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REPORT

of

Commission to Study Medico-Legal Psychiatry

submitted to

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Governor Wm. Preston Lane, Jr.

and

The Maryland General Assembly

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Hon. William Preston Lane, Jr.,
Governor of Maryland,
Annapolis, Maryland

Dear Governor Lane:

There is transmitted to you herewith the report of the Commission to Study Medico-Legal Psychiatry appointed pursuant to the provisions of Joint Resolution No. 16 of the 1947 session of the Maryland Legislature for submission to the General Assembly of 1949.

We assume that the legislation required to carry out the recommendations made will be prepared by the Attorney General and all or any members of the Commission will be glad to discuss such matters with any representative of his office.

The Commission wishes to express its appreciation to the members of the Bench and Bar and to the members of the medical profession, whose advice and contributions have been of inestimable value.

Respectfully,

JOHN H. SKEEN, JR.,

Chairman.

JHSJr/f
Encl.

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REPORT
of
COMMISSION TO STUDY MEDICO-
LEGAL PSYCHIATRY
submitted to
GOVERNOR WM. PRESTON LANE, JR.
and
THE MARYLAND GENERAL ASSEMBLY

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REPORT

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COMMISSION TO STUDY MEDICO-
LEGAL PSYCHIATRY

submitted to

GOVERNOR WM. PRESTON LANE, JR.

and

THE MARYLAND GENERAL ASSEMBLY

FOREWORD

The State Legislature of Maryland during the 1947 session adopted a resolution designated Joint Resolution No. 16 authorizing and directing the appointment of a Commission to Study Medico-Legal Psychiatry. This Joint Resolution was approved by the Governor of Maryland on April 16, 1947. The complete text of the resolution is set forth as an appendix to this report, but it is considered appropriate at this point to quote the preamble since these paragraphs clearly indicate the purposes for which the Commission was created. They are as follows:

“WHEREAS, our system of jurisprudence and legal procedure in the State of Maryland has not kept abreast with the development and growth of modern psychiatry; and

“WHEREAS, members of the Judiciary in Maryland have on numerous occasions called attention to the deplorable lack of institutions and facilities for the care of psychopathic criminals, and of persons suffering from such mental disorders as to have marked criminal propensities; and

“WHEREAS, it is imperative that study be given to the possibility for providing such institutions and facilities; and

“WHEREAS, it is well known that mental and emotional disturbances and aberrations are a major motivating cause of the commission of crime; and

“WHEREAS, it is deemed advisable and necessary that an expert and informed study be made by competent persons in order to bring about an intelligent correlation between the law and modern psychiatry; now, therefore, be it * * *.”

The Commission, consisting of the fifteen members listed in this report, was duly appointed by Governor W. Preston Lane, Jr., in compliance with the provisions of the resolution on March 4th, 1948, and held its organization meeting on April 1, 1948.

Upon undertaking its duties it became immediately apparent that the work of the Commission, as outlined in the resolution, was of such a character and of such a specialized nature as to require its division into several categories. Subcommittees were appointed to work independently and to report from time to time to the Commission as a whole. In some instances these subcommittees integrated their efforts and conferred with each other in respect to matters that by their very nature required such coordinated work. The advice and counsel of many able and learned members of the Bench and Bar, doctors, psychiatrists, penologists, criminologists and laymen have been sought and obtained both from within the State of Maryland and from other sources. All published reports of various related Commissions within the State have been examined and the recommendations herein made are considered the most appropriate to meet the problems presented.

In considering the legal aspects of the problem it was considered essential that complete information be made available to the Commission with respect to the treatment of the problem in the several states of the Union, as well as

in certain foreign countries, and towards this end the services of David H. R. Loughrie, a member of the Bar of Maryland, were obtained to make a complete study of the laws of other states and otherwise to assist the Commission in respect to the legal aspects of the work.

The recommendations contained in the report reflect the considered judgment of every member of the Commission, and the conclusions reached are based upon long study and deliberation. Time has not permitted the reaching of a complete and satisfactory conclusion to all the matters concerned, nor is it indeed considered likely that there ever can or should be a final conclusion to the work. The very nature of the task is such as to require constant attention and vigilance. This report is submitted with the hope that it will provide the basis for improvement of the highly unsatisfactory conditions existing at this time.

