1948

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PROCEDURAL ASPECTS OF THE YOUTH CONSERVATION ACT

By Maynard E. Pirsig*

On April 28, 1947, the Youth Conservation Act became the law of this state and introduced a new program for the treatment of youths under 21 years of age who have been convicted of a criminal offense or found delinquent. On March 10, 1948, the Youth Conservation Commission filed its certificate of readiness to perform its duties and the program is now in operation. Like any new piece of major legislation, this act will present initial problems of interpretation. The following discussion concerns some of the questions that have occurred to the writer or have been brought to his attention on the rehabilitation phase of the program. The prevention aspect is not discussed since it involves but few problems of legal procedure.

The principal policies underlying the act need to be kept in mind. First, the act minimizes the punitive approach in dealing with youths guilty of some offense or delinquency. It substitutes, instead "methods of training and treatment directed toward the correction and rehabilitation" of the youths to which it applies. Fear of punishment as a deterrent can, and no doubt in appropriate cases, should be used. But reliance upon it alone has universally proved insufficient to meet the problem of youth delinquency.

Second, the act recognizes that youths differ in the extent to which they are capable of correction and rehabilitation. Some may be constitutionally disposed to anti-social behavior. The psychopathic personality, the kleptomaniac, the sex pervert are examples. For them, long periods of institutional care may be indicated. In other cases, the offense may be but a temporary and passing manifestation incident to adolescence. Confinement of such youths in an institution may be wholly unnecessary and positively harmful. Still other youths may be equipped with normal moral and intellectual endowments but have been subjected to character destroying influences, such as a disrupted home life, parental neglect and an unwholesome community environment. These may have left a deep-rooted maladjustment that requires specialized

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1. Laws of Minn., 1947, Ch. 595.
2. Laws of Minn., 1947, Ch. 595, § 1, subdiv. 1.
and expert attention over a period of time if the youth is to be restored to a law abiding and trustworthy individual. Discrimination in the treatment of individual offenders is thus required and is recognized and intended by the act.

Third, responsibility for effective administration of the program is centered in a single agency, the Youth Conservation Commission. This permits of consistency of purpose and treatment and concentration of experience not possible heretofore.

Fourth, local responsibility is retained and encouraged. Whether a given case shall be retained in and dealt with through local agencies and facilities is left to the determination of the judge. The act, through the Commission, extends added facilities that may be used.

Fifth, the use of all available state facilities for carrying out the purposes of the act is contemplated regardless of existing departmentalization of function. The facilities of the division of institutions, the parole board, the division of social welfare and the department of education, to the extent that they can effectively be used, are intended to be available to the Commission in carrying out its program. It was the intent of the act to use, rather than to duplicate, the services that other departments and agencies of the state can provide. To effectuate this, the heads of the two agencies first named are to “advise, cooperate and assist the Commission” and may attend its meetings. The governor may direct that the facilities and services of any state agency shall be made available to the Commission.

Certificate of Readiness

To enable the Commission to prepare for its work, the statute suspends its going into operation until the Commission has certified in writing to the Secretary of State that it is prepared to discharge its duties and functions. Also, a certified copy of the certificate must be filed with the clerk of each court before the court can proceed to apply the act to cases before it. Under a corresponding provision in California, the District Court of Appeals of that state has held that a certificate may be filed limited to male persons, a reasonable construction which enables the Commission

3. Id., subdiv. 9.
4. Id., subdiv. 9.
5. Id., subdiv. 9.
6. Id., subdivs. 11, 13.
to begin its work on a more limited and experimental basis and, hence, at an earlier time. For reasons that need not be considered, the Commission here felt it necessary to file its certificate covering the entire field specified by the act. This has delayed commencement of the program for more preliminary work had to be done. Arrangements had to be made with each of the institutions to which the youths are to be sent so that adequate preparations and facilities would be provided and the details of operation worked out to the satisfaction of both the institutions and the Commission. In involved contacts and communications with judges and other officials and agencies of the various communities from which the cases will come and to which youths will be sent by the Commission on probation or parole. It required consideration and decision as to the kind of program that should be attempted with respect to each institution in the light of the facilities available. These preparations obviously presented the Commission with a sizeable and important task, for the thoroughness with which it was done will determine to a considerable extent the smoothness and success with which the Commission enters upon the performance of its duties.

