behalf of such an extension, the SEC urged that directors might be tempted to
delay the reorganization or liquidation of a losing concern to gain time in which
to purchase obligations and that delays might waste assets rightfully belonging
to all creditors. Judge Learned Hand's dissent in the court of appeals argued that "[t]he insolvent company may have a good chance of effecting a composi-
tion: that is, it may be able to scale down its debts and go on," and that courts
should ask, in each case, whether the alternatives to "scale down and go on" or
to buy at discount and realize a profit are sufficiently present to require the
trustee rule against divided loyalty. In refusing to extend the trust rule, the
Court adopted Judge Hand's approach to the problem since it limited its deci-
sion to the particular facts and suggested another result in Chapter X proceed-
ings should the SEC, as "statutory advisor to the court" present a convincing
"body of evidence . . . presumably informed by expert understanding."

The Court's refusal recognizes that the trust rule is based on speculation as
to causes and effects of conflicting considerations and that earlier courts may
have been too deaf to argument in behalf of the director. Looked upon as a reali-
zation that recent federal regulations and bankruptcy cases have lessened the
dangers of divided loyalty, perhaps the decision portends further restrictions on
the application of the trust rule as protections against "insider" transactions are
strengthened. Analogous safeguards on the state level leading to similar limita-
tions of the rule will prove of greater significance, however, since the discount
purchase problem is peculiar to small corporations controlled by state regulation
and jurisprudence.

YOUTH CORRECTION—THE MODEL ACT IN OPERATION

Though vengeance was, historically, the motive for criminal punishment, modern justifications are based on the prevention of future crimes. Punishment,
it has been said, serves to reform the offender, deprive him of the opportunity to do mischief, and serves to deter other potential criminals. Although there is no general disagreement on the proposition that crime and delinquency either should be prevented, or if not prevented, attacked when manifestations first appear, there is increasing doubt that punishment is the proper and desirable method to achieve these objectives.4

The causes of crime are external pressures affecting both offenders and non-offenders, and lower resistance of offenders to withstand these pressures. Criminal law and penology cannot hope to reduce the external pressures, but can hope to influence the individual's reaction to them. It is felt by many that punitive measures not only fail to develop the capacity for law-abiding conduct and self support, but have the opposite effect on the plastic and impressionable youth offender. Specifically, the objections to present methods are that (1) mass treatment too often subjects convicts of correctible character to destructive influences, (2) individuals are released and subjected to these external pressures without any societal help or encouragement, and (3) too often individuals are discharged from incarceration without regard to their fitness or the safety of society.7

The present uncertainty in regard to the proper function of the punitive and reformative aspects of imprisonment has unusually serious consequences in the case of the youthful offender. Recent studies indicate that the youth group—the age group comprising individuals from sixteen to twenty years—commits crimes of a serious nature at a rate which is vastly above its percentage of the total population.8 Furthermore, meager data concerning recidivism indicates

3 People v. Superintendent Illinois State Reformatory, 148 Ill. 413, 421, 36 N.E. 76, 79 (1894).
7 Sellin, op. cit. supra note 6.
that the youth group demonstrates a high index of repeated crime.\textsuperscript{9}

As a result of these objections, the American Law Institute's Committee on Uniform Laws developed and presented a Model Youth Correction Authority Act in 1940.\textsuperscript{10} The Act was designed to deal with the youth offender after conviction, and was a radical departure from prevailing practices. With the exception of life imprisonment, death or fines, the trial judge was to have no discretion in sentencing a youthful offender (those who were apprehended before attaining the age of twenty-one).\textsuperscript{11} If, under the facts, none of the exceptions was applicable, the judge was to commit the offender to the Youth Correction Authority.\textsuperscript{12} After commitment, the Authority was to make a detailed study of each individual and was to have wide discretion in regard to treatment, segregation and classification.\textsuperscript{13}

No definite period of control was contemplated, for in line with the purpose of the Act, the Authority was to have the power to discharge the individual when treatment and correction had been completed and when discharge would not constitute a danger to the public. However, discharge of the offender was required at the time he reached certain age limits unless the Authority felt that such a discharge would be dangerous to the public.\textsuperscript{14} If the Authority was convinced that a discharge would be dangerous, it was to apply for extended control for a period of five years.\textsuperscript{15} The determination of the need for extended control was to be subject to the safeguard of judicial approval of the petition after full hearing.\textsuperscript{16} The Authority could reapply for extended control at the end of each five-year period. The effect of these provisions resulted in giving the Authority the possibility of perpetual, indeterminate control\textsuperscript{17} over the individual.

\textsuperscript{9} Sellin, The Criminality of Youth \textit{et seq.} (1940); Sellin, Youth and Crime, \textit{9 Law \& Contemp. Prob.} 581, 584 (1942). It is interesting to note that the types of crime committed by youth—those against property—are definitely related to recidivism.

