

THE YOUTH CORRECTION AUTHORITY IN THEORY AND PRACTICE

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An objection to this topic might fairly be registered; all of this discussion of the Youth Correction Authority model act must necessarily be theoretical, inasmuch as the plan is as yet nowhere in action. However, I shall endeavor in my article to discuss the proposal from a practical viewpoint, based on many years' experience working for the enactment of laws and observing their operation in many states and in the federal system—laws whose entire purpose like that claimed for the model act is "to protect society more effectively by substituting for retributive punishment, methods of training and treatment directed toward the correction and rehabilitation of young persons" [and older ones too] "found guilty of violation of law."¹

It is the usual thing for those who believe that there are serious practical difficulties inherent in the proposal to start off with the statement that the purposes of the legislation are wholly commendable and in line with those of our improving probation, parole, socialized courts and correctional institutions laws. But the query naturally arises, why not continue to develop and implement these agencies of individual rehabilitation instead of proposing entirely new and conflicting machinery, for that is what the act attempts to do.

What are the practical purposes of the act? As I see it, they are three: (1) To remove the actual sentencing function from the courts, where it has always been, and to give it to a new type of state board to be created.

(2) To confer upon the proposed new board full power of treatment, including investigation and diagnosis, sentence to prison, or any other form of treatment, including "supervision" which is to take the place of probation and parole as now authorized in the laws of nearly all states, and final discharge or termination of treatment, without any of the restrictions now imposed.

(3) To authorize the new board, when and if sufficient funds are made available to it, to establish and operate new institutions and various other facilities of treatment.

Let us examine each of these practical objectives from the point of view of, "will it work?"

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¹ YOUTH CORRECTION AUTHORITY ACT (A. L. I., Official Draft, 1940) §1.

TRANSFER OF THE SENTENCING FUNCTION

The model act would deprive courts of all power to sentence persons under 21, except the most serious offenders requiring life imprisonment or death, and except also minor offenders who may be fined or sent to jail for up to thirty days. What is back of this proposal? The belief, repeatedly expressed by proponents of the act, that the courts are inherently unfit agencies to determine sentence or administer treatment and should be limited to the sole judicial function of deciding guilt or innocence. If that is the purpose, as has been stated, it must be admitted that it is very inconsistently and arbitrarily carried out in selecting this limited though important group for corrective treatment and excluding all others. By making the selection dependent on the extent of the penalty prescribed by law, the act follows the outworn principle of making the punishment or treatment dependent upon the crime, rather than the character and needs of the offender or on the possibility of his reclamation, or on the fundamental need that society be protected from his continued offending. The small but important group of those who may be sentenced for life, varying in size from state to state, is excluded. Everybody knows that "sentenced for life" does not necessarily mean life. The very large group of those whom the judge may fine or send to jail up to 30 days is excluded. Nothing is done for them though they may be potentially serious offenders urgently in need of corrective treatment. These two groups, the possible lifers and the so-called petty offenders, are even excluded, under the express terms of the act, from being given a suspended sentence or probation, although this treatment may have been authorized under previously enacted laws. Instead, what seems to me like a new principle in American jurisprudence is introduced, namely that after conviction of an offender of a lesser crime the judge may "discharge him unconditionally." Nothing of course is done for youths under 16 or for those who have passed their twenty-first birthday, and nothing is done by this act for anybody until he has gone through the criminal mill and stands convicted of a serious crime.

Of course it is frankly stated that the act is experimental, a start in the right direction, with due concession to public attitudes toward serious and older offenders and the danger of overloading a single state authority with too many so-called "petty offenders."