A comprehensive and thorough study of the type envisioned in the resolution never having been undertaken in the history of the State, it has been possible to approach the problems with a fresh perspective. It is the sense of the Commission that the problems are of such a character as to require that they be given continuous consideration to the end that the forward progress of the development of the law of Maryland and of the procedures of its courts may be ever kept apace with the development of modern science and scientific thinking. In the preparation of this report the nine months available to this Commission has been all too short and it should in no sense of the word be considered as final. It is earnestly recommended that provision be made for a continuing study of these vital matters. Much may be learned from the experience gained as the result of the adoption of the recommendations (if they be adopted) and as the result of such further enlightenment, other changes in our laws and procedures may be indicated.

In addition to the items of study enumerated in the resolution, it was the consensus that no study would be complete without a consideration of the problems presented

by that large class of individuals commonly known as the "defective delinquent."* It was found that the so-called defective delinquent comprises a sizable percentage of all those who come into contact with the criminal law and can best be dealt with through a particular type of procedure and institution. To this end our recommendations include measures deemed necessary to treat this group.

It should also be stated that in dealing with the question of the "need for psychopathic institutions throughout the State" the Commission has limited its study and recommendations only to those institutions found necessary for the security and treatment of criminals, and has not considered the need for mental institutions generally throughout the State, which is the subject of continuous study of both public and private agencies.

In accordance with the provisions of the resolution this report is prepared for submission to the members of the General Assembly of 1949. It is, therefore, to the General Assembly of 1949 that the people of the State of Maryland must now look for an implementation of the recommendations contained in this report and the enactment of appropriate legislation to deal with these problems which are so pressing as to permit no further delay. This report is the first ever made to the Legislature with respect to certain phases of the problems. Indeed, it would seem that never before has the Legislature dealt with some of these problems. They can no longer be ignored.

GENERAL CONSIDERATIONS

It is a function of a sovereign state in its government of the people to keep its legal tenets and its procedures apace with the development of human knowledge. Great advances have been made during the past century by men of science, and such developments are continuing at an ever-increasing rate. It is essential, therefore, con-

*For definition see p. 20 this Report.

tinuously to review such developments as they may affect the activities of the sovereign authority and to make such modifications as from time to time may be required in order to take full advantage of such advancement.

The fundamental approach to the problems considered has not been primarily on behalf of the criminal and/or mental defective person who has run afoul of the law. On the contrary, the paramount interest is and must always be the welfare of the community as a whole. The interests of the individual must ever be subjugated to the interest of the community where the two are in irreconcilable conflict. In many cases, however, modern science has provided the means of removing this conflict so that the interests of both may be jointly served.

The procedures set forth in this report should by no means be considered as providing for lesser penalties for persons convicted of crime or for making the way of criminals one bit easier. On the contrary, in many respects the application of the procedures recommended will make the commission of crime far more unattractive than it is under existing procedures. On the other hand, consideration has been given to those unfortunates who through no fault of their own are beset by mental illness, who are, in fact, sick persons and should be dealt with accordingly, rather than as criminals. At the same time the paramount interest of the community, in our opinion, has been preserved and provision made which does not exist today for the protection of the community as a whole against certain individuals who through mental illness constitute a menace to the community, but who cannot and should not be dealt with as criminals.

The problem is essentially a dual one, dealing on the one hand with the medical aspects of each individual case and on the other hand with the general procedures which are necessary to deal with such a case. There are certain inalienable rights of every citizen with which we may not

and should not interfere. There are safeguards for both the individual and for the community as a whole which must be preserved. Within these boundaries, however, much can be accomplished by enlightened practices and procedures. As will be pointed out, the responsibilities of the State are continuing in nature and are discharged only upon the restoration of the individual to his proper place as a member of society, or in the event that such individual is incurable, by the protection of the community against his acts during his entire natural life. The inception of the problem may be the commission of a serious crime or its existence may be called to the attention of the authorities by a seemingly minor incident. Discovery in the early stages may make possible the prevention of a serious later crime, as will often be true in sex cases. The early understanding of the problem may enable the inauguration of curative measures which will permit the individual to lead a normal and useful life.