**Criminal Cases Covered**

The criminal cases to which the act applies are determined by three factors. First is the character of the crime of which the youth is convicted. The crime must have been a felony or gross misdemeanor. The act does not apply to other misdemeanors. The judgment of conviction is conclusive of the character of the crime committed. The character of the crime charged in the indictment or information is immaterial. It is also immaterial whether the judgment of conviction follows from a verdict of guilty or from a plea of guilty.

Second is the age of the defendant. He must have been under the age of 21 years at the time of his apprehension. If he is over the age of 21 at the time of apprehension, it is immaterial that he was under that age when the crime was committed. The act does not then apply. Likewise, if he was under the age of 21 years at the time of his arrest, it is immaterial that he has reached the age of 21 at the time of trial or sentence. The act still applies.

Third is the character of the sentence imposed. If permitted by the statutes governing the crime of which the youth stands

10. Id., subdiv. 13.
convicted and the court wishes to impose such a sentence, it may imprison the youth in a county jail for not over 90 days or impose a fine only. In that event the Youth Conservation Act may be disregarded. It is assumed that such a sentence indicates an offense of minor gravity only and, like misdemeanors generally, is not brought within the scope of the act.

The act, likewise, does not apply if, pursuant to the statute covering the crime involved, the defendant is "sentenced to imprisonment for life." Certain crimes such as murder and treason are regarded so seriously that mandatory sentences of life imprisonment are specified. The Youth Conservation Act does not change this requirement. If a youth is convicted of one of these crimes, the court is not authorized to commit the youth to the Commission.

There are other crimes where the imposition of a sentence of life imprisonment is discretionary with the trial court. Thus, where only the minimum term of imprisonment is prescribed by the statute for a particular crime and no maximum is fixed, the trial judge may impose a sentence of life imprisonment. Applying the provisions of the Youth Conservation Act, the result is as follows. The court may impose a sentence of life imprisonment. In that event, the sentence must be to a penal institution and not to the Commission. If the court does not wish to impose such a sentence, the other alternative is to sentence to the Commission without a designation of any term, for life or otherwise. This then becomes an indeterminate sentence. It is true it may last for the life of the defendant depending on the action of the Commission. Nevertheless, the defendant is not "sentenced to imprisonment for life" within the meaning of the act. It is, instead, an indeterminate sen-
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tence which may at any time be determined by action of the Commission or other authority. The corresponding provisions of the California act have been so construed.16

A question, which arises but will be of temporary concern only, is the application of the act to crimes committed before the certificate of readiness was filed. The act cannot apply to criminal offenses committed prior to the enactment of the statute although otherwise coming within the terms of the act. To apply the act to such offenses would violate the constitutional prohibition against *ex post facto* laws.17 Where the crime was committed after the act was enacted but before the certificate was filed, the application of the act depends upon the stage reached in the criminal prosecution at the time of the filing. The act provides that “after the certificate has been filed,” “every person convicted of a felony or gross misdemeanor,” etc., shall be committed to the Commission, etc.18 Hence, whether the conviction was before or after the filing of the certificate determines the application of the act to him. If the defendant pleaded guilty or was found guilty by a jury or judge subsequent to the filing in that court of a certified copy of readiness, he must be sentenced in accordance with the act. It is then immaterial that he was apprehended or that proceedings, such as arraignment or plea, took place, or that the trial was in progress prior to such filing. On the other hand, if, at the time of such filing, a plea of guilty had been accepted or the jury had returned its verdict of guilty, the act is not applicable even though sentence had not yet been imposed. It follows that the act does not apply to defendants on probation under a suspended sentence. Should their probation be revoked after the certificate has been filed, they cannot be committed to the Commission, but the sentence should be executed as originally fixed.