The discussion of this arbitrary and unscientific limitation of cases which the courts are required to turn over to the authority in the comments of the official draft is of interest.² It is admitted that the selection "departs from the fundamental philosophy of the act" and that in certain types of cases, for practical considerations, it is best "to leave with the judge a choice of committing or not." And this rather specious statement follows: "The act as proposed leaves with the trial judges almost exactly the same discretion in the sentence of guilty youths that they possess respecting sentence of adults; the only real change is that when a judge would send an adult to prison or place him on probation he must commit a youth to the Authority." Of course in

² *Id.* at pp. 12-15.

the great majority of serious offenders the only discretion the judge now has is to place on probation or send to a penal or correctional institution. In the youth cases the judge is deprived of all discretion. If the new plan of sentencing is necessary for youth offenders it should be equally necessary for all others. In the opinion of many, if a new youth sentencing board is to be set up, a more desirable method of limiting intake would be to leave the preliminary, exploratory treatment of probation where it now is, with the courts, and trust the judges to the extent of allowing them, after investigation, to select the cases which in their judgment can best be treated by such a board. The plan of leaving probation to the courts was incorporated in the only Youth Correction Authority Act yet passed, that of California,³ and was proposed for acts in Illinois, Pennsylvania, Wisconsin and other states, also in the new proposed Federal Corrections Act,⁴ which also incorporates the principle of discretionary rather than mandatory commitment to a youth board. Both of these departures from the model act, however, are contrary to its theory that sentencing and treatment should be removed entirely from the judges because they are not competent to prescribe treatment. I shall refer again to the status of probation under the proposed act.

Even if we grant, for the purpose of argument, that sentencing should be removed from the courts and that limiting the benefits of the act to a part of the youth group is desirable on the basis that "half a loaf is better than none," it is still necessary to convince ourselves that the proposed sentencing and treatment board will do a better job than existing agencies do or can be made to do. Obviously this is in the realm of speculation, but long experience indicates that a state board appointed by a governor may or may not be as well qualified, or command public confidence to as great an extent, as do the average of judges; depending on whether it is possible to eliminate politics in appointments to the board and establish criteria of training, ability and honesty for the members and staffs who must perform the arduous task of sentencing and controlling the treatment of the youth offenders of an entire state.

The proposed act provides for the appointment of a salaried board of three persons by the governor. It suggests but does not formulate qualifications of the members, but it has so far proved impossible to prescribe such qualifications in a law. Youth Correction Authority bills have been introduced in the legislatures of New York, Rhode Island and elsewhere providing for appointments to the Authority by governors without any effective restriction whatever. Obviously the danger in many states of appointees who are politically but not otherwise qualified, is very great, greater than in the case of judges and many other state boards because admittedly the entire success of this plan is conditioned on two factors: a highly qualified board and a well-trained and adequate staff to carry out its really tremendous responsibilities.

³ Calif. Laws 1941, c. 937.

⁴ *Draft of an Act Recommended by the Committee to Provide a Correctional System for Adult and Youth Offenders Convicted in Courts of the United States*, REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME (1942) 14.

THE DEGREE OF AUTHORITY

This leads to a discussion of the second important objective of the act: to center in the proposed state board full power of determining and supervising treatment and termination of treatment for all youths committed to it. A mere statement of the duties and powers conferred on the proposed board with respect to the youths committed to it, indicates that they are almost unlimited. These are summarized by Leonard V. Harrison, one of the drafting committee, as follows: "Under this plan, the sentence determining function and treatment administration would be consolidated, with undivided responsibility for the diagnosis, specification of treatment, and continuous investigation of the efficacy of treatment applied to each youthful offender from the beginning of the treatment to the end. . . . The powers of the Authority are made commensurate with the responsibilities imposed."⁵ Those powers are judicial, diagnostic and administrative. They involve for all youths in the prescribed group, selection or approval of the place of detention, mental examination and social investigation, periodic re-examinations which must be made at least every two years, power to commit to any institution or to place under supervision before or after commitment (probation or parole), or to use any other form of corrective treatment, control or supervision during treatment, with power of final discharge at any time. The Authority may continue its control without any check whatever until the age of 25 in most cases, and thereafter may continue it for any number of successive five-year periods if the court, after a hearing, approves of each extension of authority. Incidentally, this concession to the wisdom of the court in giving it the power to decide continuances, is rather inconsistent with depriving it of all discretion upon first commitment.

