

REPORT TO THE JUDICIAL CONFERENCE. OF THE COMMITTEE ON PUNISHMENT FOR CRIME. A report of the Committee of United States Circuit and District Judges appointed to consider the subject of punishment for crime in the federal courts and to report to the Judicial Conference of Senior Circuit Judges. United States Government Printing Office, Washington, 1942. Pp. 126.; YOUTH CORRECTION AUTHORITY ACT. A Model Act Creating a Youth Correction Authority Prescribing Its Powers and Duties and Providing for Commitments Thereto of Convicted Persons Under Twenty-one Years of Age at Time of Their Apprehension. The

Repository Citation

Donald V. Wilson, *REPORT TO THE JUDICIAL CONFERENCE. OF THE COMMITTEE ON PUNISHMENT FOR CRIME. A report of the Committee of United States Circuit and District Judges appointed to consider the subject of punishment for crime in the federal courts and to report to the Judicial Conference of Senior Circuit Judges. United States Government Printing Office, Washington, 1942. Pp. 126.*; *YOUTH CORRECTION AUTHORITY ACT. A Model Act Creating a Youth Correction Authority Prescribing Its Powers and Duties and Providing for Commitments Thereto of Convicted Persons Under Twenty-one Years of Age at Time of Their Apprehension. The American Law Institute, Philadelphia, June 22, 1940. Pp. 42., 5 La. L. Rev. (1942)*
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol5/iss1/30>

American Law Institute, Philadelphia, June 22,
1940. Pp. 42.

Donald V. Wilson

Professor Jaffin's practical demonstration of how subjects of common interest to the two Americas can profitably be found and studied, thus provoking sufficient interest to provide solid and permanent grounds for a better and more intimate knowledge of the problems and achievements of our reciprocal cultures, is so highly successful and stimulating, that we cannot but hope that this essay will be only a first step to be followed by many others no less valuable.

JUAN CLEMENTE ZAMORA*

REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME. A report of the Committee of United States Circuit and District Judges appointed to consider the subject of punishment for crime in the federal courts and to report to the Judicial Conference of Senior Circuit Judges. United States Government Printing Office, Washington, 1942. Pp. 126.

YOUTH CORRECTION AUTHORITY ACT. A Model Act Creating a Youth Correction Authority Prescribing Its Powers and Duties and Providing for Commitments Thereto of Convicted Persons Under Twenty-one Years of Age at Time of Their Apprehension. The American Law Institute, Philadelphia, June 22, 1940. Pp. 42.

Much consideration has been given in recent years to methods of improving the administrative machinery for determining the proper treatment of persons found guilty of crime. Particular attention has been given to the youthful offender. The report of the Committee on Punishment for Crime proposes a new plan for dealing with all offenders in the federal courts while the Youth Correction Act sets forth a model law which has been proposed by the American Law Institute for adoption by the states. Both laws are based on the realization that the punitive method of dealing with offenders has failed and that treatment following conviction should look primarily to rehabilitation.

The problem of sentencing in the federal courts has been thoroughly studied by the Judicial Conference of Senior Circuit Judges. In 1940 the Conference recommended that an indetermi-

* Visiting professor of law and government from the University of Havana.

nate sentence law for the federal courts be adopted. Opposition developed, however, to the proposed law and consequently at the September 1941 meeting of the Conference, a committee of Circuit and District Judges was appointed to study further indeterminate sentence and the general subject of punishment for crime, including the treatment of youthful offenders. The report of this committee was published in June 1942 and contains recommendations for the establishment of a correctional system for adult and youthful offenders convicted in the courts of the United States.

This concise report is mandatory reading for the jurist or attorney who is dissatisfied with the present system under which the same persons are sent to prison repeatedly. (It has been estimated that eighty per cent of the population of Louisiana State Penitentiary at any one time has been arrested more than once.) The recommendations of the committee of federal judges will probably not be hailed by the jurist who is overly jealous of his prerogatives or by the prosecuting attorney whose principal aim is to send as many persons as possible to prison. Those who are interested in improving our present system of dealing with persons guilty of crime will be interested, and there are enough compromises in the proposed federal law to catch the support of those who dislike change but cannot stomach the present system particularly as it affects the youthful offender. Such compromises are not to be condemned but are to be recognized as symptoms of the practicality of the members of the committee in dealing with the obstacles which must be overcome in order to secure any improvement in our present system.