\textsuperscript{10} Youth Correction Authority Act (A.L.I. Official Draft, 1940).

\textsuperscript{11} Ibid., at §§ 4--10, 13.

\textsuperscript{12} Ibid.

\textsuperscript{13} Ibid., at § 30. The Authority was to have at its disposal the services of psychiatrists and psychologists; it could discharge the offender immediately or place him on a type of parole; it could send him to a vocational camp, to school or to a general rehabilitative institution in which varied vocational, educational and recreational activities were to be offered.

\textsuperscript{14} Ibid., at § 29.

\textsuperscript{15} Ibid., at §§ 33--36.

\textsuperscript{16} Ibid.

\textsuperscript{17} Indeterminate sentence is used here to mean the power to retain control over an offender for an indeterminate period of time, provided, of course, that judicial approval of extended control is obtained. The indeterminate sentence is most commonly applied to the procedure
II

The Model Act, which was not received without adverse criticism, was presented ten years ago. Since that time the states of California, Massachusetts, Minnesota, Texas, and Wisconsin have adopted similar or related acts. Attempts to pass such legislation in Illinois have been fruitless. In all probability, the objections to youth correction legislation have come from the judges who are jealous of any attempts to restrict their judicial power, the lawyers who are wary of the constitutionality of such legislation, the local communities who fear a decrease of activity on the local level, and finally, general apathy. It is felt that a discussion of youth correction legislation is pertinent again today because of the success which has been achieved by those states which have adopted such acts and because of the need for such legislation in Illinois. The remainder of this note will investigate the operation, achievements, and defects of the presently prevailing statutes, and finally will discuss the applicability of youth correction legislation to Illinois criminal law administration.

The various statutes which have been adopted resemble the Model Act to a great extent, but all of them differ in certain vital respects. In all probability, the provision in the Model Act for true indeterminate control was one of the most crucial measures with which to protect society and rehabilitate the offender. It was this provision that went directly to the heart of the philosophy underlying the Act, since the time limits for completion of rehabilitative treatment cannot be determined in advance. None of the acts which have been adopted have retained this provision. It is highly possible that the reasons for this omission were fear that passage of legislation containing a provision tantamount to perpetual control would not be obtained, and that even if passed, the Act's provision for indeterminate control would violate constitutional prohibitions of sentencing a criminal for a definite minimum and maximum. The determination of control and release is to be made by parole and related boards. The term is also applied to the sentencing procedure in Illinois. Here, however, the judge may set the minimum and maximum, as long as these termini are within statutory limits. The evil of this practice is apparent, since a criminal may be sentenced to a minimum of life and a maximum of life and the sentence still will comply with legal requirements. See Ill. Rev. Stat. (1949) c. 38, § 802; Blackiston, Previous Criminal Records and the Indeterminate Sentence, 76 Crim. Justice 27, 33 (1948), §§ 27–31; Healy, Youth Correction: Principles of Diagnosis, Treatment, and Prognosis, 9 Law & Contemp. Prob. 681 (1942). See Perkins, Indeterminate Control of Offenders: Arbitrary and Discriminatory, 9 Law & Contemp. Prob. 625 (1942); N.Y. Times § 1, p. 12, col. 6–7 (Mar. 13, 1943); Perkins, Defect in Youth Correction Authority Act, 33 J. Crim. L. & Criminology 112 (1942); Hall, The Youth Correction Authority Act, 28 A.B.A.J. 317 (1942). The majority of these objections are dealt with in III, IV.

18 See Perkins, Indeterminate Control of Offenders: Arbitrary and Discriminatory, 9 Law & Contemp. Prob. 625 (1942); N.Y. Times § 1, p. 12, col. 6–7 (Mar. 13, 1943); Perkins, Defect in Youth Correction Authority Act, 33 J. Crim. L. & Criminology 112 (1942); Hall, The Youth Correction Authority Act, 28 A.B.A.J. 317 (1942). The majority of these objections are dealt with in II, III, and IV.


20 Bennett, Indeterminate Control of Offenders: Realistic and Protective, 9 Law & Contemp. Prob. 627 (1942).
tions against "cruel and unusual punishment." These constitutional provisions, however, have been construed very liberally and courts have seldom interfered with legislative discretion in fixing the sentence for a particular crime. It is not uncommon for courts to state that cruel and unusual punishment is that which approaches immoral, barbaric or uncivilized conduct. In light of this, one can but wonder about the fears of the legislators. It must be emphasized that it is cruel and unusual punishment which is prohibited; it justifiably can be argued that such prohibitions do not apply to the philosophy and provisions of youth correction legislation. The draftsmen of the Model Act were motivated by a dissatisfaction and distrust of punishment as a method of preventing repeated crime; it would seem that an application of the prohibitions against cruel and unusual punishment to this therapeutic legislation would be inherently self-contradictory. However, as long as many judges and legislators conceive of the disposition of a convicted offender as punishment, one cannot wholly condemn the proponents of youth correction acts for intentionally omitting a provision for true indeterminate control.