In form this report deals with the problem in its natural chronological sequence, rather than in the order in which the several aspects are set forth in the resolution of the Legislature. It will readily be seen by the reader that many cases will be disposed of at each of the several stages of the entire procedure recommended, while some cases, of necessity, will present continuing problems which must be dealt with accordingly. It should be noted that provision is made for consideration of some individual cases at any time after the case has been judicially determined.

It should be emphasized that in no wise has there been any interference with the jurisdiction or function of the courts. On the contrary, the hand of the court is, in fact, strengthened, and the courts are provided, in many instances for the first time, with advice and guidance of a scientific nature which will better enable them to deal with each individual case. This is true not only with respect to the trial and the proceedings preliminary thereto, but also

with respect to the disposition of the individual following the trial, and the jurisdiction of the court in some cases is continued throughout the incarceration of the individual. Thus, the courts will no longer be confined to the imposition of penalties prescribed by hide-bound statutes long on the books, but will be given a more flexible and broader discretion augmented by the assistance of men especially trained and able to deal with mental disorders.

SUMMARY OF RECOMMENDATIONS

1. Mandatory pre-trial examinations, for sole purpose of determining sanity or insanity of a person accused of a capital offense.
2. Mandatory post-trial and pre-sentence examinations, in all cases involving capital punishment, for purpose of determining disposition of the convicted person.
3. Establishment of a Medical Court Service to serve all courts of the State and the Department of Correction.
4. Until permanent staff is available the Medical Court Service to be operated by a full time Director and a panel of part-time practicing psychiatrists and psychologists.
5. The Medical Court Service to conduct all examinations whether mandatory or requested by the courts.
6. Establishment of legal procedures for determination of defective delinquency and subsequent commitment.
7. All defective delinquents to be detained on an indeterminate commitment.
8. A new special institution for defective delinquents to be established outside urban limits under the jurisdiction of the Department of Correction.
9. A Board of Review to be created within the Institution for Defective Delinquents and charged with the duty of recommending to the courts when an inmate may safely be released.

10. While in custody all persons committed as defective delinquents to be re-examined at least once a year.
11. Release from the Institution for Defective Delinquents to be only on order of court and on an indeterminate parole, unless otherwise directed by the Court.
12. Any person before juvenile court may be treated as a defective delinquent when and if the judge of such court believes it to be in the best interest of the individual and of society.
13. All convicted offenders who might otherwise be committed to any penal institution under the jurisdiction of the Department of Correction to be committed by the courts to the custody of the Department of Correction, rather than to a specific institution.
14. All persons so committed to the Department of Correction to be processed and classified by the Medical Court Service before being sent to a specific institution for detention.
15. Classification boards to be established or further developed in each local penal institution.

PRE-TRIAL EXAMINATIONS

One of the principal problems with which the Commission has been confronted is the method by which the mental state of persons accused of crime may be determined in advance of trial. This is because our law, as well as that of all of the several states, recognizes the fact that an individual who is unquestionably insane at the time of trial can not be tried. A pre-trial mental examination has been the accepted method for determining the mental state of an accused individual and while such procedure is regularly followed in connection with the Criminal Courts of Baltimore City the lack of facilities has prevented its general use in other courts including magistrate courts throughout the State. It would be ideal to subject every individual charged with crime to such an examination. The difficulty

which would be encountered with such a procedure, however, appears obvious, and for practical reasons such examinations must be limited to cases involving the more serious types of offenses and to those minor cases in which significant mental abnormality is seriously suspected. The purpose of the pre-trial examination is considered by the Commission to be the determination of the question of an individual's mental state, solely to prevent a person being brought to trial where it appears that he is clearly insane and incompetent to conduct his own defense or to advise in the conduct of such defense.

We believe that the present statutes relating to the initiation of pre-trial examinations to determine the sanity or insanity of an accused do not require any material alterations with the following exceptions.

We recommend that provision be made for mandatory pre-trial examinations in any case where the sentence of capital punishment may be imposed.