The proposed federal law would create within the Department of Justice a Board of Corrections composed of ten members appointed by the Attorney General for terms of six years each. The Board would consist of a Division on Adult Corrections, a Youth Authority Division and a Policy Division. The United States Board of Parole would be abolished and its functions transferred to the Board of Corrections.

When a person over twenty-four years of age had been convicted of a federal offense carrying a maximum penalty of more than one year, the court was to impose a general sentence which will be the maximum term prescribed by law. Within six months after the offender begins to serve the sentence, the Division on Adult Corrections would recommend to the court the term of imprisonment. The judge would then fix a definite sentence by

modifying or affirming the original sentence. In this way the actual sentencing power is left with the judge but he may benefit from the recommendations of a national agency which is responsible for studying the entire problem of sentencing.

The committee also recommended that county jails and prisons should not be used as places of confinement for the short-term offender. The proposed law provides that the Director of Prisons may designate institutions, camps, or farms of minimum and medium security, to which offenders sentenced to imprisonment for one year or less may be confined. In this way the short-term offender may be kept separate from hardened offenders and employed so as to facilitate his return to society as a useful citizen. A companion statute proposed by the committee provides for waiver of indictment and jury trial, so that persons accused of crime may not be held in jail needlessly, pending trial.

Special provisions are made for youthful offenders, who are defined as persons under the age of twenty-four. The court is authorized at its discretion to commit the youthful offender to the jurisdiction of the Youth Authority Division, which would determine the period of incarceration. The purpose of this section of the act is to provide for youthful offenders the type of correctional treatment found to be successful in the English Borstal system.

This proposed method of handling youthful offenders in the federal courts is somewhat similar to the recommendations of the American Law Institute set forth in the official draft of a proposed Youth Correction Authority Act for the states. The proposed plan is now receiving more thoughtful attention from public leaders since the rate of juvenile delinquency has been increasing rapidly during the war. It is one thing, however, to recognize a partial remedy to a social problem but another to place that remedy in operation.

Under the provisions of the law proposed for the states by the American Law Institute, youth correction authorities are to be established by each state, to which youths under the age of twenty-one would be committed by the state courts. If the youthful offender receives a sentence of less than imprisonment for life, the judge is required to commit him to the Youth Authority. The Authority then determines what treatment the youth shall receive. The proposed law clearly recognizes that the period of segregation of a convicted youth should depend upon his fitness

for freedom, rather than upon the length of imprisonment his crime deserves. The safety of society and not the nature of the crime will determine the length of time a youth is in custody.

These new methods of treatment for the criminal will probably be opposed by those who insist that the criminal be punished through incarceration. The same persons, however, go to the opposite extreme and advocate that the criminal be released from the penitentiary if he agrees to enter the armed forces. Advocates of such measures should first enlist for service so that they can be members of the welcoming committee for their new "buddies" who have been convicted repeatedly of petty larceny, pocket-picking and assault. The problem of release from prisons and penitentiaries is not solved by opening wide the gates or by keeping them tightly closed, but rather by creating an intelligent method of selecting those persons who can probably adjust either to civilian or army life.

These proposed laws attempt to resolve, at both the federal and state levels, fundamental difficulties in determining the division of responsibility between the judicial and executive branches of government in the treatment of persons guilty of crime. The proposed laws do not affect the judicial function of determining guilt. The power of the courts to grant or deny probation will not be changed by these laws. The proposed laws will, however, make available to the judge the services of boards necessarily established within the executive branch of government. It will probably be many years before it is finally agreed that the function of the judiciary should end with the decision that a person is guilty of crime. The proposals which are being made indicate that in order to solve the problem of what to do with the criminal, further attention will be given to the "separation of powers" between the judicial and executive departments of government. It seems clear, however, that "the last word on this head" has not been spoken.

DONALD V. WILSON*

*Department of Public Welfare.