Not all of the states which have adopted youth correction acts have completely abandoned provision for continued control beyond a set period. Some of the states have adopted a method by which the Authority is empowered to extend the period of control in cases of individuals who suffer from mental deficiencies or disorders short of insanity, who would constitute a danger to the public. The rationale here, in all probability, is similar to that underlying the detention of individuals of the "Typhoid Mary" class. The possibility of extended control on this basis is accompanied by elaborate provisions for judicial determination of the necessity for further control. It is difficult to understand the dis-


22 State v. McCauley, 15 Cal. 430 (1860); In re O'Shea, 11 Cal. App. 568, 105 Pac. 776 (1909). The Illinois Constitution states, "All penalties shall be proportioned to the nature of the offense..." (Ill. Const. Art. II, § 17). This also has been given an exceedingly broad interpretation. See People v. Landers, 329 Ill. 453, 160 N.E. 856 (1927); People v. Callicott, 322 Ill. 390, 153 N.E. 688 (1926); People v. Elliott, 272 Ill. 592, 112 N.E. 300 (1916).

23 State v. McCauley, 15 Cal. 430 (1860); People v. Elliott, 272 Ill. 592, 112 N.E. 300 (1916).

24 Mimms, Indeterminate Control of Youth Offenders Under the Youth Correction Authority Act: Constitutional Issues, 9 Law & Contemp. Prob. 635, 641 (1942). Furthermore it is hardly fair to classify the possibility of perpetual control as cruel and unusual since judicial safeguards would surround the determination of the need for extended control; the individual is protected against arbitrary action. Youth Correction Authority Act (Official Draft, 1940) §§ 33-34 (2).


26 Illinois has provision for the commitment of those who are adjudged sexual psychopaths. Ill. Rev. Stat. (1948) c. 38, § 820 et seq. However the rationale here is not only protection of the public per se, but also prevention of the prosecution of individuals for crimes committed when in this condition. People v. Simis, 382 Ill. 472, 47 N.E. 2d 703 (1943).

27 Note 25 supra.
tinction between extended control on this basis and extended control over those who are merely considered dangerous to the public. Theoretically, the standard of physical or mental abnormality could be construed as synonymous to that contemplated in the Model Act, for those who are considered dangerous to the public vary from the norm and in this sense are "abnormal or deficient." Practically, however, there should be no doubt that the standard of abnormality will be construed narrowly; definite objective evidence of abnormality will be demanded. Thus, those states which have chosen this method of extended control have effectively rejected the merits of extended control, for by and large the great number of offenders over whom the Authority should have extended control are not those who are objectively and definitely "abnormal."

Other states have provided for extended control by another and quite dissimilar method. It is provided that if the Authority determines that discharge at the end of the statutory period would be dangerous, the Authority can petition the court. If the court finds that discharge would be dangerous, it is not to grant extended control to the Authority, but must commit the individual to a penitentiary for a period of time equal to the maximum term prescribed by law for the offense for which he was originally convicted, less the period during which he was under the control of the Authority. 28 Apparently this commitment is not a resentencing but a transfer of control under the original sentence, and it seems that the individual will be eligible for parole, and in all respects treated as other prisoners. This method is contingent on the fact that the time spent under the control of the Authority is less than the maximum sentence prescribed by law; if such is not the case, he must be discharged in accordance with the statutory limits. These statutes have provided for protection from the discharge of dangerous offenders and are meritorious in this respect. But it is very possible that

28 Cal. Wel. and Inst. Code (Deering, 1944) §§ 1780–83. Minnesota has a somewhat different solution, but the manner of extended control is based on the maximum sentence idea. The offender is to be discharged on his twenty-fifth birthday except when the Commission determines that discharge would be dangerous to the public. In such cases the Commission is to then terminate control in the following manner: "(1) If he be then on probation under the supervision of the probation officer of the district court, the future control and disposition of the case shall be in all respects as though such probation were under the order of said court. (2) If he be then on probation, but not under the supervision of a local probation officer, or if he be on parole, control of him shall be transferred to the State Board of Parole who shall thereupon assume like control over him as though he were on parole following sentence of a court for a maximum term provided by law for the crime for which he was committed. (3) If he be then confined in a penal institution, the control of the Commission shall cease and such confinement shall be upon like terms and conditions as though it had been under sentence of the court for the maximum term provided by law for the crime for which he was committed." Minn. Stat. (Mason, 1947) § 260.125, subd. 27. The Texas statute seems to apply only to delinquent children—males under seventeen years and females under eighteen years (Tex. Ann. Rev. Civ. Stat. [Vernon, Supp. 1949] art. 2338–1), and is ineffective as far as the youth group is concerned (Tex. Ann. Rev. Civ. Stat. [Vernon, Supp. 1949] art. 5143C, § 3). The provision for termination of control is ambiguous. "Every child committed to the Council as a delinquent, if not already discharged, shall be discharged or referred back to the [Juvenile] court when he reaches his twenty-first birthday." Art. 5143C, § 3. Apparently there is to be no extended control whatsoever.
this type of extended control may have an insidious effect. Presumably the offender was receiving corrective treatment while under the control of the Authority, and commitment of this offender to a penitentiary may destroy all the progress which has been made.\textsuperscript{29}