We recommend that the agency for making such examination should be a medical court service instead of the Board of Mental Hygiene, as now provided. It should be noted that the Commissioner of Mental Hygiene concurs in this recommendation.

We believe such a change will make for a distinct improvement, in that facilities for a pre-trial psychiatric examination would be more readily available to all of the courts in the state and facilities in Baltimore City would be improved.

MEDICAL COURT SERVICE

We recommend the establishment of an autonomous state-wide agency operating and financed at the state level and divided into divisions of psychiatry, medicine and social service to be known as the Medical Court Service and to perform a two-fold function. On the one hand to render services to the judiciary in accordance with the recom-

mendations set forth in this report, and on the other to render services to the Department of Correction. The work of the Service in connection with the Department of Correction will include the classification and processing procedures called for by subsequent recommendations.

We recommend the following minimum table of organization of personnel for the dual purpose of operating the Medical Court Service and the Institution for Defective Delinquents recommended at page 21 of this Report.

- (a) One psychiatrist as Director of Medical Court Service and Institution.**
- (b) Two psychiatrists.**
- (c) Two psychologists.**
- (d) Three social service workers.**
- (e) One physician.**
- (f) An institutional administrative officer.**
- (g) Such other custodial and clerical personnel as may be required.**

Other personnel should be provided for in a budget to be drafted by the Director and submitted to the State Budgetary officials.

We recommend a salary of not less than \$15,000.00 per year for the Director, in order that the proper competent individual can be obtained.

We recommend that the Director be appointed by the Governor, with advice and consent of the Senate, on nomination of a committee composed of the Judges of the Court of Appeals of Maryland and The Professor of Psychiatry at The University of Maryland and The Professor of Psychiatry at The Johns Hopkins University.

The Service would be available to the Supreme Bench of Baltimore City and to the Judges of the Circuit Courts

of the Counties as well as to Trial Magistrates for making pre-trial examinations as permitted in existing statutes.

We recognize the fact that lack of adequately trained professional personnel and budgetary requirements may make it impossible to obtain a permanent staff immediately. **We, therefore, recommend a temporary organization so that until such time as a permanent professional staff is available the Medical Court Service shall consist of the Director and a panel of part-time practicing psychiatrists and psychologists set up by him to operate on a case fee basis.** We believe that, in spite of the admitted fact that trained psychiatrists are difficult to obtain, the position of the Director of the Medical Court Service and institution above noted can be filled without too great difficulty. It is visualized that the job itself would be of the sort that is most likely to attract a qualified individual. It would be a new job and a difficult one with a definite challenge to it. It should be also a position of permanence and dignity within the community. It is the opinion of members of the Commission that the proper person for such a position can be obtained.

The Commission has given careful consideration to the present omission in our existing law of adequate protection to society from those persons who may be acquitted by reason of their insanity at the time of the commission of an offense, but who are found to be sane at the time of trial. Under our present law, that individual may leave the court room a free man even though proper professional observation might disclose that the individual may be subject to recurrent insanity which would render him unsafe in the community. Some states have made legal provision for automatic commitment to a state hospital for a period of observation under these circumstances and such a procedure we deem to be highly desirable. **We recommend the matter be made a subject of further study looking to the establishment of such a law in this State.**

POST-TRIAL AND PRE-SENTENCE EXAMINATIONS

In considering the need for examinations conducted after conviction and before sentencing, the distinction between examination at such times and the pre-trial examinations above discussed should be kept clearly in mind. The purpose of a post-trial examination would have no relation to the legal responsibility of an individual, but is solely for the purpose of advising the court with respect to the proper disposition of the case.

We recommend that it be made mandatory for Judges sitting in criminal cases in this State to order post-trial examinations in cases in which capital punishment may be inflicted. In addition the Commission feels it is advisable that examinations be ordered by the Court in all cases involving sex crimes and in cases involving individuals, who, because of their demonstration of persistent aggravated anti-social or criminal behavior, suggest the need of examination to the Court.

Reports of examinations, whether mandatory or otherwise, should be of an advisory nature only and in no means binding on the courts. In the past, judges have frequently been willing to accept advice from the prosecution and defense counsel in regard to sentence. It is therefore felt that such reports will be of great value to judges sitting in the criminal courts.