The application of the act in the manner stated to persons whose crimes were committed after the act was passed but before the certificate was filed is not invalid as *ex post facto*. In point is *People ex rel. Cervosie v. Warden of New York County Penitentiary*.19 A state statute authorized a city to create a parole commission which was given wide powers of parole, imprisonment, discharge, transfer as between institutions, etc. Once a city had created such a commission, the act required that courts impose an

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indeterminate sentence, further disposition of the case depending upon action by the commission. The statute became law on May 10, 1915. Defendant's offense was committed in New York City on November 25, 1915. The city created a parole commission on December 17, 1915. He was convicted on January 18, 1916, and sentenced under the act to an indeterminate sentence.

The defendant argued that the act "did not take effect in any given city until the parole commission therein provided for had been appointed, and that inasmuch as this did not occur in New York City until after the commission of his crime his punishment was not and could not be administered in accordance with the terms of the act." The argument was rejected, the court saying:

"In our opinion the statute in a real, as well as in a technical and legal sense, was in force at the time when the relator committed his crime and forewarned him of the punishment which he might expect. As has been pointed out, it outlined a system of punishment such as has been inflicted upon him, and it provided that in case he should be convicted after a commission had been appointed for administering the provisions of said statute he should be punished in accordance with its terms. Thereby it was indicated, and he was fully warned before he committed his crime, that in the city of New York there might at any time be adopted an altered form of punishment which would be applied to him if he was convicted after its adoption. Thus he was not subjected to a new and altered form of punishment formulated after his crime was committed. He was, so far as we can see, subjected to none of the penalties or injustice arising from an ex post facto law."

These reasons are directly applicable to the Minnesota act.

**Procedure in District Court**

In a criminal prosecution against a minor, the procedure prior to conviction is not affected in any manner by the act. Preliminary hearings, the indictment, information, pleas, rules of evidence, right to jury trial, etc., are governed by the same rules as heretofore. Likewise, the rule continues that criminal cases against minors under the age of 18 years should not be prosecuted in the district court unless referred for such prosecution by the juvenile court.

Once, however, a verdict of guilty has been rendered or a plea of guilty accepted, the provisions of the act need to be considered. There should now be a finding made by the court, based either on evidence adduced during the trial or on new evidence of the fact, that the defendant was under the age of 21 years at the time of his apprehension.20

20. Laws of Minn., 1947, Ch. 595, § 1, subdiv. 12.
Substantial changes have been made in the sentence that may be imposed. Under the act, the court may either place the youth on probation or commit him to the Commission. Before the youth can be placed on probation, the act requires that a pre-sentence investigation and report first be obtained. These are to be provided by the court's own probation officer if it has one, otherwise by the Commission to the extent that it has facilities for making them. If they cannot be provided by either probation officer or Commission, the court may grant probation without the investigation and report. If they are provided, they constitute at most a recommendation to the court, and are not binding. The court may disregard them and grant or deny probation and fix the terms thereof as it chooses.

With the consent of the Commission, the court may condition probation on supervision of the youth by the Commission. Ordinarily, this is not to be anticipated where the court has a probation officer of its own, for it was not the intention of the act to relieve local probation departments of the responsibilities they have had heretofore.

Whenever a court grants probation, whether under the supervision of the Commission or the court's own officer or on some other terms, the court retains control and jurisdiction over the defendant and can revoke the probation, or alter its terms or discharge the youth without any restrictions under the act. The judge's discretion is thus left unfettered so long as he wishes to keep the case within the confines of his community.

The other alternative open to the court is to sentence the youth to the Commission. Unless the case is one calling for a life sentence as explained earlier, the court cannot, under the act, sentence a youth to a penal institution. The sentence must be to the Commission. It must also be for the maximum term fixed by the statutes for the crime of which the youth has been convicted. Neither a maximum for a lesser period nor a minimum can be set.