The only other alternative is that of an absolute requirement of discharge in accordance with statutory limits.\textsuperscript{30} However, this method would be no better, if not much worse, than the adopted provisions for extended control.

Thus, in lieu of the provision in the Model Act, those states which have adopted youth correction legislation have chosen methods which either are practically ineffective, or which may have an effect contrary to the philosophy and principles underlying youth correction. This is not to say that those statutes which have been adopted are without value; it is most probable that the great majority of those treated by the various authorities will benefit by the treatment. The need for extended control would only be apparent in the exceptional situation. The statutes, although departing from the Model Act in this important respect, still contain the important ideas and methods of treatment, and for this reason alone realize a system of youth correction which is vastly superior to general present day methods.

At least two of the states which have adopted youth correction legislation have made a further departure from the aims of the Model Act. It was intended and provided by the framers of the Model Act that commitment to the Authority was to be in effect mandatory.\textsuperscript{31} Texas and Massachusetts have provided that commitment to the Authority is discretionary and permissive.\textsuperscript{32} It is apparent that this type of legislation is contrary to the letter and spirit of the Model Act. Youth correction is relegated to the position of just another method of disposition available to the judge, and implies an admission by the proponents of these acts that the present methods are acceptable. Legislation which relegates the Youth Authority to the position of just another alternative not only condemns the present system, but indicates a lack of faith in amelioration through corrective methods. Unless all judges could be convinced of the value of youth correction, it is probable that Youth Authorities will be ineffective in these states.

\textsuperscript{29} Notes 8 and 9 supra.
\textsuperscript{30} This apparently is the situation in Texas. See note 31 infra.
\textsuperscript{31} Youth Correction Authority Act (A.L.I. Official Draft, 1940) § 13. The judge was to retain the power to sentence to death, life imprisonment or fines, if the offense was such that these dispositions were in order.

\textsuperscript{32} Children between the ages of fourteen and seventeen against whom delinquency proceedings have been brought and dismissed, and against whom criminal proceedings subsequently are begun may be committed to the Youth Service Board, Mass. Ann. Laws (Supp. 1948) c. 119, §§ 65, 73, 74, 75, 76. See Section 85. Section 85 provides that any boy between fourteen and eighteen years of age may be committed. The Juvenile Court has a great many alternative dispositions at its disposal. Tex. Ann. Rev. Civ. Stat. (Vernon, Supp. 1948) art. 5143C, § 12.
It has been ten years since the Model Act was drafted and but nine years since California became the first state to adopt youth correction legislation. It is still much too early to determine conclusively the effect of such legislation on the rates of youth crime and recidivism. It is not too early, however, to note trends and discuss what has been done with the general problem of youthful offenders and crime prevention by those states with youth correction legislation.

The reports from California present a few facts and trends which, although inconclusive, are worthy of notice. It was expected by experts in law enforcement and allied fields that the end of the war would see a major increase in the rate of delinquency in California, due to such factors as the great influx of persons into the state, and the extreme mobility and disorganization of its population. However, contrary to these expectations, the actual increase in the rate did not occur. From information available it appears that the actual occurrence of delinquency approximately paralleled the increase in population. It is not safe to conclude that this absolutely proves the success of youth correction, for there might be many other causative factors. This fact does seem to indicate, however, that state-wide mobilization of youth services might well have had a beneficial effect in enabling California to hold the line.

Whether the California Youth Authority has been able to combat the rate of recidivism cannot be answered at this time. If recidivism includes not only acts committed by a youth after discharge, but also any offense committed while under parole or probation, some definitive trends are recognizable. Crudely refined statistics indicate that of all the youthful offenders who have been placed on parole and returned, the percentage recommitted because of new offenses has been decreasing. In 1946, 54% of all returned from parole had perpetrated new crimes; in 1947, 41%; and in 1948, 35.2%. Before any definite, over-all conclusions can be drawn, considerable statistics must be accumulated and more precise methods of tracing the movements of discharged individuals must be developed.

