, but a third also—psychopathic offenders of average or above-average intelligence.

This conclusion is interesting for two reasons, first, because it recognizes the need for a separate institution in which the simple feeble-minded and the feeble-minded of psychopathic tendencies could be placed, and second, because it suggests that psychopaths who are not feeble-minded should be confined in the same institution. The Napanoch authorities, it will be recalled, strongly disapproved of mixing intelligent psychopaths with defective delinquents. But it is necessary to bear in mind that Napanoch is not a truly flexible institution, since the buildings were inherited and provide at best only three types of housing (cell blocks, dormitories, farm colony).

The combined institution desired by the New Jersey authorities would be highly flexible, with many grades and types of housing from cells to cottage groups, thus making possible extensive segregation within the institution. Under such circumstances it might well be possible in one institution to care for all three types, that is: the simple feeble-minded group, those that were also psychopathic, and, finally, intelligent psychopaths.

The need for a law authorizing indefinite commitment of defective delinquents is felt in New Jersey almost more keenly than the need for a specialized institution. The department of institutions and agencies finds itself seriously handicapped without such authorization, and is constantly faced with the necessity of releasing defectives who are shortly back on a new sentence.<sup>79</sup>

### *The Federal Hospital for Defective Delinquents*

The federal government is now building at Springfield, Missouri, a new institution which it calls a "hospital for defective delinquents," but the term in this case has a much wider meaning than that accorded to it in either New York, Massachusetts or New Jersey. The hospital is designed to care for federal prisoners who are "suffering from tuberculosis and other chronic degenerative diseases," for those who are insane, and those who are psychopathic.<sup>80</sup> The simple feeble-

<sup>77</sup>Letter from Dr. Doll, December 18 1931.

<sup>78</sup>Letter from Dr. Doll, February 13, 1932.

<sup>79</sup>Letter from Dr. Bixby, December 22, 1931.

<sup>80</sup>A. H. McCormick, "The New Federal Hospital for Defective Delin-

minded, as such, are not included in the prospective types to be admitted, since they "do not loom up so prominently as a class" in the federal prison population<sup>81</sup> It remains to be seen, from the actual development of this extremely significant institution, just how many "combination" cases will find their way to it because of the psychopathic symptoms which they display, and how many purely subnormal cases will be transferred because of physical ailments. The emphasis at Springfield will be on physical rather than mental disabilities, but the institution should nevertheless provide some data bearing on the New Jersey proposal to combine types.

The federal project is also interesting in connection with the present discussion because insofar as it includes the actual problem of the defective delinquent it will use what we may call a more strictly medical approach. The grouping of types at Springfield will include very diverse cases which yet have in common the need for special *medical* treatment. The medical aspect will be more prominent than the custodial or the educational. This point was emphasized by Sanford Bates in an interview on November 9, 1931, while it was stated in August of that year that the staff would probably consist of medical officers from the United States Public Health Service, with only a lay administrator representing the Bureau of Prisons.<sup>82</sup>

### *Conclusions*

It is the frequent combination of mental defect with some form of mental disorder or abnormality which makes any attempt at classification and definition a complicated matter. Thus Dr. Doll writes that—

"Our general plan in New Jersey now provides that when an individual presents a combination of one or more abnormalities the individual is classed according to the major defect."<sup>83</sup>

Cases of subnormal mentality without other complications—simple feeble-mindedness—occur among offenders, of course, but they probably do not occur in so great a proportion as combination cases. The figures quoted for 540 cases at Napanoch in 1926 support this tentative conclusion, and Commissioner Thayer has recently stated that not more than 5 or 10 per cent of Napanoch's population today is

quents," National Society of Penal Information, *News Bulletin*, II, No. 4 (August, 1931), p. 3.

<sup>81</sup>Letter from Mr. Bates, March 21, 1932.

<sup>82</sup>MacCormick, *op. cit.*, p. 4.

<sup>83</sup>Letter of December 18, 1931.



of the simple feeble-minded type.<sup>84</sup> Available New Jersey figures are not conclusive, in as much as a study of over two thousand commitments in the approximate period 1928-30 showed 10.5 per cent to the feeble-minded but did not separate the "defective delinquents" from the "difficult" class, the two together constituting 35.5 per cent of the total.<sup>85</sup> No Massachusetts figures are available to show the proportion of Bridgewater commitments which would be classed as simple feeble-minded and the proportion displaying both subnormal and abnormal characteristics.

Our search for a uniform working definition of the term "defective delinquent" has brought out the fact that the phrase was at first—in Massachusetts in 1911 and New York in 1920-21—applied to a group which now is seen to be heterogeneous and capable of further classification into two if not three types—the mentally subnormal or simple feeble-minded, the mentally abnormal or psychoapthic type, and the class in which abnormality and subnormality are combined—the psychopathic feeble-minded.

We may not conclude that it is impossible for the same staff to handle both psychoapthic delinquents of all grades of mentality and subnormal delinquents together advantageously. Such a juxtaposition of cases is likely to occur at Springfield, where transfers will be made upon a basis of physical or mental illness rather than mental ability. Yet those who have had experience at Napanoch advise strongly against it, as does the psychologist of the Massachusetts State Farm:

" . . . there is a grave doubt in my mind as to whether the reaction of the intelligent psychopath to daily contact with the defective delinquent group would not in the long run tend to be more disturbing and increase the instability of the higher group."<sup>86</sup>

## HOUSING, SUPERVISION AND TRAINING OF DEFECTIVE DELINQUENTS

### *Housing*

The design of an institution for defective delinquents should manifestly be related to the type or types received. If, for example, all the inmates were idiots or imbeciles, it would be foolish to house them in tool-proof steel cells set in a concrete cell house and surrounded by a thirty-foot wall. Simple restraints and precautions would be sufficient to prevent escape. But institutions for defective

<sup>84</sup>Letter of December 22, 1931.

<sup>85</sup>Potter, *loc. cit.*

<sup>86</sup>C. S. Ricker, memorandum of May 2, 1932.

delinquents should not take idiots or imbeciles. Such an institution is likely to contain the three groups already mentioned namely, the simple feeble-minded above the grade of idiots and imbeciles, the psychopath of low mentality and (possibly) the intelligent psychopath. How should these different groups be housed? It will be illuminating to review the existing facilities for the housing of defective delinquents in New York, Massachusetts and New Jersey, and also to consider any new facilities contemplated or advocated in these states, as well as the federal hospital now building.

Napanoch is located on a 350-acre tract of which 148 acres are farm land; it rents another farm of 175 acres.<sup>87</sup> "The institution was built in 1895 as a prison but was turned over to the reformatory department, a branch of Elmira."<sup>88</sup> The buildings which it inherited in 1921 in its new capacity as Institution for Defective Delinquents were therefore of the Bastille type, with the two central-block cell houses and the administration building forming one massive stone structure flanked by walls. Dormitories were established later, in sections of the hospital building,<sup>89</sup> and a farm colony three miles away from the institution proper houses a group of parole prospects.<sup>90</sup> These three types of housing offer, roughly speaking, three degrees of security—maximum, medium and minimum. But the accommodations are not highly adaptable to the shifting needs of different groups of the population; there are too many cells in proportion to dormitory and colony space, and no single rooms of medium-security construction.