We recommend that the Medical Court Service in its Reports, after conviction but prior to sentence, make definite recommendations to the Court as to disposition.

DEFECTIVE DELINQUENTS

This Commission believes that not only will the post-trial and pre-sentence examination have value to the court in aiding in the disposition of the case before it, but also believes that this examination will be of inestimable value in detecting the so-called "defective delinquents" who have

violated the law and whose potentially dangerous nature might otherwise go undetected.

The term "defective delinquent" has been used as a catch-all phrase to cover a multiplicity of conditions ranging from chronic delinquency through feeble-mindedness among delinquents to persistent mal-adaptive behavior among offenders. Various states, in their attempts to cover the groups subsumed under the term, have tried to define exactly what is meant by it, and to convert their definitions into law. Thus, for example, Pennsylvania defines the term as covering a group of offenders over the age of fifteen, who are not "insane, idiots, nor imbeciles" but are "mentally defective" persons with "criminal tendencies". The State of New York maintains a similar definition, with the exception that the minimum age limit there is sixteen.

In our opinion, definitions such as these are inadequate; since they exclude those of a low order of intelligence (below the moron level), restrict the term to the group known as morons and to offenders of normal and above normal intelligence; fail to define "criminal tendencies"; and, most important, fail to provide adequate protection both for the offender and the public.

Therefore, in accordance with accepted scientific and logical usage, this Commission has adopted the proposition that the term "defective" is to be understood as applying in the two chief spheres of human behavior; the intellectual and the emotional. It is well-known to members of the psychological professions and to laymen that inadequacy in either one or both of these spheres can be shown. In any given offender, one may exist without the other, or both may appear simultaneously within a single personality. It is possible, as, for example, in the case of the criminal psychopath, to have a high intelligence quotient together with an emotional inadequacy. Similarly, emotional adequacy may be present where the intelligence is low or

limited. In many cases it will be found that a limitation in both spheres exists conjointly.

Both of these spheres are subject to reliable analysis by psychiatrists and psychologists. Many intelligence tests have been devised and defined to the point where they are extremely sensitive in separating those of less than normal intelligence from the rest of the population. Similarly, there exist, and are being developed, excellent instruments for the measurement of emotional inadequacy, stability and maturity and competent and experienced psychiatrists utilizing direct and non-implemented procedures in a standard clinical way have also proven themselves eminently capable of rendering accurate opinion on these same factors regarding emotional adequacy or defect.

This Commission is of the opinion that any changes in the law regarding insanity should not seek to overthrow existing laws and definitions; but rather to refine and further define them, bringing them into closer accord with modern scientific and legal thinking and allowing room for future development.

Bearing all this in mind, we feel that *a proper definition of defective delinquents would be those individuals, who, by the demonstration of persistent aggravated anti-social or criminal behavior, evidence a propensity toward criminal activity and who, on the evidence of standard test and clinical procedures, reveal either intellectual deficiency or emotional disorder, or both.* The following recommendations are based on this definition.

We recommend that the State's Attorney, acting upon knowledge or suspicion of the presence of defective delinquency in any given case, after guilt has been determined and before sentence is passed, be empowered to request the Court to order that a given defendant be examined for defective delinquency, or the Court may do so on its own motion, and that the Court be required in every instance where such a request is made to order the individual re-

moved for such examination to the Medical Court Service. The power to initiate a request for examination should not be denied to the defendant or his counsel.

We recommend that, if, after examination and hearing before the Court, any individual is declared to be a defective delinquent, the Court may impose an indeterminate sentence, without minimum or maximum limits, to a special institution herewith proposed.

We recommend the establishment of a special institution for defective delinquents to be under the jurisdiction of the Department of Correction and to be located outside urban limits; such institution to be headed by the Director of the Medical Court Service and to be staffed by the additional professional and administrative personnel previously enumerated.