Despite the inconclusive statistical evidence of the effectiveness of youth correction some appraisal of the success of the various youth authorities may be drawn from an examination of delinquency prevention on the local level, and diagnostic treatment on the centralized correctional level.

The Youth Authority, created by the Model Act, was not limited solely to corrective treatment after conviction; the Authority also was empowered to

34 Ibid.
35 Ibid., at 149-50.

Attention has been focused on California because it has been such a short time since other states have passed youth correction legislation that it is even more difficult to determine the effect on youth crime and recidivism in these states than in California.
engage in programs of delinquency prevention. A practical objection which was raised against this aspect of youth correction legislation was that the creation of a unified program of delinquency prevention would have the effect of increasing the control of state agencies and thereby removing youth problems from the sphere of local activity. The experience of those states with youth correction programs, however, has been quite the contrary. Statutory provisions authorizing wide-spread delinquency prevention programs\textsuperscript{37} have been effectively utilized. In the practical sphere the various authorities have been acting in an advisory and organizational capacity in developing enlightened programs of prevention and youth service, not on the central state level, but on the local level.\textsuperscript{38} Local detention services have been improved; subsidiary local youth agencies have been established; law enforcement methods have been studied and improved; the youth authorities have advised and aided in the expansion of local recreation facilities;\textsuperscript{39} community youth services have been increased, improved and coordinated; and various local and state-wide conferences called and workshops instituted.\textsuperscript{40} Thus the various youth authorities, acting as advisers and clearing houses for youth services, have not usurped the functions of local agencies, but rather have been the instigators of realistic and effective community activity.

It is interesting to note that Illinois has set up statutory agencies to act in an advisory capacity and as a central clearing house and coordinator of youth service throughout the state.\textsuperscript{41} Should youth correction legislation be adopted in this state the coordination of corrective and preventive activities would be a relatively simple matter.

On the centralized correctional level, facilities for diagnosis of the youthful offender have been established and expert staffs of social workers, psychologists and psychiatrists have been retained. Certain shortcomings are apparent however. The Youth Authority in California has been unable to secure the full-time services of psychiatrists, and therefore has been unable to effectuate complete programs of diagnosis and psychiatric aid. In Minnesota, reception centers have


\textsuperscript{39}See generally note 38 supra.

\textsuperscript{40}California and Minnesota have initiated workshops in order to train workers and teachers on the local level. Recently the governor of Minnesota convened a general state conference on youth in which prominent citizens and authorities participated. The recommendations made indicate an interesting source of remedial and corrective measures. Report of Governor's State Conference on Youth (1948).

\textsuperscript{41}Ill. Rev. Stat. (1949) c. 23, §§ 220a-220d. These provisions establish state agencies which work together with local communities in the study and the prevention of youth crime.
been established within the confines of prisons. This seems undesirable since 
the psychological influences of prison or reformatory atmosphere may obstruct 
and prevent adequate diagnosis.

The California Youth Authority has been extremely active and effective in 
its program of improving present correctional institutions and establishing new 
ones. Its program has been guided by the need for segregation. Offenders whose 
correction programs provide for institutionalized care have been carefully 
screened. Individual variables of sex, age, personality, type of offense and per-
sonal desires have determined to which of the more than ten schools or camps 
the offender is to be sent. Upon commitment to an institution, an extensive full-
time program is prescribed. Vocational training varying in scope from carpentry 
to dramatics is offered. Accredited elementary and high school training is given 
to those individuals whose limited education would constitute an impediment 
upon return to society. Adequate physical and recreational facilities are also 
provided. Throughout the period of rehabilitative control the progress of the 
individual is carefully studied, and when it is determined that sufficient progress 
has been made and that the individual is fit to return to society, he is dis-
charged.

Thus although it is not possible to appraise statistically the effects of youth 
correction, and salutary effects of the concrete measures taken in California and 
other states are clearly apparent.

IV

Though attempts to pass a Youth Correction Act in Illinois have failed, it is 
felt that the present Illinois treatment of youthful and juvenile offenders dem-
onstrates the need for youth correction in this state. The Juvenile Court in Illi-
nois has jurisdiction over all persons under the age of twenty-one years and may, 
in proper proceedings, assume control over males under seventeen years and fe-
males under eighteen years because of delinquency. The court has great dis-
cretion in dealing with those individuals who have been declared neglected, de-
pendent or delinquent. These is ample opportunity for disposition on an indi-
vidual basis. However, the shortcomings of the system become apparent in 
cases of youths charged with felonies and misdemeanors. The judge may, in his 
discretion, allow a delinquent to be proceeded against in accordance with the 
laws governing the commission of crimes. The criminal courts, moreover, have

43 California Youth Authority, Report of Program and Progress 37-40 (1948); private 
correspondence with Mr. Whittier Day, Director, Minnesota Youth Conservation Com-
mission; see Division of Child Welfare, op. cit. supra note 38.