Commissioner Thayer, who knows Napanoch's needs intimately, has frequently expressed his ideas on the subject of proper housing for defective delinquents:

"Cellular confinement is necessary for a certain number. There should also be graded houses, and the men should be promoted from one house to another . . . an individual may need cellular housing at first, and after he has shown a disposition to adjust himself there, can be promoted to a congregate dormitory type of housing, going on through two or three different dormitory grades. Eventually I would give him a room by himself, and require him of course to show himself by his conduct worthy of having that privilege.

"Napanoch . . . had a pre-parole group on a colony dairy farm about three miles away from the institution. There the environment was much the same as in any American farm home. The men came in once

<sup>87</sup>*Handbook of American Prisons and Reformatories: 1929*, p. 696.

<sup>88</sup>*Ibid.*, p. 695.

<sup>89</sup>Institution for Defective Delinquents, *5th Annual Report (1927)*, p. 8. For photographs of main building and shops, cf. *3 Annual Report (1925)*.

<sup>90</sup>Thayer, "Institutions for Defective Delinquents," pp. 7-8.

a week, on Saturday, for their recreation and for a bath and clean clothing, and could stay over till Monday if they cared to, so as to attend church."<sup>91</sup>

In a recent letter to the author, Dr. Thayer has this to say about the new institution for which provision was made in January, 1932:

"... the new Institution for Defective Delinquents which is on the program for Construction during the coming year will be built, we hope, in a County adjoining that in which the original Institution for this class is located. So far, at least, our plan is to have all commitments made directly to the parent Institution at Napanoch and classify these individuals at that place. The new Institution will be of a much lower grade of security than the old, and the plan comprehends housing at the new site the very low grade defective delinquent who does not need the prison type of housing and the higher grade more stable individual who will probably be definitely on the road toward parole."<sup>92</sup>

The Institution for Defective Delinquent Women is established at the former Albion State Training School, which was originally called the Western House of Refuge for Women. The institution owns 92 acres of land, including a farm;<sup>93</sup> it is built on the cottage plan and is unwallled, although the grounds are fenced.<sup>94</sup> The 1932 Legislature has authorized the construction of two new buildings, one for segregation purposes and one in which will be combined the administration, reception and hospital functions.<sup>95</sup> This will release for other purposes the present hospital, administration and reception buildings. Albion may thus be said to offer minimum-security housing.

The Massachusetts institutional facilities for the care of defective delinquents take the form of two departments, one for male and one for female offenders, located at the State Farm at Bridgewater. This is in strict accordance with the statute, which does not authorize a separate institution but merely says that—

"At the Massachusetts reformatory, the state farm or such other place as may be approved by the governor and council, there may be maintained departments to be termed departments for defective delinquents, for the custody of persons committed thereto . . . ."<sup>96</sup>

The State Farm houses a very heterogeneous population: prisoners transferred from state and local institutions, misdemeanants sentenced direct from court, paupers, defective delinquents, criminal in-

<sup>91</sup>*Ibid.*, p. 8.

<sup>92</sup>Letter of March 3, 1932.

<sup>93</sup>Albion State Training School, *32nd Annual Report of the Board of Managers* (1926), p. 4.

<sup>94</sup>*Ibid.*, p. 5.

<sup>95</sup>Senate Bill No. 59, sec. 20.

<sup>96</sup>*General Laws*, ch. 123, sec. 117.

sane (the Bridgewater State Hospital is part of the institution), drug addicts and inebriates on both voluntary and involuntary commitments. Nevertheless, the two departments for defective delinquents "are insulated from the rest of the institution, and they come very near to being separate institutions."<sup>97</sup>

The Farm as a whole is not walled, and the defective groups are not trusted upon it, but are kept within their respective departmental enclosures, which are relatively small. The boys' department occupies about 4 acres, while the girls have almost 10 acres. The acreage of the entire Farm is 1428.<sup>98</sup> The superintendent's report for 1928 mentions the desirability of enclosing enough land to give the male group farm work.<sup>99</sup> The defective girls have a vegetable garden within the walls of their department.<sup>100</sup>

The buildings are of medium-security type, since the quarters consist of rooms, not cells, and yet are surrounded by walls.<sup>101</sup> The only classification which appears to be possible within the defective delinquent group as a whole is the separation of men and women. Beyond that the construction prevents any further grouping. The men's quarters were originally a part of the State Farm's prison buildings, which, being unoccupied at the time the department was started, were "partitioned off" for the use of the defectives.<sup>102</sup> The women's quarters consist of a remodeled building formerly used for almshouse patients,<sup>103</sup> and are separated from the other units of the Farm; there are 102 outside rooms opening onto wide corridors.<sup>104</sup>

Massachusetts authorities have never, of course, considered the State Farm facilities for defective delinquents ideal. The arrangement was something of a makeshift to begin with and the growth of the two departments has rendered conditions less and less desirable through overcrowding. Commissioner Stearns has given us a general outline of the kind of institution he would like to have instead:

"If I could start fresh and had plenty of money I would build a new institution for defective delinquents, modeled after the institutions for the feeble-minded, but involving greater facilities for security. I do not believe any specialized work is suitable for this group, but think the ordinary occupations of an institution for the feeble-minded (perhaps extending some of their industries a little) would be best."<sup>105</sup>

<sup>97</sup>Letter from Mr. Bates, March 21, 1932.

<sup>98</sup>Memorandum from Mr. Ricker.

<sup>99</sup>Cf. Commissioner of Correction, *Annual Report* (1928), p. 79.

<sup>100</sup>*Ibid.*

<sup>101</sup>Bates, "Care of Defective Delinquents," p. 531.

<sup>102</sup>Commissioner of Correction, *Annual Report* (1925), pp. 4, 62.

<sup>103</sup>*Ibid.*, p. 62.

<sup>104</sup>Memorandum from Mr. Ricker, May 2, 1932.

<sup>105</sup>Letter of January 19, 1932.

We must keep in mind, of course, that in Massachusetts "defective delinquent" can mean both subnormal and defective (*i. e.*, subnormal plus abnormal) offenders, and that Bridgewater has received a large proportion of the purely subnormal type.

The unsatisfactory results of the New Jersey experiment in using existing charitable institutions to handle defective and subnormal delinquents (*i. e.*, psychopaths of high- and low-grade mentality, and the simple feeble-minded) has brought the Department of Institutions and Agencies face to face with the need for a specialized institution and a law authorizing indefinite commitment of defective and subnormal delinquents. Dr. Doll is of the opinion that the hospital treatment facilities needed by the defective delinquents and the special training facilities needed by the subnormal delinquents could be provided in one institution assuming flexible housing:

"I think such an institution could provide classification groups with differentiated methods of housing, treatment, training and correctional methods. I think that preferably all types of housing should be provided from minimum through maximum security, with varying degrees in between, and that the type of housing might well vary from the open cottage groups to enclosed cottage groups, to dormitories with minimum supervision, to dormitories with maximum supervision, and to cells of varying degrees of security."<sup>106</sup>

If the subnormal group is to be housed alone, Dr. Bixby has the following recommendations to make:

"I think it is clear that various degrees of security from cells to unenclosed cottages should be provided. I would never recommend dormitories if they could be avoided. Without having made an exhaustive study of the matter, I would guess that the receiving unit of such an institution should be maximum security and you should provide maximum security for at least one-third of the population. Of the other two-thirds, the majority should have what we term medium security with outside rooms equipped with window guards and fairly close supervision inside a stockade fence. The rest could be housed in unenclosed minimum security cottages. It would undoubtedly be desirable to run the housing on a promotional basis."<sup>107</sup>

A certain proportion of the three groups of simple feeble-minded psychopaths of high-grade mentality and psychopaths of low-grade mentality will undoubtedly be collected at the new federal hospital at Springfield. The housing plans are of medium-security type and are based partly on medical distinctions and partly on mental needs, with a considerable degree of flexibility:

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<sup>106</sup>Letter of December 18, 1931.