I am not opposed to lodging these powers and duties in some authority. In fact, I think they are all necessary and a part of modern correctional practice. It has been demonstrated that they can be exercised successfully by properly equipped courts and state boards. What I do object to is the placing of all control over individuals in the hands of a single board of uncertain qualifications and equipment, subject only to a limited and deferred right of appeal to the courts. This may bring about uniformity and efficiency, but so does any dictatorship. I believe that experience has shown that discretion as to treatment conferred for different purposes upon several coordinated authorities can bring about unity of treatment with less danger of misuse of arbitrary power over the individual. But of this more later.

The youth offender group will be a large one in every state, even with the limitations imposed, and within it are many of our most difficult and serious criminal cases. The number of new cases to be dealt with under the act in New York State, for example, is estimated at 7,500 each year; in Massachusetts about 3,000. If the period of control averages no more than two years, the entire case load would be twice those figures after two years. Obviously a central board cannot do this work; even the decisions and re-decisions as to treatment of cases will have to be delegated to subordi-

⁵ Harrison, *Preventing Criminal Careers* (Community Service Society of N. Y., 1941) 25.

nates located in all parts of the state. Every one conversant with the facts knows that the failure or inadequacy of probation and parole work today is due almost entirely to two factors: inadequate quality as to training and selection of workers, and inadequate quantity or sufficiency of staffs for thorough individual work. Undoubtedly the Youth Correction Board would be in the same boat unless it could set a new precedent by starting off with a large appropriation and unlimited authority to appoint a large trained staff. We can only judge what is likely to happen in many states from the experience of one, California, where the appropriation made to the Authority is pitifully small. Although the act has been in effect over a year, no real staff has been appointed. As a consequence, the work conferred on the Authority, that of sentencing and controlling treatment of youthful offenders, has scarcely started.

I am sure it is the experience of all administrators that an agency, receiving cases on commitment with full power to control their treatment, must operate through its own staff and agencies. The bill contains the rather naïve provision that the new Authority is authorized "to make use of" existing law enforcement, detention, probation, parole, correctional and other services, institutions and agencies, public and private. This means nothing more than that the cooperation of all these agencies should be sought, but it does not mean that the board has any authority to require or control their work with its cases. In fact, the act expressly states that no control is conferred on the Authority over existing facilities, institutions and agencies. Obviously, probation, parole and other staffs serving under other authorities could investigate or take charge of cases for the new authority only on a cooperative or volunteer basis. They are responsible to the courts or state boards which employ them and are usually overloaded. I predict that further divided responsibility will not prove satisfactory. I believe it is now recognized by the sponsors of the act that to make it work it will be necessary to build up a large separate statewide staff to carry out the extensive and responsible services above outlined. This new state staff will cover the same ground and in many instances perform the same type of work as existing staffs.

In the monograph, "Preventing Criminal Careers," already quoted, Mr. Harrison estimates that the cost for necessary personnel services of a Youth Correction Authority in New York State would be \$1,400,000. This is extremely modest and would provide for less than 700 investigators and case workers for the whole state. As many more would be required to establish and operate the proposed detention centers, camps, farms, hostels and other special institutions, where the personal-service cost would and should be greater than in existing institutions. I believe that greatly increased expenditures for individual treatment are desirable, if not during the war, as soon thereafter as possible; but they should be administered by existing authorities rather than by a competitive, conflicting new authority for one group.

Many of the supporters of the act seem to emphasize the need for more institutional confinement, but it should be realized that for youths under 21 supervision and

guidance in the community through probation or parole should be the major form of treatment. However, in many cases, because of serious and repeated offenses, the result of social and family conditions which we deal with "too little and too late," confinement will be necessary and for some time to come must be in existing institutions. The act makes clear that the new Authority will have no control of treatment in these institutions. It is not so clear who has control over release or subsequent supervision on parole. The attempt has been made to avoid conflict of authority here, but with doubtful success. Youths are committed absolutely to the Youth Authority which may continue its control until 25 or longer. It is authorized to prescribe or change the treatment at any time, to release from institutions and continue supervision afterward. But the kind of institution to which most youths should be sent, the reformatory type, has long exercised the right to train youth within the institution and, under a wholly indeterminate sentence, to determine the time of release and control on parole afterward. Recognizing this, the act provides that in such cases the institution is only required to give reasonable notice of its intention to release. If the Authority and the institution disagree after commitment regarding treatment and release, conflict may well arise.