44 Ibid., at §§ 198-203.

45 Ibid., at § 199. See People v. Lattimore, 362 Ill. 206, 199 N.E. 275 (1935). This case 
construed Section 199 to mean that the judge can exercise his discretion and refuse to take 
jurisdiction and custody of a child named in a petition of delinquency.
original jurisdiction to hear and permit prosecution for felonies notwithstanding a previous declaration of delinquency by the Juvenile Court.\textsuperscript{47} Thus, juveniles as well as the youth group\textsuperscript{48} may be subjected to criminal prosecutions, and the resultant evils which confront the youth group after conviction.

The Illinois indeterminate sentence law allows the judge the power to fix minimum and maximum sentences within the statutory limits. The minimum must be equal to or greater than that fixed by law, and the maximum must be equal to or less than the statutory maximum.\textsuperscript{49} Allowing such discretion in fixing sentences is utterly contrary to the idea of the indeterminate sentence\textsuperscript{50} and parole. Especially in cases of the youthful offender, it admits the evil of varying the sentence of individuals convicted of the same crime in accordance with varied and irrational standards, and not in accordance with intensive diagnosis.\textsuperscript{51} The length of a sentence in a mass treatment institution may well be one of the prime causative factors in character and personality destruction. Youth correction and parole were developed, in part, to avoid this consequence.

Prior to the first of this year it was within the discretion of the trial judge to sentence even a very young offender to the state penitentiary. However, recent enactments require all youthful male offenders under seventeen years of age to be sentenced and committed to the Illinois State Reformatory.\textsuperscript{52} Similar provisions exist for females under sixteen years.\textsuperscript{53} Meritorious as the intention of preventing incarceration of youthful offenders\textsuperscript{54} with adults may be, mass treatment and lack of individual segregation are found equally in reformatories, and in this respect a reformatory is a penitentiary for the young. Most important, however, the group which has the highest rate of youth crime is still subject to penitentiary sentences. The present system in Illinois is thus open to the objections motivating those who drafted the original Model Act—the youth offender is faced with all the destructive influence inherent in punishment and penitentiary commitment.

Youth correction legislation has not fared well in Illinois, nor has there been any legislative action on this matter since the defeat of Senate Bill 63\textsuperscript{55} in 1947. The defeat of this legislation may have been due, in part, to constitutional objections to youth correction generally, and Senate Bill 63 specifically.

\textsuperscript{47} People v. Lewis, 362 Ill. 229, 199 N.E. 276 (1935).

\textsuperscript{48} For the purposes of this note juveniles are defined as those offenders under seventeen years of age, and youths are defined as those from seventeen to twenty-one years of age.

\textsuperscript{49} Ill. Rev. Stat. (1949) c. 38, § 802. See discussion note \textsuperscript{17} supra.

\textsuperscript{50} Note 17 supra.

\textsuperscript{51} See Chicago Sun-Times § 1, p. 14, col. 1 (January 27, 1950), for an excellent example of how irrationalities may determine the length of a sentence. Where offenders are convicted of rape, treason, murder or kidnapping, the jury (if any) is to fix a determinate sentence. Ill. Stat. (1949) c. 38, § 801. In the above-mentioned article, two convicted rapists were sentenced within ten minutes of each other. One was sentenced to ten years, the other to seventy-five.


\textsuperscript{53} Ibid.

\textsuperscript{54} Note 51 supra.

\textsuperscript{55} Introduced by Senator A. Marovitz.
The constitutionality of the California Act was sustained in 1943,6 and the Minnesota Act was recently upheld in the case of State v. Meyer.61 The arguments against both acts fall more or less within traditional categories of constitutional law, and are relevant since they restate the main arguments made against proposed legislation in Illinois. In the Meyer case the defendant contended that the provision of the Act which made it mandatory upon the court to commit the offender to the Conservation Commission,68 was a violation of the principle of separation of powers, since the court was deprived of its “inherent power”39 to fix sentence. This argument was disposed of by the court since they distinguished between those acts which are inherently judicial and those which are judicial by legislative grant and performed within statutory limits. The pronouncement of sentence is judicial in nature, but the sentence which the court pronounces can be, and is, determined by legislative mandate. This argument would apparently meet with a similar fate if presented to an Illinois court. In sustaining the validity of the indeterminate sentence law the Supreme Court of Illinois employed reasoning similar to that of the Minnesota court.60 In People v. Joyce,61 it was said, “The functions of the court in regard to the punishment are to determine the guilt or innocence of the accused, and if the determination be one of guilt, then to pronounce the punishment or penalty prescribed by law.”