<sup>107</sup>Letter of December 22, 1931.

"The total bed capacity of the hospital will be 850, divided as follows: insane and psychopathic—500; tubercular—150; chronic medical cases—200. . . . The institution is so laid out as to make it possible to add buildings to any of the three groups, and each of the three groups is distinct from the others, although all will be under the same administrative direction and will be dependent on a centralized system of utilities. . . . All buildings will be connected by a covered passageway which passes through the basement of each and is extended above the ground so as to complete the barrier around the insane group. The institution will be unwallled, but a heavy wire fence will surround the reservation.

"The general design of the buildings for the insane and chronic medical cases is based on that used in the construction of veterans' hospitals. There has been some deviation from these plans, however, in order to meet the peculiar needs of a hospital caring for convicted men. These changes have resulted in an increase in the percentage of single rooms over that characteristic of veterans' hospitals. . . .

"The largest unit in the institution is the group of buildings for insane and psychopathic prisoners. These are arranged in the form of a quadrangle; with the connecting corridors, they form their own barriers against escape. Facing toward the east is the main building, which will contain the administrative services, complete services for diagnosis and treatment, a receiving section, an operating suite and surgical ward, and various departments designed to serve the whole institution. . . .

"Flanking the main building and lying at right angles to it are the Acute Building and the Continued Treatment Building, which are symmetrical in size and external design. The Acute Building will care for 55 patients in single rooms and 120 in wards of various sizes, or a total of 175 patients. The Continued Treatment Building will house 55 prisoners in single rooms and 132 in wards, or a total of 187. Each of these buildings will contain adequate day rooms and glassed-in porches, diet kitchens, small dining rooms for those patients who cannot go to the main dining room, and provisions for occupational therapy. The Acute Building will contain a number of rooms designed with especial attention to the prevention of escapes, but there will be no cells in the institution. Detention steel sash will be used throughout the buildings, with the addition of bars at only a few strategic points.

"At the west end of the quadrangle is a building on the ground floor of which are two dining rooms, seating a total of about 300 patients, and a kitchen which will not only supply these dining rooms but also all buildings of the insane and general medical group. . . . The Tubercular Building will have its own kitchen and dining room.

"Lying parallel to the Acute Building and opposite the dining hall building is the General Medical Building, which will provide for 16 patients in single rooms and 192 in wards of various sizes, or a total of 208. This building will closely resemble the Continued Treatment Building, except for the decreased percentage of single rooms.

". . . the storehouse, laundry, and power plant lie in the rear

of the dining hall building, and necessary farm buildings will be erected on other parts of the reservation . . . ."<sup>108</sup>

We may draw the following general conclusions with respect to housing: Regardless of whether or not psychopaths of high-grade intelligence are included in the group of defective delinquents, maximum security will undoubtedly be needed for a certain proportion of any defective delinquent group, but the necessity for diversified housing by means of medium-security rooms or dormitories and cottage groups and colonies is equally clear. The device of promotion is too valuable to be neglected. The important essential is flexibility, to permit the staff to classify and group and rearrange its charges according to their needs. There is some disagreement as to the advisability of using dormitories, but this does not affect the principle of flexibility and diversification.

### Staff

The staff of an institution is more important than the buildings. Napanoch has been able to function not only as a custodial but as an educational institution, too, in spite of the handicaps imposed by its over-supply of cell blocks and the correspondingly penal atmosphere, because its staff has supplied the necessary medical attitude which considers each inmate as an individual and attempts to fill his peculiar needs.

By law, the superintendent is selected by competitive civil service examination and he

"shall be a well educated physician and a graduate of an incorporated medical college, of at least five years' actual experience in an institution for the care and treatment of mental defectives or of the insane."<sup>109</sup>

According to Thayer, the first assistant must also be "a physician with adequate psychiatric training"<sup>110</sup> There is no statutory provision to this effect, so the requirement must represent a departmental ruling or policy. Other members of the staff include a psychiatrist, a psychologist, a doctor, a trained nurse, an educational director, a superintendent of industries, a farm superintendent, guards, instructors, and a parole officer.<sup>111</sup> The emphasis upon medical and psychiatric training is evident, and to be expected.

<sup>108</sup>MacCormick, *op. cit.*, pp. 3-4. An architect's sketch appears with this article.

<sup>109</sup>*Consolidated Laws*, ch. 43, sec. 432.

<sup>110</sup>"Institutions for Defective Delinquents," p. 6.

<sup>111</sup>*Handbook of American Prisons and Reformatories: 1929*, pp. 696-7; Institution for Defective Delinquents, *5th Annual Report* (1927) p. 17.

The law which changed Albion from a reformatory to an institution for defective delinquents continued the old staff in office,<sup>112</sup> and we have no data on changes or additions which may have been made since July 1, 1931, the date of the new régime.

The Massachusetts statutes do not set forth any qualifications for the superintendent of an institution for defective delinquents. This may be because no separate institution was authorized. No departments have been established at any place except the State Farm, and the superintendent of that institution is responsible for the departments for defectives. Much of this responsibility devolves upon the State Farm's medical director, and the person immediately in charge of the department for male defective delinquents is an officer bearing the title of "supervisor," while a head matron has immediate care of the women's division.<sup>113</sup> The institutional staff includes a psychologist.

We can of course only speculate as to what standards and qualifications would be established for the staff of an institution for defective delinquents in New Jersey. Dr. Bixby says that the staff would certainly include competent psychiatrists but that he is "inclined to think that the program would center about the educational work and that the chief executive officer would be a person of educational bent rather than a psychiatrist."<sup>114</sup> But at the new federal hospital we know that the medical approach will be paramount, no matter how the staff is actually selected:

"While plans for administering the hospital have not yet been completed, it is probable that it will be staffed by medical officers of the United States Public Health Service, which supervises the medical work of all Federal penal institutions. The Bureau of Prisons will undoubtedly be represented by a lay administrator."<sup>115</sup>

To summarize our findings on the matter of staff, it is plain both from experience in existing institutions and from *a priori* reasons that the first requisite for the head of an institution for defectives is good psychiatric training. The superintendent should be a physician of extensive clinical and private experience who has specialized in the study of mental disease and mental defect. He will need assistants with medical training. One will be needed to run the hospital and take care of physical examinations and the general health of the population. Another should fill the post of deputy, or first

<sup>112</sup>*Laws of 1931*, ch. 456.