It should be borne in mind that such an institution must make provision for maximum security for some cases and the Commission suggests that consideration be given to the type of institution represented by the Medical Center for Federal prisoners at Springfield, Missouri. Specific plans for such an institution as well as its exact location should be the subject of study by especially qualified personnel, since such matters are largely of an engineering and architectural nature. A further need for an institution of this type is shown by the overcrowded conditions now existing in the present state correctional institutions. Such conditions are emphasized in the Report of the Department of Correction which states that "the overcrowding at the House of Correction and particularly the Penitentiary has resulted in conditions with respect to health, discipline, idleness and other matters which will require rectification in the immediate future." The overall situation in our penal system thus requires a new institution which in our opinion should be one capable of dealing with that portion of the criminal population for which no facilities are presently available. Since it is reliably estimated that more than ten per cent

of all those individuals requiring detention are defective delinquents, who can only be handled properly in a special institution, the Commission is confident that the overcrowding will be greatly alleviated by the institution recommended.

The various possibilities for jurisdictional control of the institution have been carefully considered. It was the consensus that the final decision on this point must depend to a considerable extent upon professional opinion of the curability of the potential inmates. It was the opinion of medical members that most persons in such an institution would be incurable and the primary problem therefore would be one of custody and proper care rather than curative treatment for mental illness. Thus, it seemed most practical and sensible that the Department of Correction assume jurisdiction of the institution.

We recommend that all defective delinquents, while in custody, be subject to review and thorough re-examination not less than once each year, according to the techniques and procedures to be devised by the resident personnel of the institution.

We recommend that an Institutional Board of Review be created, whose duty it shall be to report to the Court when an individual has progressed sufficiently that he may be safely released or placed on an indeterminate parole. Upon receipt of such report the Court shall make such decision as it deems advisable.

We recommend that, when and if released, an individual having been committed as a defective delinquent be released by the Court on an indeterminate parole, which may be terminated by the Court upon report of the Institutional Board of Review that such person has completely recovered and should not constitute a menace to society, or the Court, in its discretion, may release such individual without parole.

We recommend that the Department of Correction notify the committing Court when an inmate in any institution under its jurisdiction appears to be a defective delinquent.

We recommend that the Court then order an examination to be made of such individual by the Medical Court Service to ascertain whether he is a defective delinquent. If upon examination and hearing such person is found by the court to be a defective delinquent then the court should order his transfer to the institution for defective delinquents, there to be detained for the duration of the term to which he was originally committed. If at the expiration of such term such individual appears still to be a defective delinquent this fact should be reported to the court. We recommend that the Court then order another examination to be made and if, after hearing, such person is found still to be a defective delinquent, that he be committed to the Institution for Defective Delinquents there to be detained until the Court after report of the Institutional Board of Review, is of the opinion that he should not constitute a menace to society, if released. Commitment of a defective delinquent upon expiration of a definite sentence is a civil procedure recognized and practiced in both the States of New York and Pennsylvania.

We recommend that the Juvenile Courts of this State follow the same procedure as the criminal courts when a Judge of such Court believes any person before him is a defective delinquent and that it is in the best interest of such person and of society to treat such person as a defective delinquent. (In planning actual construction and arrangement of the Institution for Defective Delinquents provision should be made for the segregation of minors.)

The Commission is fully aware that any provision for an indeterminate sentence without minimum or maximum limits will require specific legislation to be enacted. Such legislation should set up a detailed procedure that would insure all constitutional safeguards to the individual con-

cerned. Whenever as a result of a post-trial examination, or otherwise, it becomes apparent to the court that an individual may be a defective delinquent as defined herein a special hearing should be held at which time all evidence tending to show the existence of such defective delinquency should be heard. At such hearing the offender should be given an opportunity to present evidence, including expert testimony, in his own behalf to dispute the charge of defective delinquency. It should be clearly understood that in carrying out any of the procedures outlined herein it is imperative that provision be made for representation of an individual by counsel of his own choosing and that the right to trial by jury be preserved.

We are of the firm belief that the procedure and type of proceeding recommended for disposition of the defective delinquent adequately provide for full protection of all rights not only of the defective delinquent but of the community. In order to assure, however, that the procedural requirements be fully complied with in the technical sense, we recommend that the Court, when dealing with convicted offenders later declared to be defective delinquents, impose a sentence for the specific offense to be suspended upon condition that the offender spend at least the length of time fixed by said sentence in the Institution for Defective Delinquents and receive treatment prescribed by the Director of said Institution. If the condition of said defective delinquent shall improve to such an extent that he may be released at an earlier date, the Court, upon the recommendation of the Institutional Board of Review, may order such release.