The reason for this seeming inflexibility is that the sentence to the Commission serves a different function than does a sentence of the court in a case not under the act. It no longer fixes the conditions of punishment. It is, instead, a transfer of the defendant to the Commission and it is the duty of the Commission, after investigation and study, to specify the terms and conditions under which the sentence is to be served and to determine when the defendant

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22. Ibid.
is to be discharged. To permit flexibility in the sentencing by the
court would introduce a corresponding inflexibility in what the
Commission could do to provide an adequate program of rehabili-
tation.

Applying the principles stated, the judgment and sentence of
the court might properly be rendered in the following form, being
preceded by the customary recitals:

"Wherefore, the court adjudges you A. B. guilty of the crime
of ...................................... of which you stand convicted by the jury in
this case [to which you have pleaded guilty]. The court finds that
you were under the age of 21 years at the time of your apprehen-
sion. The sentence of the court is that as punishment for the said
crime you are hereby committed to the Youth Conservation Com-
misson for a period of .......... years and subject to its further
orders, or until sooner discharged by said Commission or other
competent authority or by due course of law."

If probation is granted, the foregoing judgment and sentence
should still be made followed by a provision that execution of the
sentence is stayed under further order of the court and stating the
terms of probation. Revocation of the probation and of the stay
would then automatically result in the youth being committed to
the Commission pursuant to the sentence.

In case the sentence commits the youth to the Commission, the
warrant of commitment directed to the sheriff should follow in
substance the following form, the usual recitals being first stated:23

"You are commanded to convey forthwith the said A. B. to the
State Reformatory for Men [Women] at St. Cloud [Shakopee],
Minnesota and there to deliver him into the custody of the warden
of said Reformatory, to be received by him for and in behalf of the
Youth Conservation Commission and subject to the further orders
of said Commission."

JUVENILE COURTS

All youths found delinquent by a juvenile court come under the
provisions of the act.24 The act, however, does not apply to cases
in which the charge is neglect or dependency. It covers only de-
linquency cases.

23. The Commission has designed the reformatories at St. Cloud and
Shakopee as the places of detention for male and female youths respectively.
See § 1, subdiv. 16 of the act. This subdivision also provides that the court
may leave the defendant "at liberty until otherwise ordered by the Commis-
sion under such conditions as will insure his submission to any orders of the
Director." If this is done, it should be with the knowledge of the Commission
so that it may take such steps as may be advisable. Subdivision 17 requires
that a certified copy of the warrant of commitment be promptly sent to the
Commission.

As heretofore, the juvenile court retains the power to transfer a case to the district court for criminal prosecution of the youth for the crime involved. In determining whether such transfer should be made, the juvenile court judge should keep in mind the difference in result between a commitment to the Commission by the district court and commitment by the juvenile court. Commitment by the district court is for the maximum term fixed by statute for the crime involved. Until this term expires, the Commission may retain custody of the youth until he is 25 years of age and then transfer him to another agency to serve out the balance of the term. It may also confine the youth in a penal institution while it retains custody of him. Under a commitment by a juvenile court, the youth can be confined by the Commission only in the schools at Red Wing and Sauk Center and other non-penal institutions and it must discharge him at the age of 21 years.

For a time, the question will come up concerning the application of the statute to acts of delinquency committed before the certificate of readiness of the Commission was filed with the clerk of the juvenile court. The act provides that "before such filing a judge of said courts shall deal with persons . . . found delinquent without regard to the provisions of this Act." The act could be clearer, but a fair interpretation is that it covers only those cases in which the finding by the court of delinquency is made after the filing of the certificate. If the court has already found the youth delinquent and made an order to that effect and then the certificate is filed, the court would not be permitted by the act to commit the youth to the Commission. Likewise, if the youth was previously found delinquent and placed on probation and later, after the certificate was filed, the court revokes the order of probation, the act does not authorize commitment to the Commission. Of course, if new acts of delinquency have been committed by the youth, new charges and a new finding of delinquency based upon them may be made and, in that event, the disposition of the case in the new proceedings would be governed by the act.