<sup>113</sup>Memorandum from Mr. Ricker, May 2, 1932.

<sup>114</sup>Letter of April 5, 1932.

<sup>115</sup>MacCormick, *op. cit.*, p. 4.



assistant. The Commission for Mental Defectives, acting as board of managers for Napanoch during its early years, emphasized the reasons for the qualifications of the first assistant:

"A first assistant physician who is an experienced psychiatrist is an immediate need. These cases cannot be classified, paroled or discharged with discretion until their mental characteristics are understood. The medical superintendent [*i. e.*, the superintendent of the institution] cannot undertake this work in addition to his other duties."<sup>116</sup>

A psychologist will be needed to handle the psychometric tests and coöperate with the psychiatric workers. A social service worker to investigate the background of each case is also indispensable. Teachers of both academic and vocational subjects, especially the latter, will be most essential, and also shop foremen.

### *Training*

In the beginning it was not expected that Napanoch would be anything but a custodial institution, a place in which to keep persons who were not safe to be at large, on account of their mental incompetence and criminal habits. The possibility of mental improvement and subsequent release was considered remote. Consequently the educational program, both academic and vocational, was anything but ambitious in the beginning. In fact, the academic part was completely lacking at the start,<sup>117</sup> and what occupational training there was was rather subordinate to the problem of keeping the men healthily busy.

But even though the intelligence level cannot be raised, experiment has shown that judicious training can form good habits to replace undesirable ones, and can make the most of a man's limited mental endowment, while psychopathic aberrations sometimes disappear entirely with careful treatment. Therefore reëducation now appears more important than it did when Napanoch was started.

The basis of the present occupational program is farm work, which is important because the common labor needed in small-scale farming supplies work for individuals who are not mentally equal to anything else.<sup>118</sup> Those who are somewhat higher in the intelligence scale handle a number of different occupations. The list includes shoe making and repairing; the manufacture of clothing, socks, mittens, caps, rugs, mattresses, toweling, baskets, hampers,

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<sup>116</sup>Institution for Defective Delinquents, *Annual Report* (1923), pp. 3-4.

<sup>117</sup>*Ibid.*, p. 9.

<sup>118</sup>*Ibid.*, p. 7.

brooms, sheet metal products, aluminum ware, concrete blocks; printing, carpentry work, cabinet work, painting, masonry, blacksmithing, road building; laundry work, kitchen work, janitor work.<sup>119</sup>

This list is of rather unexpected variety, and the fact that Napanoch has been able to develop such a relatively wide range of work is significant. It indicates in the first place that the possibilities of training defective delinquents are greater than one might suppose, and in the second place it suggests the value of variety in any training program. Reëducation of individuals who are at once emotionally unstable and mentally subnormal is necessarily difficult, but if it is to be attempted, the wider the range of available occupations the greater the chances of successful adjustment for each individual.

Academic training is possible on a more restricted scale. Here is Thayer's summary of Napanoch's experience in trying to give its men training that would enable them to maintain themselves in the free world:

"It is rather remarkable what can be accomplished with defective types by careful training. The procedure upon the arrival of an individual required him to undergo a very thorough physical examination and a system of psychometric and educational tests. The social worker was required to make a thorough inquiry into the man's entire life history, going back to the grandfather on both sides. The psychiatrist completed the examination and endeavored to tell us whether or not the man possessed any deviations from the normal [a] side from his subnormality, which was of course his normal condition. [It will be remembered that Napanoch received both defective and subnormal delinquents.] An effort was also made to detect any latent mechanical ability he might possess. As a result of the study, he was assigned to such training—academic, vocational and habit-forming—as seemed advisable, and whenever feasible a goal was set for each case on the basis of any possibilities which had been uncovered.

"We were told at first that there was no use trying any academic educational work. But . . . we established a school and found that there were a great many men who had never reached their educational limit. We were able to teach some illiterates to read and write, and some to do a little figuring, although with others, of course, the instruction had little effect.<sup>120</sup>

Concerning the nature of the training to be attempted at Albion, we have only the following statement by Commissioner Thayer:

"As to the nature of work suitable for defective delinquent women, farm work and the farm colony is considered of the first importance as it provides a very suitable outlet for a great many of the inmates. Con-

<sup>119</sup>Idem, *5th Annual Report* (1927), pp. 7-8; Thayer, *op. cit.*, pp. 8-9.

<sup>120</sup>*Ibid.*, p. 8.

siderable can be done in connection with training for domestic work, house cleaning, scrubbing, washing dishes, and in some cases, kitchen and cooking work, depending, of course, upon the ability of the inmates."<sup>121</sup>

Presumably the program will follow the general lines here laid down by Dr. Thayer. We know that the training school did its own laundry work, and had a sewing room and an arts and crafts department<sup>122</sup>

The types of work at the Massachusetts institution may be summarized quite briefly. In 1924 the defective boys were doing shoe-making, cabinet making, carpentry and weaving. A few had been taken out onto the farm, under close supervision. Work in the dining room was available for still others.<sup>123</sup> Six years later the superintendent reported that the "general lines of industry" had not been changed.<sup>124</sup> Most of the women do laundry work including that for the State Sanatorium at Lakeville. Some learn arts and crafts such as basketry, beadwork and rug making.<sup>125</sup> The rest grow flowers and vegetables and do sewing and housework.<sup>126</sup> The psychologist states that the staff is considering the possibility of providing university extension correspondence courses in some of the simpler trades.<sup>127</sup>

Academic training at Bridgewater "is limited to part-time grade-school work," but physical education occupies an important place in the régime for both men and women.<sup>128</sup>

Lacking a special institution, New Jersey (as has been pointed out) tried some extremely interesting transfer experiments between correctional institutions and the state's charitable institutions for non-delinquent feeble-minded and those for persons suffering from mental disease and abnormalities. Psychopathic delinquents were given the benefit of treatment in the state mental hospitals and those who were merely subnormal were given the training offered by the schools for the feeble-minded. Low-grade psychopaths who showed improvement under the hospital treatment were sometimes transferred to the training schools. But in spite of success in some cases, failures were frequent:

"The delinquent group when transferred to the charitable institutions are prone to display delinquent tendencies through unruly conduct, sex offenses and attempts to run away in nearly half of the cases studied.

<sup>121</sup>Letter of December 22, 1931.

<sup>122</sup>Albion State Training School, *op. cit.*, pp. 4, 10-11

<sup>123</sup>Bates, "Care of Defective Delinquents," p. 532.

<sup>124</sup>Cf. Commissioner of Correction, *Annual Report* (1930), p. 83.

<sup>125</sup>Idem, *Annual Report* (1928), pp. 79-80.

<sup>126</sup>Idem, *Annual Report* (1930), p. 83.

<sup>127</sup>Memorandum from Mr. Ricker, May 2, 1932.