ESTABLISHING NEW AGENCIES OF TREATMENT

The final purpose of the act is to authorize the new board to establish and operate new agencies of treatment when and if necessary funds are available. The last is a big "if" for so expensive an undertaking as the setting up of a complete new set of institutions for youth. I cannot accept the easy optimism of Judge Ulman⁶ who says, "It (the Authority) is to have at its disposal a graduated series of penological facilities, ranging from the mildest to the most rigorous." If accomplished, this would mean two authorities in the state developing and operating institutions; this looks like competition rather than coordination.

There has been considerable progress in recent years in developing corrective or training institutions for young offenders of both sexes. Our federal minimum security institutions, reformatories and prison camps have led the way. With greater opportunity to experiment, I believe we shall in due time improve on the much-discussed English Borstal system, although the size of the problem and the diversity of jurisdictions make our task much more difficult. Let us have increased appropriations in many states for improving existing institutions and especially for developing the small camp or farm type of institution.

California has made a demonstration which the whole country might well follow in its successful forestry camps for youthful offenders, established and operated by juvenile courts and county probation departments.

CONCERNING PROBATION

Probation officers and judges are naturally very much concerned with the effect of this proposal on the development of probation service. In the courts having the

⁶ Ulman, *Dead-End Justice* (May-June, 1942) 33 J. CRIM. L. & CRIMINOL. 1, 14.

best-organized systems, every youth case is investigated and approximately 50% are placed on probation. Probation and parole, as closely related forms of case supervision and guidance in the community, have in some quarters become and everywhere should become greater factors in preventive, corrective treatment of youth than institutional commitment which, no matter how it may be camouflaged, will always be considered essentially punitive.

The results of probation treatment of youth under the courts are difficult to estimate and statistics vary, but there is evidence enough to convince any fair-minded person that when proper selection of cases is made and real casework supervision attempted, probation gets far better results than any other form of treatment available.

Great progress has been made in developing probation service in this country in recent years. Selection of the officers through civil service or other competitive-examination plan is extending rapidly. Special training and experience are now usually required. Each year new state probation laws are enacted. Statewide, state-administered probation systems have now been established or authorized in 23 states and there are now only five states in the Union without adult probation laws.

In spite of these gains, every one knows that probation service is still an "under-financed moral gesture" in many localities. Not half the area or population of the country is as yet served by competent probation departments. The creation of state-administered probation has made possible state-wide service for the first time in many states, but in some states no adequate staff is yet provided and in nearly all states the staffs employed must be doubled or tripled if probation treatment is to obtain the results it is capable of. While probation will probably be increasingly developed and supervised by state boards, the power to place on probation and control the probationer should remain with the court, where it has always been. Judges have been the greatest supporters of probation development. They are increasingly demanding pre-sentence investigation of all cases, reports of clinical diagnoses and careful follow-up of cases. They should not be reduced to mere judicial automata. Probation is an investigative or trying-out process and can best be applied by the judicial agency which, through the reports and recommendations of its probation staff and those of clinics, whose expert diagnoses are more and more available, is best equipped at the start to decide the question of probation.

It is doubtless unnecessary to pursue this argument further. Although the model Youth Correction Authority Act provides that all power to suspend sentence and place on probation shall be taken away from the court in youth cases, it is my opinion that no state will seriously consider this. The only state, California, which has adopted the act in greatly modified form, by apparently unanimous consent, retained the power of using probation unchanged in the hands of the courts. In the discussions of the act by committees in Wisconsin, Illinois and Pennsylvania on which, unlike the national and the New York committees, practical probation workers sat, one of the first recommendations arrived at was to leave power to place on probation in the courts.