The provision for mandatory commitment to the Authority (Section 13 of Senate Bill 63), unless the individual was initially placed on probation or sentenced to death or life imprisonment, may raise further objections. Probation under the present Illinois Probation Act62 has been construed as a matter within the discretion of the court.63 Admission to probation, the termination thereof, and the ultimate disposition of the offender, have been dealt with as an exercise of judicial power. It may be argued that commitment to the Authority is in effect the legal equivalent of compulsory probation. The adherents of this view maintain that the initial commitment to the Authority is a form of suspended sentence64 because of the subsequent possibility of penitentiary commitment.65

6 In re Herrera, 23 Cal. 2d 206, 143 P. 2d 345 (1943); Ex parte Ralph, 27 Cal. 2d 866, 168 P. 2d 1 (1944).
61 228 Minn. 286, 37 N.W. 2d 3 (1949).
63 State v. Meyer, 228 Minn. 286, 37 N.W. 2d 3, 8-9 (1949).
64 People v. Reid, 396 Ill. 592, 72 N.E. 2d 812 (1947); People v. Mikula, 357 Ill. 481, 192 N.E. 546 (1934); People v. Prochowski, 294 Ill. 482, 128 N.E. 474 (1920); People v. Joyce, 246 Ill. 124, 93 N.E. 607 (1910).
65 246 Ill. 124, 135, 92 N.E. 607, 612 (1910).
67 See People v. Donovan, 376 Ill. 602, 35 N.E. 2d 54 (1941); People v. Miller, 317 Ill. 33, 147 N.E. 396 (1925); cf. People v. Harrison, 392 Ill. 511, 64 N.E. 2d 882 (1946).
69 Ill. Senate Bill 63, §§ 33-34 (1947).
It is only the latter disposition which is described as the imposition of a sentence. Therefore, it is concluded that although a court cannot exercise powers of probation without legislative authorization, it is quite another thing for a legislature to invade the sphere of judicial discretion and require admission to probation.

This argument relies on the assumption that commitment to the Youth Authority would not be a judicial sentence, but rather a form of probation. This assumption appears to be unwarranted. Senate Bill 63 provided that control of the offender by the Authority was to terminate when the individual reached the age of twenty-five. If the Authority felt that discharge would be dangerous, it was to allege so in a petition to the court. If the judge agreed, he was to be empowered to commit the offender to the penitentiary for a period of time equal to the maximum sentence set by law for the offense committed, less time spent with the Authority. Such a commitment complies with the requirement that a sentence must be definite enough to appraise the offender of his rights.

Commitment to the Youth Authority would be a sentence for a period of time limited by the statutory age limits, or the maximum sentence fixed by law for such a crime, whichever is greater. The commitment of an individual for corrective purposes for a definite maximum period of time subsequent to conviction for a crime is equivalent to a sentence, and is in fact a sentence. The possibility of subsequent penitentiary incarceration is nothing more than a shift of control under the original sentence. The fact that Senate Bill 63 made explicit provision for the exercise of probation powers by the judge indicates further that commitment to the Authority is not compulsory probation. The treatment of an individual duly convicted and sentenced is not a judicial function; it is, on the contrary, an executive function. Probation, as conceived and defined in the statutes, is inherently different in nature and effect from the treatment of an offender by the Youth Authority subsequent to conviction.

Consistent with the Model Act, Senate Bill 63 empowered the Authority to discharge the offender when corrective therapy had been completed. It is pos-

66 People v. Penn, 302 Ill. 488, 135 N.E. 92 (1922).
67 Persons committed by the Juvenile Court were to be discharged on the twenty-first birthday; those convicted of misdemeanor were to be discharged on the twenty-third birthday; and those persons who were convicted of a felony and committed to the Authority were to be discharged on the twenty-fifth birthday. Ill. Senate Bill 63, § 32 (1947).
68 Ibid., at §§ 33–34.
69 People v. State Reformatory, 148 Ill. 413, 36 N.E. 76 (1894); People v. Pirfenbrink, 96 Ill. 68 (1880); cf. People v. Joyce, 246 Ill. 124, 92 N.E. 607 (1910).
70 Ill. Senate Bill 63, § 13 (1947).
71 Compare People v. Mikula, 357 Ill. 487, 192 N.E. 546 (1934); People v. Joyce, 246 Ill. 124, 92 N.E. 607 (1910).
72 Note 64 supra.
73 Ill. Senate Bill 63, § 28 (1947).
possible that such a provision would be declared unconstitutional as an unlawful delegation of the pardoning power granted to the governor by the constitution.\textsuperscript{74} The power to parole has been described and upheld as a method of treatment and not an employment of the pardoning power.\textsuperscript{45} However, under the present parole act there can be no final discharge of a prisoner without the concurrence of the governor.\textsuperscript{76} Discharge, as long as conceived of as commutation or pardon, would necessitate executive concurrence and approval. Such a requirement, if more than a rubber stamp activity, would work a hardship on youth corrective treatment and should be avoided. The pardoning and commutation powers are based on the idea of executive clemency.\textsuperscript{77} The discharge granted by a Youth Authority has no relation to clemency and thus no relation to the pardoning power. Rather, it is granted as the termination of corrective treatment and indicates that the individual is ready to go back into society. Because an executive agency can grant final discharge to a convicted offender, it does not follow that the governor's pardoning power has been delegated or usurped. Furthermore, Senate Bill 63 implied that the power of discharge was in no way to infringe on, or affect, the scope of the executive pardon.\textsuperscript{78}