<sup>128</sup>*Ibid.*

This occurs in spite of the care with which the classification was made, and in spite of the fact that an effort is made to send the unstable cases to the hospitals for treatment of instability before commitment to the institution . . . for the feeble-minded."<sup>129</sup>

Dr. Bixby further explains the reasons for the failure, in the case of the feeble-minded:

" . . . after several years' experience with this plan it has been definitely given up except in exceptional cases. For some reason the simple feeble-minded who have had the police station, county jail, and brief correctional institution period do not make a good adjustment with a non-criminal group. Apparently, they develop attitudes and ways of thinking which make them troublesome among the suggestible inmates who have never had the privilege of criminal incarceration. This was as true with the youngsters transferred from Jamesburg to the Vineland Training School as with the older men who were transferred to New Lisbon. It is a curious phenomenon. For example, if you were to study our feeble-minded group at the Leesburg farm, and our group at New Lisbon in their native haunts, you would say there is no reason why they should not be put together with perfect amalgamation. When you try it, it does not work. For that reason, I am in favor of the complete separation of the criminal and non-criminal feeble-minded always providing for the special disposition in individual cases."<sup>130</sup>

To give details of supervision and training accorded defective delinquents and subnormal delinquents when transferred to the charitable institutions would mean describing the set-up and régime of the New Jersey state hospitals and training schools, and that would be beyond the scope of this paper.

The whole prospective régime of the new federal project is that of a hospital rather than of a training school, in accordance with the name of the institution and the standards of transfer. A training program designed to fit patients to hold their own in free life will undoubtedly be worked out but the lack of the indefinite commitment feature, coupled with the state of health of the prisoners when received, may make any extensive training difficult to carry out. Full medical care and ample therapeutic work will, of course, be provided.

To sum up: Considerable occupational training and some academic work are attempted in New York institutions for defective delinquents. In Massachusetts training is chiefly occupational. Farming seems to be a basic occupation. That is because small-scale farming offers many occupations which can be done by individuals of low

<sup>129</sup>William J. Ellis, "Experience in Classifying Defective Delinquents," p. 16.

<sup>130</sup>Letter of December 22, 1931.

intelligence under supervision, and because a farm offers scope for the activities of those inmates who can be trusted outside a wall or stockade, notably the colony groups. Napanoch's experience proves that a large part of the maintenance work can be done by inmates, although office work and record keeping should be in the hands of civil employees. Industries for both home and outside consumption are equally feasible, and it is not necessary to repeat here the list of jobs detailed in the descriptions of Napanoch and Bridgewater. Schooling is important in order to make sure that each individual gets as much book knowledge as he is able to assimilate. Illiteracy is a handicap which need not necessarily be carried by every defective.

#### THE QUESTION OF RELEASE FROM INSTITUTIONS FOR DEFECTIVE DELINQUENTS: LAW AND PRACTICE

An institution for defective delinquents may conceivably be custodial, or a training school, or both. If commitments are completely indefinite and the institution is considered custodial only, it undertakes, in effect, to care for its inmates for life. If training is held to be its purpose, it will attempt to fit its charges for return to the free world eventually. If its function is conceived as two-fold, it will do its best to train and educate the promising cases and will be prepared to retain the unpromising ones as long as they live. Again we turn to current practice in New York and Massachusetts for light on the various questions which arise in any discussion of release.

##### *In New York*

It will be recalled that inmates may now be received at Napanoch and Albion in either of two ways: (1) by direct and indefinite commitment from court, and (2) by transfer, on definite commitment, from a penal or correctional institution; formerly Napanoch and the division (now discontinued) for defectives at Bedford Hills could receive individuals by a third method, namely, (3) by transfer, on indefinite commitment, from state schools for mental defectives.

An individual transferred from a penal or correctional institution may be (and usually is) recommitted indefinitely at the expiration of his original sentence. Thus we may say that almost all persons committed to a New York institution for defective delinquents *may be* held for life. If not detained for life, an individual may leave the institution in any one of the following ways: (1) court order in

habeas corpus proceedings; (2) discharge by the superintendent; (3) retransfer to a peno-correctional institution or a state training school; (4) transfer to a training school; (5) parole.

What, then, is the state policy about release? Are Napanoch and Albion regarded as "end-of-the-road" institutions, in which to segregate permanently defectives of incurable criminal tendencies? Or are individuals sometimes released? Practice at Napanoch will serve as illustration, since data on the operation of the new institution for women and the former women's division at Bedford Hills are scarce.

Discharge upon a court order may follow if habeas corpus proceedings are instituted in an attempt to prove that an individual has been wrongly committed.

The law gives the superintendent power to discharge any inmate outright, with the approval of the commissioner of correction,<sup>131</sup> but subject to the exception that no man committed on definite sentence (*i. e.*, received by transfer from a peno-correctional institution) may be discharged before his original sentence expires, at which time he may be either discharged or recommitted as the superintendent thinks best—assuming that the mental examiners and the judge agree with the superintendent if the latter applies for recommitment. A man may be discharged, even though definitely defective, if the superintendent considers him "reasonably safe to be at large," and if he has relatives or friends "able and willing to comfortably maintain him, without further public charge. . . ."<sup>132</sup>

In practice, outright discharge of properly diagnosed cases was not used during Thayer's term as Superintendent:

"We never discharged a case. We fixed the parole period at what we thought the individual needed and told the man that he would be required to report as frequently as we desired, for as long as we desired, after which, if we were convinced he had done what was right and was going to keep on, he need report no longer. 'But,' we said, 'that doesn't mean you are discharged from the books. We will go and get you ten years later, if it is necessary; if you get into trouble, we will bring you back on this old commitment without any further court procedure.'"<sup>133</sup>

A prisoner received directly from court and found to be unsuitable may be discharged by the following procedure:

"If an inmate of such institution at Napanoch was received therein otherwise than by transfer from a state prison, penitentiary, reformatory or any penal or correctional institution, but was, at the time of his ad-

<sup>131</sup>*Consolidated Laws*, ch. 43, sec. 441.

<sup>132</sup>*Ibid.*

<sup>133</sup>"Institutions for Defective Delinquents," p. 10.

mission, held upon an order of a court or judge in a criminal proceeding, and it be found that his confinement in an institution for mental defectives is unsuitable and the commissioner of correction shall so certify in writing to such court or judge making such order, and if he be not discharged thereon, or be not otherwise disposed of on such certificate within fifteen days after the service thereof, either personally or by mail upon such court or judge, then the commissioner of correction may direct the discharge of such inmate from such institution at Napanock, and his return to the officer from whom last received or to the sheriff of the county in which such court was held or such order was made and such inmate shall not be again returned to such institution at Napanoch."<sup>134</sup>

This clause covers all direct commitments, including cases committed (under the old law) before conviction, of which some still remain at Napanoch.