Briefly stated, the position of the drafting committee is that "the whole plan of preventive and corrective treatment . . . if it is to operate effectively, must be administered by one authority, under established policies, and with a high degree of uniformity and consistency."⁷ This is the basic theory of the act and it seems unassailable at first glance, but the arguments against it are these: First, it can't be done. Many agencies must deal with the offender: community agencies, police, courts and institutions, and each must have authority, a social viewpoint and tools to handle its part of the correction job. Second, there is danger in giving so much control of convicted youth to one authority unless we could be certain of its complete qualifications to handle it. Third, there is something to be said for some check on absolute power, and for several authorities to deal with offenders having different needs at different stages, provided there is proper coordination between the various agencies. As an illustration of this let me cite the fact that in the early days of enthusiasm for juvenile courts it was generally agreed, and so provided in many laws, that the court should maintain continuing jurisdiction over every child received during his entire minority. Now we recommend that the court, no matter how able, should not carry the full responsibility. It should turn over many cases absolutely to other agencies, particularly to public institutions or welfare boards.

AN ALTERNATIVE PROGRAM

I believe it is incumbent on the critic of this well-thought-out proposal, which its supporters are not only presenting for discussion but are very effectively pushing for immediate adoption in many states, to present constructive alternatives to meet the unsolved problem of youth crime. If the campaign for the act accomplishes nothing more, it will be valuable in bringing this problem to the fore.

Certainly much progress has been made in extending probation and parole and in improving and coordinating state institutional programs. In the more advanced states there is a concerted effort to develop receiving centers for all offenders, to diversify institutions and to make them all corrective. But in spite of this we can admit for any state the facts so well set forth with respect to one, New York, in Mr. Harrison's pamphlet,⁸ indicating the fact that the problem of preventing youth crime is still an unsolved one and that something must be done about it. I do not admit the implication of Mr. Harrison's argument, however, that youthful crime or crime in general has increased greatly in recent years. There are no statistics to show any general increase whatever. The figures do show for New York and other states a large increase in commitments to state penal institutions and an even larger increase in the cost of maintaining them. This is partly to the good. New York has developed new and better types of institutions and more offenders are sent to them at greater cost. It is partly bad and is the effect of too long terms in the prisons, the direct result of the infamous Baumes habitual-offender laws. It is also due in part to public caution

⁷ YOUTH CORRECTION AUTHORITY ACT (A. L. I., Official Draft, 1940), pp. 35, 36.

⁸ Harrison, *op. cit. supra* note 5.

which results in limitations on the powers and policies of the parole authorities and to the lack of statewide development and assistance to probation.

These evils are everywhere. We are only beginning to develop an effective correctional system, but we know how, and the thing needed is to coordinate, not divide, our forces, especially at this time when the maintenance of all normal services is threatened by the tremendous demands of war.

Some of the proposals I shall advance are, I believe, just as radical as the Youth Correction Authority Act, but all of them have been tried out in some of our states and their need is generally admitted by leaders in practical penology. The program will benefit youthful offenders first and foremost, but it will also reach the older "youth" and it will coordinate the whole treatment program rather than set up another separate agency competing for funds and public support.

It goes without saying that development of crime prevention agencies, councils, police juvenile bureaus, and extension of the jurisdiction and effectiveness of juvenile and domestic relations courts are paramount for heading off much youthful crime, but the following program is limited to what our states ought to do for youths over the standard juvenile court age of eighteen and for older offenders.

1. Continue to develop adult probation as a diagnostic and treatment function of all criminal courts. Give probation a real chance at youth by providing more adequately trained staffs, selected through competitive examinations. Enlist the state government by establishing in every state an effective supervisory or administrative bureau, which may be combined or closely coordinated with the state parole bureau, both of them divisions of the State Department of Correction. The state, through payment of salaries or subsidies to local units, should insist that adequate probation service be available to every court, and this means the lower as well as the higher courts. Probation has never been fully utilized for misdemeanors and lesser offenses.