REHABILITATION AND INSTITUTIONAL CARE

This Commission, after a study of the present method employed in committing convicted offenders to the state penal institutions, has come to the conclusion that the existing system may advantageously be made much more flexible. At the present time, the sentencing Judge selects the institution for the custody of the offender before him either by rule-of-thumb or at the request of the offender or his counsel or, sometimes, on the basis of a probation report. We believe that one of the fundamental factors in rehabilitation of such offenders as may be rehabilitated and salvaged for society depends upon the careful and well thought out selection of a type of institution in which he may be maintained. Judges sitting in criminal cases do not have the time to give the thought and careful attention to this problem, as applied to a particular offender, that it deserves. We therefore have sought for some formula whereby the court could pass sentence and make commitment yet leave to the department charged with custody and rehabilitation of the offender some flexible approach to the problem of where and in what environment he is to be detained (within, of course, the limits of the penal institutions available).

We therefore recommend that in all cases of offenders who might otherwise be committed to any penal institution under the jurisdiction of the Department of Correction, such offenders shall be committed to the custody of the Department of Correction rather than to any specific institution under its jurisdiction. This would seem to be a reasonable and common sense extension of the power and authority now being exercised by the Department of Correction to transfer inmates from any one of the institutions under its control to any one other institution under its control.

The Department of Correction would then take custody of these convicted offenders and process and route them in the following manner. All offenders would first pass through the Medical Court Service. Here they would be classified by appropriate techniques, during which time they would be subject to medical and laboratory survey, psychological and psychiatric appraisal and sociological investigation as well as routine identification procedures. The data thus obtained would prove of the greatest value to the administrators of the penal institutions, the parole authorities, et al. It should be pointed out that this function of the Medical Court Service will require physical facilities in the way of housing and accommodations in order to maintain the individuals being processed during the period of time needed for such work; however, this need not result in a duplication of facilities or new construction, since it may be possible to use the laboratory and clinical services and the penal facilities now existing or proposed for the City of Baltimore or the State.

The Department of Correction, with the guidance of the report of the Service would then assign each offender to the particular local penal institution which may seem to it advisable.

It is the feeling of the Commission that the function of the modern penal institution is no longer purely punitive. The function is rather to remove the offending individual from society for the protection of society and to provide means for his eventual psychological rehabilitation, if possible. The situation existing in the State penal institutions visited by members of the Commission not only reveals a deplorable lack of facilities for psychiatric care and treatment but also a very inadequate organization to cope with the important responsibility of psychological testing and classification. The treatment in these penal institutions consists primarily of the management of an acutely disturbed inmate, and can be considered only a matter of emergency treatment or diagnosis of an individual disturbing

the routine of an organization rather than an integrated step in a program of the rehabilitation of an individual. This statement is not meant to minimize the self-sacrificing and excellent work of those part-time psychiatrists who, without adequate compensation, have contributed their time in an effort to help the various superintendents of the penal institutions. In fact they are among the severest critics of our present system. Also, we do not want to minimize the value of the work now being done by the few psychologists who are employed on a part-time basis without adequate remuneration or of the full time psychologist at the Maryland Penitentiary. Because of present conditions these psychologists are not giving and can not be expected to give sufficient time to permit a thorough-going psychological classification of every inmate in our penal institutions. These conditions exist in spite of the efforts of the Board of Correction to carry out a program of classification and testing, while seriously hampered by inability to obtain qualified personnel due to lack of available funds.

We recommend that in each local penal institution there be established or further developed a classification board for the purposes of local classification, orientation, and assignment as to quarters in work, as well as medical and psychiatric care. This would be an aid to achieving the maximum rehabilitation. The first step in starting a program of psychological rehabilitation is the establishment of a program conducted at the level of each penal institution, which should include planned activities designed toward (a) maintenance of physical health during the prisoner's period of incarceration, (b) constructive relationship of prison personnel to the prisoner and the constructive relationship of the prisoners to each other, and (c) satisfactory adjustment of the prisoners to society. In any event, each institution should attempt to give the best available psychiatric treatment.