The institution may also, by means of retransfer, get rid of unsuitable cases received from another institution—including cases which become unsuitable at some time subsequent to the transfer.<sup>135</sup>

Discharge by means of transfer to an institution for defectives—i. e., non-criminal defectives—is possible, according to the statute:

"Any such prisoner in such institution, whose term of imprisonment has expired by commutation or otherwise, and who is still a mental defective, may, upon an order of the commissioner of correction and with the consent of the commissioner of mental hygiene, be transferred to any institution for mental defectives."<sup>136</sup>

There is no mention of further court proceedings in such cases, although one would expect that some process similar to the recommitment procedure would be necessary. Commissioner Thayer writes that this method of discharge is used "rarely, if ever."<sup>137</sup>

Transfer to a peno-correctional institution of inmates received on direct commitment or on transfer from a state school is not provided for. Nor did the original statute make specific provision for inmates who developed insanity.<sup>138</sup> As Thayer remarked in his first report, "the general Mental Deficiency Law provides that no insane person should be retained in custody in an institution for defectives,"<sup>139</sup> and he accordingly suggested that the statute be amended to cover the point in question. A reading of the present law discloses no amendment. The logical disposition of such cases would be transfer to one of the hospitals for the criminal insane, and in

<sup>134</sup>*Consolidated Laws*, ch. 43, sec. 442.

<sup>135</sup>*Ibid.*

<sup>136</sup>*Ibid.*, sec. 441.

<sup>137</sup>Letter of March 3, 1932.

<sup>138</sup>Institution for Defective Delinquents, *Annual Report* (1923), p. 10.

<sup>139</sup>*Ibid.*

several instances this was done, either with or without specific legal instructions.<sup>140</sup>

Contrary to general expectations, parole has been used quite extensively. In the beginning there was some question concerning parole jurisdiction over cases transferred from penal or correctional institutions,<sup>141</sup> but the matter was settled by the Attorney General, who decided that the Napanoch board of managers and not the state board of parole had control of such cases, as of those committed directly.<sup>142</sup> When the institution passed into the hands of the department of correction, parole authority was given to the superintendent, subject to regulations prescribed by the commissioner of correction.<sup>143</sup> Actually, this means that "while the Superintendent and his staff . . . select the prospective parolees, the Commissioner of Correction is required to pass on their recommendations."<sup>144</sup> The new full-time state parole board handles cases from the prisons and from Elmira Reformatory, but not from Napanoch or Albion.<sup>145</sup>

Eligibility for parole is restricted so that all inmates, whether received directly or on transfer, must serve at least as much time before parole as the minimum they would have served if committed to another penal or correctional institution for the same offense:

"An inmate who has been arraigned, convicted or in custody on a criminal charge shall not be paroled before he might have been paroled from another institution, if any, to which he was originally committed or before he would have been paroled if he had been committed to a reformatory or correctional institution under a similar charge."<sup>146</sup>

The law is framed to include all individuals who may be in Napanoch at present, even though only convicted men are now sent there.

Not until 1925 did the institution succeed in getting the legislature to authorize a parole officer; before then the Commission for Mental Defectives used its own agents, who already had other work of their own.<sup>147</sup> Inmates are paroled to the custody of parents, relatives and legal guardians, and if someone other than a parent has custody, he must be of the same religious faith as the parolee.<sup>148</sup> Parole may be terminated and the individual recalled at any time, on

<sup>140</sup>*Ibid.*, p. 12; *2nd Annual Report* (1924), p. 19.

<sup>141</sup>*Idem*, *Annual Report* (1923), p. 10.

<sup>142</sup>State Commission of Prisons. *29th Annual Report* (1923). p. 134.

<sup>143</sup>*Consolidated Laws*, ch. 43, sec. 445.

<sup>144</sup>Thayer, *op. cit.*, p. 6.

<sup>145</sup>*Laws of 1930*, ch. 824.

<sup>146</sup>*Consolidated Laws*, ch. 43, sec. 445.

<sup>147</sup>Institution for Defective Delinquents, *Annual Report* (1924), p. 6; *ibid.* (1926), p. 14.

<sup>148</sup>*Consolidated Laws*, ch. 43, sec. 445.



satisfactory evidence. But inasmuch as men are very carefully selected, success has been quite good. We quote Dr. Thayer's account of the methods he developed:

"It was freely prophesied that we would never be able to parole or release one of our men, but we established a parole system which possessed some unique advantages. In the first place, the selections were made only after a careful study of the individual cases, and good conduct while in the institution was not enough to make a man eligible for parole; he must first have shown signs of developing responsibility and ability to cope with outside life. There are certain men inside prison walls who get on well there. There are certain individuals in hospitals for the insane who recover their sanity because they are relieved of the stress and trouble and complexities of ordinary life. With housing, food, clothing, care and recreation supplied, they function; but back in the community and in competition with others who are better equipped, they break. So we endeavored to select only those individuals who would be able to stand on their own feet when they got out. The environment to which each man was to go was subjected to a careful survey to make sure, if possible, that he could succeed in it. The work to which he was released was subjected to the same tests, since we felt that many times these men became delinquent because of the wrong occupational environment. It was important that they should be sent to jobs in which they could function successfully. Almost every one of them had complexes of failure; they had failed in everything they had tackled in their lives, and they never took up a new task without the thought in the back of their heads that they were going to fail. It was necessary to recreate within them a feeling of self respect by teaching them something to do, something to accomplish, something they could themselves respect. . . .

"The Napanoch parole system has been functioning now for about eight years. A survey reveals that between 67 and 70 per cent of the men, over a period of seven years, did not get into trouble again."<sup>149</sup>

Between June, 1921, and January, 1928, about 1400 cases were received at Napanoch and about 800 were "paroled or discharged"<sup>150</sup> discharged presumably by retransfer or return to court, since Thayer has elsewhere stated that it was not his policy to discharge outright.<sup>151</sup> He does not say how many of the 800 cases were paroles and how many were discharges.

The farm colony plays a most important part in selecting men for parole:

"A period of observation under almost ordinary civil conditions before release on parole is most desirable with this group and would, in fact, be a splendid thing with any pre-parole group. This is provided at Napanoch to a certain limited extent by the farm colony, distant three

<sup>149</sup>"Institutions for Defective Delinquents," pp. 9-10.

<sup>150</sup>Thayer, "Six Years' Experience with the Defective Delinquent," p. 10.

<sup>151</sup>Cf. above, p. 43.

miles from the institution. The colony group operates a dairy farm and visits the institution on Saturday only, for a bath, clean clothing, etc., . . . life is similar to that on any ordinary farm. Unfortunately, we have but the one colony and so are unable to pass all of our parolees through the colony period. We feel, however, that a larger percentage of parole success is achieved with these men than is experienced with those who do not have the colony training."<sup>152</sup>

### *In Massachusetts*

The discussion of commitment procedure in Massachusetts has already brought out the fact that defective delinquents may be received at Bridgewater in three ways: (1) by direct commitment; (2) by transfer from training schools for the feeble-minded; (3) by transfer from peno-correctional institutions, juvenile or adult. All commitments are completely indefinite, so that it is possible to hold individuals for life. There are at present only two ways in which an inmate may be discharged; (1) discharge by court order, and (2) parole. Transfer and retransfer to other institutions are not mentioned in the statute.