2. Develop youth courts with informal, socialized procedure, closely akin to that of the juvenile court. These may be separate courts, or better, divisions of courts now having criminal or juvenile court jurisdiction. Campaigns for such courts have started in New York and other states. The time is ripe for them. Such courts will especially need adequate probation and clinical services and also socially minded judges. Lawyers, as such, will not be greatly needed. Experience indicates that with proper handling 90% of youth offenders, as is the case with delinquent children, readily admit their offenses.

When I called to the attention of the Youth Committee of the American Law Institute that the Youth Correction Authority Act began too late—after the conviction of youths for serious crimes—and that this act did not touch the evils so graphically portrayed in "Youth in the Toils"⁹ which deals almost entirely with the evils of police handling, detention and treatment before final conviction, I was assured that the Youth Correction Authority was only half of the program. A youth court act

⁹ HARRISON AND GRANT, *YOUTH IN THE TOILS* (1938).

would also be advanced. This act,¹⁰ when it appeared, turned out to be an adjunct to the Youth Correction Authority Act, impossible of enforcement in its present form without the latter. It seems to have been lost sight of in the campaign for the Authority. A youth court, or a modification of procedure of existing courts, providing jurisdiction over youths from the moment of arrest, separate detention and social, corrective treatment before as well as after conviction, would go far 'to secure maximum rehabilitation where it is possible.

3. Enact a real indeterminate sentence law for all offenders. No one, neither the court, a board, nor the law should fix in advance either the minimum or maximum time best fitted to protect society and reclaim the offender. Release should be earned and granted in accordance with the combined judgment of the parole board and experts in the institution. Very great progress is being made in many states toward this long advocated goal. The setbacks and limitations are due to public distrust of sentencing and parole boards, and a demand, justifiable perhaps in the present state of penal treatment, for at least a maximum limit on commitments, fixed either by the law or the courts.

An excellent review of state sentencing practices is included in the report of the United States Judicial Conference Committee on Punishment for Crime, published this year.¹¹ There are listed eleven states in which the courts now have no jurisdiction whatever to determine the length of imprisonment and eight others where the courts have discretion in some cases but not in others, chiefly the reformatory groups. In the most advanced systems—California, Utah, Washington—the principle is established of no minimum term, with discretion granted to the sentencing and parole board to release from prison at any time.

Commitment of all or part of the sentenced offenders to a central receiving station is provided for in New York, California and elsewhere. Federal prisoners are not committed to a specific institution. Selection of the institution and transfer from one institution to another is a prerogative of the Attorney General, exercised by the Bureau of Prisons. The power of transfer from one penal institution to another, not by the court but by the state prison board, is a common practice in a number of states. Most important of all, there has been great improvement in recent years in the quality of parole boards and parole staffs. Two states—Florida and Michigan—have the distinction of selecting the members of their parole boards by competitive examinations.

Some of these advances toward individual scientific treatment have been cited as arguments for adoption of the Youth Correction Authority Act, as it embodies many of the same principles for a limited youth group. To my mind they are rather a convincing proof that we can advance, slowly perhaps and at times haltingly, as is the way with basic reforms, toward the greater goal of scientific correctional treatment for all and a centralized, not a divided, state authority.

¹⁰ YOUTH COURT ACT (A. L. I., Official Draft, 1941).

¹¹ Beattie and Tolman, *State Sentencing Practices and Penal Systems*, REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME (1942) 81.

4. Finally, in addition to well-manned state probation and parole bureaus, uniform, indeterminate sentencing laws with sentencing and parole boards in which the public can have confidence, there is the need in each state for a progressive administration of penal and correctional institutions. Since there should be cooperation and coordination between all of the above, I believe they should all be parts of a State Department of Correction, the executive of which should be a commissioner of the highest standing, appointed for merit by an unpaid, nonpolitical Board of Correction.

Is such a state corrective set-up a dream? Far from it. Many of its features are found in a number of states and one state, Michigan, has practically all of it.

The State Correction Department should be in a position to establish and operate new plans for the treatment of youth, called for in the proposed act, and the department might well establish a youth division or board, not as a separate authority for sentencing, but as a study bureau, to cooperate with existing authorities in establishing agencies not only for improved treatment but also for prevention of youth crime.