No change has been made in the grounds on which a youth may be charged and found guilty of delinquency. Neither has there been any change in the procedure prior to or during the hearing of such a charge. Forms heretofore used prior to and during the hearing may continue to be used.

25. Id., § 1, subdiv. 14.
27. Id., subdiv. 11.
However, after the hearing is over and the judge has found the youth delinquent, the act must be considered in deciding what disposition should be made of the case. The principal change is that the power of a juvenile court to commit a youth directly to the State Training School for Boys at Red Wing, Minnesota, or to the Home School for Girls at Sauk Center, Minnesota, no longer exists.\(^{28}\) Instead, the juvenile court commits the youth to the Commission. The Commission, in turn, decides whether he or she shall be committed to these schools. Under the act, the only youths the schools will receive are those committed to them by the Commission.

The following form for commitment by a juvenile court to the Commission would appear to meet the requirements of the act, the usual recitals first being set forth:

"Wherefore it is ordered and adjudged that said A. B. be and hereby is committed to the Youth Conservation Commission until he shall attain the age of 21 years or until he is sooner discharged by said Commission or other competent authority or by due course of law."

The corresponding portion of the warrant of commitment following might be used:

"You, the said sheriff [or other appropriate officer] are commanded to convey forthwith the said A. B. to the [State Training School for Boys at Red Wing,] [Home School for Girls at Sauk Center,] Minn., and there to deliver him [her] into the custody of the superintendent of said [Training School for Boys] [Home School for Girls] to be received by [him] [her] for and in behalf of the Youth Conservation Commission and subject to the further orders of said Commission."

In other respects the powers of the juvenile court remain unchanged. It may grant probation as heretofore on such terms as the judge chooses. To aid it in determining the disposition to be made of the case, the court may ask for an investigation and report by the Commission either before or after the hearing.\(^{29}\) The court may, with the consent of the Commission, place a youth on probation under the supervision of the Commission.\(^{30}\) However, the investigation and probation services are limited to counties which do not have probation officers of their own.\(^{31}\)

The juvenile court may continue to commit a delinquent youth to a local county institution or school, if one exists, or to a private institution, or it may make such other disposition as may seem

\(^{28}\) Id., § 2.

\(^{29}\) Id., § 1, subdiv. 14

\(^{30}\) Id., subdiv. 14.

\(^{31}\) Id., subdiv. 14.
appropriate to the court under the broad discretionary powers granted to it under the juvenile court act.

**PROCEDURE BY THE COMMISSION**

The first task of the Commission on receiving a youth committed to it is to study and examine him and his case in order to determine what course of action should be undertaken for his rehabilitation. This preliminary study is to be made in what are known as detention centers. The Commission has designated the four institutions at St. Cloud, Shakopee, Red Wing and Sauk Center, Minnesota, as such centers. The youths sent there by the courts will be segregated for a period of several weeks under conditions which will permit study of their behavior, disposition, level of intelligence, physical condition, etc. During this period, they will be removed from those already confined in the institution.

A separate institution for this preliminary study would have had some advantages over the present arrangement. With each detention center existing at an institution to which youths are also committed by the Commission, there will no doubt be some public confusion concerning youths sent to the detention center and later, after study, released on probation. Much of this confusion will disappear as the public becomes better acquainted with the work of the Commission. The Commission had no other alternative. A separate institution that might be used as a detention center did not exist and could not be created within the time and by the means at hand.

In determining what measures should be taken in a particular case, the Commission has all the powers of the court which committed him to the Commission in addition to other broad powers to prescribe activities and conduct designed to promote the rehabilitation of the youth. It may place him in an institution appropriate to his offense or place him on probation upon such terms as it considers desirable. The order for confinement in an institution need not be for a specified period. The Commission continues to retain control of the case and may at any time terminate the confinement and place him on parole.