It is impossible for the State Farm's department for defective delinquents to discharge inmates outright, on its own authority.<sup>153</sup> The only means of discharging inmates is to parole them and after a period of time to withdraw parole supervision, or else to procure a discharge by court order, which is a slow and troublesome process:

"Any person may apply at any time to the justice of the district court in whose jurisdiction a department for defective delinquents . . . is located, for the discharge of any inmate of said department. A hearing shall thereupon be held, of which notice shall be given to the applicant and to the person in charge of the institution where the inmate is confined. If after the hearing the justice shall find that it is probable that the inmate can be allowed to be at large without serious injury to himself, or damage or injury to others, he may order the person having custody of said inmate to parole him. Further application for the inmate's discharge shall be suspended for one year from the date of his parole. If, at any time prior to the expiration of said year, the justice of the court where the application was filed shall be satisfied that the best interests of said inmate, or of the public, require the recall of the inmate from parole, he may authorize the person having custody of the inmate to so recall him. If an application is denied, a new application shall not be made within one year after the date of the order denying the previous application. If at the end of said year the justice shall find that said inmate can be allowed to be permanently at large without serious injury to himself, or damage or injury or annoyance to others,

<sup>152</sup>"Six Years' Experience with the Defective Delinquent," p. 11.

<sup>153</sup>Letter from Commissioner Stearns, January 19, 1932.

he may order the person having custody of said inmate to discharge him. If a person discharged under this section is found by any court to have committed, after his discharge, any offense against the laws of the commonwealth, said court may commit such person to a department for defective delinquents . . . without the certificate of any physician."<sup>154</sup>

This means that the department has difficulty in getting rid of cases wrongly diagnosed, whether they come to it directly from court, from a school for the feeble-minded, or from a peno-correctional institution. It has been suggested by a staff member that the authority to discharge inmates would be desirable,<sup>155</sup> but Mr. Bates feels that the public interest is safeguarded more carefully by keeping the discharge power in the hands of the court.<sup>156</sup> The interests of the offender are safeguarded, of course, by the fact that commitments are subject to review.

Parole is in the hands of the regular board of parole for penal institutions, and the board's judgment in cases of defective delinquents is hedged about by no special restrictions:

"The board of parole of the department of correction may parole inmates of the departments for defective delinquents . . . on such conditions as it deems best, and may at any time during the parole period recall to the institution any inmate paroled."<sup>157</sup>

The board makes a practice of not paroling defectives unless the State Farm officials approve,<sup>158</sup> but this does not mean that the board accepts the staff's recommendations without question. The supervisor of the boys, the matron in charge of the girls, and the medical director select cases to recommend for the board's consideration. Bates has summed up the basis of parole in these words:

". . . parole from this institution is not a matter of right or favor, but is dependent solely upon the condition of the inmate and the probability of his succeeding outside. At the same time hope is held out to every inmate that if he succeeds in improving himself, he may yet be given another chance outside. Undoubtedly there may be some who will always be custodial cases."<sup>159</sup>

Elsewhere he states the reason underlying the parole provisions:

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<sup>154</sup>*General Laws*, ch. 123, sec. 119. Probate courts may discharge under the provisions of Sec. 89-A. There has been one case of an inmate paroled and eventually discharged by a justice of the state Supreme Court. (Cf. memorandum from Mr. Ricker, May 2, 1932).

<sup>155</sup>Cf. Commissioner of Correction, *Annual Report* (1930), p. 94.

<sup>156</sup>Letter of March 21, 1932.

<sup>157</sup>*General Laws*, ch. 123, sec. 118.

<sup>158</sup>Bates, "The Care of Defective Delinquents," p. 533.

<sup>159</sup>*Ibid.*

"We cannot be sure enough of our ground to say that a boy or girl once committed as a defective delinquent can never improve or can never afterwards succeed in the community. Therefore, a properly-guarded parole system, based upon the doctor's diagnosis, would be a part of any scheme for handling defective delinquents."<sup>160</sup>

From 1922 to 1932 there were 226 paroles out of a total of 548 boys admitted; returns from parole numbered 66.<sup>161</sup> From August, 1926, up to March, 1931, 141 girls were admitted, 37 were paroled, and 8 were returned.<sup>162</sup> These figures indicate success with about 73 per cent of the boys and 78 per cent of the girls. Even when allowance is made for the fact that at first paroles were frequently used to correct mistaken diagnoses,<sup>163</sup> a fair degree of success is indicated. Boys on parole are supervised by the agent for their division;<sup>164</sup> the girls are supervised by the Department of Correction's regular women parole agents.<sup>165</sup> All parole work is guided by the Deputy Commissioner of Correction in charge of paroles.<sup>166</sup> The majority of those paroled—as of those committed—are boys.

### Summary

Institutions for defective delinquents in both New York and Massachusetts combine the custodial function with that of training, and differentiate among their inmates according to the possibilities in each case. In both states parole is used to an extent not anticipated when the institutions were organized, and selection for parole is in the hands of the institutional staff; but staff recommendations must be passed upon by the Commissioner of Correction in New York and the regular board of parole in Massachusetts. In each state the paroling authority can revoke parole at any time it sees fit to do so. Both Bridgewater and Napanoch handle their own parole supervision.

In New York the institutional authorities may discharge a case outright even though the individual is undoubtedly defective, provided they think he is not likely to cause trouble. They do not make a practice of granting discharges, however, except in cases of mistaken diagnosis; parole is used in preference to discharge, so that in the event of further trouble a former inmate may be returned without

<sup>160</sup>"Practical Problems of the Defective Delinquent," p. 6.

<sup>161</sup>Letter from Mr. Ricker, May 16, 1932.

<sup>162</sup>"A Brief Survey of Paroles and Returns Among Female Defective Delinquents," article to appear in *Journal of Juvenile Research*, October, 1932.

<sup>163</sup>Letter from Mr. Bates, March 21, 1932.

<sup>164</sup>Commissioner of Correction, *Annual Report* (1925), p. 76; *ibid.* (1927), p. 66.

<sup>165</sup>Memorandum from Mr. Frank Loveland, April 5, 1932.

<sup>166</sup>*Ibid.*

court proceedings. In Massachusetts the institutional authorities lack the power to discharge outright, but must use the roundabout method of obtaining a court order, with the result that they are put to some trouble to get rid of cases wrongly diagnosed.

Experience in both New York and Massachusetts indicates that a system of parole carefully worked out and carefully administered is an integral part of an institution for defective delinquents. The New Jersey authorities "favor parole as the natural method of release."<sup>187</sup> There is disagreement, however, over granting the institutional staff the power to discharge cases outright.

#### POINTS THE LAW SHOULD COVER

The preceding outline of the problem of caring for defective delinquents has brought out many unsettled or controversial points of policy, and has shown the need for care in framing any law on the subject. A law establishing and regulating an institution for defective delinquents should embody a definite policy carefully thought out and covering many points, the most important of which we shall list briefly.

#### *Definition of "Defective Delinquent"*

The term must be very carefully defined, so that there may be no doubt about the type or types of offenders to be committed. We may roughly outline as follows the types which it seems to us might conceivably be included:

- (1) Intelligent but psychopathic
- (2) Of subnormal intelligence but not psychopathic
- (3) Subnormal and psychopathic
- (4) Extremely subnormal—*i. e.*, with very low-grade intelligence

Whether Group 1 should be included is a question. New York and Massachusetts say no; New Jersey, yes. Groups 2 and 3 are certain to be included. Group 4 should certainly not be included, since such individuals so palpably belong in custodial institutions for the feeble-minded.