DEFINITION OF INSANITY

The Commission does not now recommend any change in the definition of insanity in criminal cases as announced in the case of *McNaughton*, 10 Cl. & Fin. 200 (1843) and adopted by the Court of Appeals of Maryland in 1888, in the case of *Spencer v. State*, 69 Md. 28. However, many members of the Commission are severely critical of our present laws on this subject and feel that they should be made the subject of intensive scientific study with a view toward legislative revision. Among our recommendations is a proposal for a Medical Court Service to assist the courts in the sentencing of convicted persons, the establishment of which will provide for unbiased and competent psychiatric examinations and reports when needed during a trial for the determination of sanity. The use of such Medical Court Service need not prevent the defendant or the prosecuting attorney or the Judge from seeking and presenting the opinions of other psychiatrists. In order to effectuate these changes the rules of law need not be amended.

NEED FOR PSYCHOPATHIC INSTITUTIONS

The establishment of an Institution for Defective Delinquents, together with an increase of facilities at the present Hospital for the Criminally Insane (now located on the grounds of the Spring Grove State Hospital) at the earliest possible moment, and removal of the criminally insane from Crownsville State Hospital to the present Hospital for the Criminally Insane so as to form a single unit in which the criminally insane could be cared for, will, in our opinion, meet the need for institutions and facilities to take care of the criminally insane and psychopaths with criminal tendencies.

CONCLUSION

It is our belief that the above recommendations, if adopted, will go far in making criminal law and penology in Maryland instruments for achieving individual justice and community welfare.

Respectfully submitted,

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APPENDIX

HOUSE JOINT RESOLUTION NO. 16

House Joint Resolution requesting the appointment of a Commission to study medico-legal psychiatry.

WHEREAS, our system of jurisprudence and legal procedure in the State of Maryland has not kept abreast with the development and growth of modern psychiatry; and

WHEREAS, members of the Judiciary in Maryland have on numerous occasions called attention to the deplorable lack of institutions and facilities for the care of the psychopathic criminals, and of persons suffering from such mental disorders as to have marked criminal propensities; and

WHEREAS, it is imperative that study be given to the possibility for providing such institutions and facilities; and

WHEREAS, it is well known that mental and emotional disturbances and aberrations are a major motivating cause of the commission of crime; and

WHEREAS, it is deemed advisable and necessary that an expert and informed study be made by competent persons in order to bring about an intelligent correlation between the law and modern psychiatry; now, therefore, be it

Resolved by the General Assembly of Maryland, That the Governor of Maryland be and he is hereby authorized and directed to appoint a Commission to study Medico-Legal Psychiatry, to consist of fifteen members as follows: The Director of Phipps Clinic of the Johns Hopkins Hospital, ex officio; the Commissioner of Mental Hygiene, ex officio; at least one member of the Supreme Bench of Baltimore City; at least one Judge from a Circuit Court outside Baltimore City; the Medical Officer of the Supreme Bench of Baltimore city, ex officio; at least one member of the House of Delegates of Maryland; at least one member of the Senate of Maryland; and such number of other persons as shall be required to bring the total membership of the Commission to fifteen persons; and be it further

Resolved, That said Commission is hereby requested and directed to make such studies and investigations as it may

deem necessary and desirable, to enable it to report to the General Assembly of 1949 on the following topics: (a) the need for psychopathic institutions throughout the State; (b) the possibilities for attaching psychiatric clinics to the courts of this State, including trial magistrates' courts; (c) the possibilities for pre-trial and post-trial examinations in criminal cases; (d) the factor and possible lack of criminal responsibility because of emotional disturbances; (e) the possibilities of psychiatric treatment and care in jails, training schools and other institutions; (f) the commitment of sexual psychopaths and the insane in criminal cases; (g) procedural methods by which courts determine sanity; (h) the definition of insanity in criminal cases; and (i) such other matters and inquiries as to the Commission shall seem pertinent and important to the spirit and purpose of this Resolution.

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