The high courts of California and Minnesota both entertained argument that laws providing a different method of treatment for youth offenders and adults violated constitutional guarantees of due process and equal protection. Both courts rejected these contentions and stated that a classification which is reasonable, and in which the law affects in the same way all of those similarly situated, does not violate these constitutional prohibitions. In Illinois it has been held consistently that classification is a matter of legislative discretion and courts will not interfere unless the classification is clearly unreasonable and arbitrary.\textsuperscript{79} Certainly it should not be said that a statute which provides a different means of control for individuals apprehended when under the age of twenty-one than that for adults, is clearly unreasonable in light of the purpose to be accomplished.

The objection that the power to terminate treatment and grant discharge constitutes an unlawful delegation of legislative power does not appear to be substantial. It has long been held in Illinois that as long as the legislature prescribes the rule and standard of conduct, it may delegate various functions to an

\textsuperscript{74} Ill. Const. Art. 5, § 13.

\textsuperscript{75} People v. Nierstheimer, 401 Ill. 465, 82 N.E. 2d 438 (1948), cert. den. 69 S. Ct. 402 (1949); George v. People, 167 Ill. 447, 47 N.E. 741 (1897).


\textsuperscript{77} Jensen, The Pardoning Power in the American States 110 et seq. (1922).

\textsuperscript{78} Compare Ill. Senate Bill 63, § 37 (1947).

\textsuperscript{79} Compare Berry v. City of Chicago, 320 Ill. 536, 151 N.E. 481 (1926).
The prime requirement is that the standard of conduct by which the agency is to guide its actions must be reasonably definite and certain.\textsuperscript{81} The legislative standard prescribed in the various correction acts and in Senate Bill 63 is that of public safety.\textsuperscript{82} Admittedly this is a vague standard, but the nature of corrective activities negatives the possibility of a more definite rule of conduct. In view of the purpose and aims of youth correction legislation, the standard of public safety seems adequate and sufficiently certain. Only a very conservative court would condemn such legislation as an unlawful delegation of legislative power.

In all probability the strongest sources of opposition to youth correction legislation in Illinois are the judges who have resented any attempts to decrease their power,\textsuperscript{83} and the local communities which resent an increase of the power of central state agencies and a decrease of their functions in dealing with the problem of delinquency on a local level. It is true that a youth correction act would reduce the power of the judge over sentencing. However, in view of the present application of the indeterminate sentence law to youthful offenders under which sentences for identical crimes vary depending upon the whims and irrationalities of the judge, it would appear that such a reduction in judicial power would be highly desirable. The fear by communities of a reduced role in delinquency prevention has not materialized. The contrary is apparent in those states which have adopted youth correction legislation.

In view of the present disposition of youth offenders in Illinois—one which is highly inadequate—and in view of the strides and success of youth correction in other states, the time again is ripe for the introduction of a youth correction act to the legislature.

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PROMISSORY ESTOPPEL—A BASIS FOR ENFORCEMENT OF GOVERNMENTAL PROMISES BY THIRD PARTIES

Although a subcontractor engaged upon a building contract normally looks first to the contractor for any compensation due him, experience has often demonstrated the practical inadequacy of this contractual remedy. The improvidence of the contractor and the lack of any contractual relationship with the owner frequently have left the subcontractor unable to obtain compensation either for labor and materials expended, or for damages sustained in connection

\textsuperscript{80} People v. Roth, 249 Ill. 532, 94 N.E. 953 (1911). Compare People v. Wilson Oil Co., 364 Ill. 406, 4 N.E. 2d 847 (1937); Boshuizen v. Thompson and Taylor Co., 360 Ill. 160, 195 N.E. 625 (1932); People v. Yonker, 351 Ill. 139, 184 N.E. 228 (1933); People v. Beekman & Co., 347 Ill. 92, 179 N.E. 435 (1932).

\textsuperscript{81} Ibid.

\textsuperscript{82} Senate Bill 63, § 28 (1947).

\textsuperscript{83} Senator Marovitz, Transcript, Midwest Forum of the Air, April 13, 1947, p. 6 et seq.; cf. Judge Wallace, N.Y. Times § 1, p. 12, col. 6–7 (March 13, 1943).