In addition, the law should specify:

a) Whether commitment is to depend on conviction of crime or whether defective offenders may be committed merely upon charge or arraignment;

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<sup>187</sup>Letter from Dr. Bixby, April 5, 1932.

b) Whether a previous conviction is necessary before an offender may be committed as a defective delinquent;

c) Whether or not there are any offenses (e. g., murder) which shall preclude commitment as a defective delinquent;

d) Whether or not any age limits are to be set. The use of a maximum age limit is ruled out, it would seem, if commitments are to be indefinite, and it has not been found necessary in either New York or Massachusetts. A minimum age limit of 16 is used in New York and one of 18 is advocated by Sanford Bates, who feels very strongly that mental tests are not reliable enough to warrant our saddling the classification of "defective delinquent" upon anyone younger than that.<sup>168</sup>

### *Function of the Institution*

Next it must be decided whether the function of the institution is to be custodial or educational, or whether it is to combine these purposes. Experience in New York and Massachusetts shows that it should be both custodial and educational.

### *Place of the Institution in the State Administrative Scheme*

An important point connected with function is still being debated: Should an institution for defective delinquents be managed by the correction authorities or the mental hygiene authorities? New York began by giving jurisdiction to a mental hygiene group but later transferred the institution to the correction department. Some experienced Massachusetts officials feel that their group of defective delinquents belongs in the department of mental diseases rather than in the department of correction:

"I still feel that the Defective Delinquent is a mental problem and that this department should be under the jurisdiction of the Department for Mental Diseases. The boys and girls who are committed as defectives are first and foremost feeble-minded, and I believe that delinquencies are due to this fact, plus home conditions and associations. I feel that a school established for defective delinquents would be much more appropriate than an institution for defective delinquents under jail conditions. Such a school could be strong enough to hold these cases, and laws could be established to give them the necessary discipline which is not strict or harsh even under prison conditions."<sup>169</sup>

Mr. Bates expressed a similar opinion some years ago, when he was

<sup>168</sup>Letter of March 21, 1932.

<sup>169</sup>Dr. William T. Hanson, medical director of the State Farm, in his report for 1930; cf. Commissioner of Correction, *Annual Report* (1930), p. 100.

Commissioner of Correction,<sup>170</sup> and he says in a recent letter to the writer that he is still decidedly of the same mind<sup>171</sup> while the federal Bureau of Prisons is now planning to have its hospital for defective delinquents staffed by medical officers from the public health service. In New Jersey one department manages both penal and charitable institutions.

On this phase of the history of Napanoch, a recent letter from Dr. Thayer is interesting:

"In the re-organization of the State under Governor Smith, the first re-action of the Commission having the allocation of Institutions in charge was to place the Napanoch Institution in the Correction Department. It was due to my personal efforts that the Commission finally recommended its placement in Mental Hygiene as I felt that the Prisons had never manifested an intelligent idea of the problem of defective delinquents and that we would have much more sympathetic cooperation from the Department of Mental Hygiene. Later on the State opened the Psychiatric Clinic at Sing Sing and the Prison Department seemed to begin to understand what it was all about. It also developed that under Mental Hygiene there was considerable danger of reduction in salaries, especially salaries of the Guards and Attendants. I felt this would be destructive to the morale of the Institution and would be more detrimental to future development. I, therefore, reversed my former position and succeeded in getting the Institution transferred to the Department of Correction where it has functioned very nicely."<sup>172</sup>

It will be noted that he places great emphasis on the stage of development of the correctional work. His point of view seems to be sound, but it is well to bear in mind that both he and Dr. Kiehl, the preceding Commissioner of Correction, are psychiatrists, and Napanoch might conceivably find its program much hampered under a commissioner differently trained and less sympathetic.

### *Type of Commitment*

Is the commitment to be completely indefinite, as in Massachusetts, or is it to be restricted in some way? In New York, a defective delinquent may be held indefinitely, but may not be discharged or paroled sooner than he could have been discharged or paroled sooner than he could have been discharged or paroled from a peno-correctional institution to which he might have been sent for his offense. In cases of transfer, is the commitment to be automatically changed to an indefinite sentence or is the individual

<sup>170</sup>"Practical Problems of the Defective Delinquent," p. 5.

<sup>171</sup>Dated March 21, 1932.

<sup>172</sup>Letter of March 3, 1932.

to carry with him his original sentence? In the latter event, provision should be made for recommitment.

### *The Commitment Procedure*

The law should specify definitely what persons are to have authority to initiate commitment proceedings (both from court and by transfer).

a) Court commitment procedure should be carefully outlined, from the initial steps through the mental examination, hearings, and final disposition of the case. The law should state whether or not it is mandatory for the judge to commit an offender as a defective delinquent if the mental examination shows that he fails within the legal definition.

b) The law should specify very carefully the necessary qualifications of the examiners, the method of selecting them and the amount they are to be paid. Every precaution should be taken to secure thorough examination by competent persons, in order to safeguard both the prisoner and the public. There seems to be general agreement that one examiner's judgment is not enough—two examiners are necessary. At least one of the two should be a well-trained psychiatrist; the second might advisedly be an experienced clinical psychologist.

c) Transfer procedure and source of transfers: The law must decide whether transfers are to be made from peno-correctional institutions or from institutions for the non-delinquent feeble-minded, or from both. This point is involved in the matter of defining "defective delinquent" in the first place. Then procedure must be outlined and provision made for examination. Retransfer should be allowed, in cases found to be unsuitable.

### *Type of Institution*

This will depend upon the type or types of prospective inmates and upon function. The greater the number of types received, the greater must be the flexibility of the housing units. Considerable flexibility is important in any event, even though but one general type is received, for only through flexible housing arrangements can classification be carried out within the group and individualized treatment secured. Various kinds of housing, from cells to detached colony units, should be provided, making available various degrees of security and featuring the use of promotion as a part of the discipline.



*Staff*

Financial provision for adequate staff is extremely important. Psychiatric training should be emphasized in selecting the head of the institution, and he should be provided with assistants trained in psychiatry, medicine, psychology, case work, vocational methods and teaching.

*Release*

a) Outright discharge: Whether or not this power should be granted to the superintendent in order to care for mistaken diagnoses through return to court is debatable. However, the New York provision that the Commissioner of Correction shall pass upon such discharges seems in that state to constitute a sufficient check on the superintendent's authority, so that there is small chance of a dangerous individual being released just because he is a tractable inmate. Discharge by court order, as in Massachusetts, should certainly be possible, to insure full protection to the individual.

b) Parole: Policy will depend on the function of the institution, whether educational or custodial, which in turn depends largely upon the type or types admitted. If the educational function is stressed, then the principle of parole and future supervision (to be relaxed gradually) is basic. The law should clarify parole provisions and leave no doubt as to who has authority to parole, whether this authority be vested in staff, in a state departmental head, or in a regular board of parole for penal institutions. It might be well to specify that in any case no inmate shall be paroled without approval of the staff, and the staff should be responsible for selecting and supervising parolees, as well as for preparing them. When parole is backed up by the indefinite commitment, defective delinquents can be released conditionally, and returned without further court proceedings if they get into trouble again, a device which seems peculiarly valuable in dealing with defective individuals.