Probation granted by the Commission may be under the supervision of its own agents or of some other agency or person, public or private. However, if the youth was committed to the Com-

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32. Id., subdiv. 18.
33. Id., subdiv. 19.
34. Id., subdiv. 20.
35. Id., subdiv. 19.
36. Id., subdivs. 19, 21.
mission by a court which has a probation officer of its own, the supervision must be under this officer.\textsuperscript{37} Youths paroled may be put under the latter's supervision only with the consent of the district or juvenile court involved.

The Commission may discharge youths committed to it at any time it is considered advisable.\textsuperscript{38} There is no requirement that they must remain under its control for any minimum period.\textsuperscript{39}

The Commission must discharge a youth convicted of a criminal offense at the expiration of the maximum term for which he was sentenced.\textsuperscript{40} If before that time he reaches his 25th birthday, the Commission must discharge him unless it finds that his release would be dangerous to the public. In that event, he is turned over to other appropriate agencies dealing with adult criminals to be dealt with as are other persons convicted of a crime and sentenced to an indeterminate term.\textsuperscript{41} The purpose here is to safeguard society from the demonstrated dangerous criminal by retaining control of him for the maximum period allowed by law. Youths committed to the Commission by the juvenile courts must be discharged on their 21st birthdays.\textsuperscript{42}

There will, no doubt, be cases in which the youth has retained counsel who will wish to appear before the Commission. Such counsel can be of help in bringing forward facts and considerations about which the Commission will want to know. But it should be remembered that the responsibilities of the Commission are much greater, more continuous and of a different character than those of a judge about to impose sentence. The Commission cannot carry out its duties through an adversary proceeding in which witnesses are mustered and arguments of counsel presented as though a trial were in progress. The responsibility for making a thorough investigation of the case and reaching a sound judgment based upon all the tangible and intangible factors involved is placed upon the Commission. Counsel's participation must, of necessity, be limited to a considerable degree.\textsuperscript{43}

\begin{itemize}
\item \textsuperscript{37} Id., subdiv. 22.
\item \textsuperscript{38} Id., subdiv. 19.
\item \textsuperscript{39} Minn. Stat. 1945, § 610.17, which provides that a minimum penalty of imprisonment for a felony shall be one year, is, to the extent that it is applicable, superseded by the Youth Conservation Act.
\item \textsuperscript{40} Laws of Minn., 1947, Chap. 595, § 1, subdiv. 26.
\item \textsuperscript{41} Id., subdiv. 27.
\item \textsuperscript{42} Id., subdiv. 26.
\item \textsuperscript{43} Similar considerations evidently led to the provision in Minn. Stat., 1945, § 637.06, that the parole board in considering applications to it for parole or release need not hear oral argument from an attorney or other persons either for or against the application.
\end{itemize}
It is evident that the success of the new program calls for the cooperation of many persons and agencies. The judges of the district and juvenile courts and the Commission will need to work out a mode of operation and an understanding concerning the cases that should be placed on probation by the courts and those that should be committed to the Commission. In developing probation facilities for use in the various localities and in supervising persons placed on parole, the Commission will need to enlist the assistance of local individuals and agencies, both private and in official positions. The Training School for Boys at Red Wing and the Home School for Girls at Sauk Center from now on will receive all of their cases from the Commission. None will come any longer from the juvenile or district courts. Success of the program for these youths will depend in large measure on how well these schools perform their tasks. Especially difficult problems will be met at the State Reformatory for Men at St. Cloud, for it will continue to receive inmates over the age of 21 committed directly to it by the district courts of the state. Administration of the same program for both these inmates and the youths committed to it by the Commission will not be in the best interests of the youth conservation objectives. Yet, to set up a separate program for youths in the reformatory would involve an extensive reorganization of the institution and an expenditure of funds for added staff and equipment not now available to either the Reformatory or to the Commission.

There is already adequate evidence that the necessary cooperation from these and other agencies is, and will continue to be, forthcoming. The initial problems that arise in the work of the Commission will, with public tolerance and as experience grows, undoubtedly be solved. The objectives are sound and there is much assurance that the program will be soundly administered.