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Chapter 12: Criminal Law, Procedure, and Administration

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A. PENAL REFORM

§12.1. Introduction and background on Chapter 770. The most important development in the administration of criminal justice and, perhaps, in the entire area of the subject covered in this chapter during the 1955 Survey year was the passage of a single act, Chapter 770 of the Acts of 1955, which completely reorganized the correctional system of the Commonwealth. Though this legislation effects primarily the state Department of Correction and the penal institutions and parole laws and procedures under the jurisdiction of this department, its sweeping provisions also effect the administration of our county jails, houses of correction, and commitment procedures.

Some conception of the magnitude of the changes that the 123 sections of Chapter 770 have made in the General Laws may be realized when the following is considered: two chapters of the General Laws have been repealed in their entirety; another lengthy chapter has been almost completely rewritten; extensive revisions have been made in two further chapters; and other new provisions have some effect on a total of nine other chapters of the General Laws.

Until recent years Massachusetts had been recognized as one of the leading states in the country in its management of the crime problem and its treatment of convicted offenders. It has made significant con-
tributions in this latter area. Most notable perhaps was the "invention" of the idea of probation as a form of corrective treatment. In more recent times, however, there have been criticisms of our prison program as being outmoded in the light of advanced knowledge in this field and by comparison with the programs in other jurisdictions. The need for fundamental and extensive reform rather than patchwork legislation and change was officially recognized in 1953 and 1954 by the reports of two separate legislative Recess Commissions. The precipitating incident which brought about the current reform was an escape attempt and hostage-holding rebellion by four inmates at the State Prison in Charlestown in January, 1955, which received national attention. After this incident was resolved the Governor on January 25, 1955, appointed a special committee of four men to study the Massachusetts correctional system. Nils Y. Wessell, President of Tufts University, was designated Chairman and the other three members were recognized experts in the correctional field from outside Massachusetts. This so-called "Wessell Committee" examined the laws, procedures, and operations of our prison, parole, probation, and sentencing practices and submitted its report to the Governor on June 1, 1955. After reciting "The correctional system of Massachusetts is in a deplorable state" in the preface, the Committee proceeded in a very lengthy report to point out the shortcomings in the various areas of its inquiry and to make a total of some 128 specific recommendations which would involve statutory and administrative changes.

Governor Herter in a message to the General Court implemented the report with a total of 307 sections of proposed legislation. A special joint committee of both houses of the General Court was established "to consider the Governor's Message." Following hearings and deliberations this committee produced a bill which, with some changes, was enacted into law as Chapter 770 on September 12, 1955, to become effective on October 20, 1955. The soundness of most of

5 As to this and other innovations in which Massachusetts pioneered see House Doc. 2198, Report of the Unpaid Commission Relative to Prisoners (1953), with citations.

6 The Wessell Committee reports that our corrections system has been neglected "for at least two decades." Senate No. 5750, p. 17 (1955).


8 The other three members were Joseph E. Ragen, Warden, Illinois State Penitentiary; Will C. Turnbladh, Executive Director, National Probation and Parole Association; Robert J. Wright, Assistant General Secretary, The American Correctional Association and the Prison Association of New York.

9 Senate Doc. 750, Message from His Excellency the Governor Submitting Recommendations Relative to Reorganizing the Correctional System of the Commonwealth (1955).

10 Id. at 108 et seq.

11 By joint order on June 9 in the Senate and on June 13 in the House of Representatives.

12 House No. 3098 (1955).
the Wessell Committee findings is attested to by the fact that the new law followed the recommendations of the Committee to a substantial degree in the area of prison reform. The suggestions concerning the parole and probation programs were for the most part left for further study.

It is not possible in a discussion of this length to present a comprehensive analysis of all the changes brought about by the new law. The following is therefore an attempt to point out only the most significant aspects of these changes with a minimum of interpretation.

§12.2. **Sentencing provisions.** The new law makes no change in the penal law of substantive crimes either in the definition of criminal acts or in the length of sentences imposed for the various crimes. The statutory definition of felonies and misdemeanors\(^1\) and the minimum-maximum sentences with a minimum of two and one-half years to what was formerly designated State Prison\(^2\) are unaffected. Sentences will continue to be made to specific institutions although the names of each of the prisons within the Department of Correction have been changed by the provisions of Section 11, Subsection 1.\(^3\) Despite the sentence to a specific state institution, however, if the offender is sentenced to what formerly was known as the State Prison or the Reformatory, he must be delivered by the sheriff instead to a new Reception Center\(^4\) which has been established under the new law for classification purposes. There seems to be no change in the lack of authority on the part of the courts to sentence defendants to what was formerly known as the State Prison Colony at Norfolk.\(^5\)

The length of sentence is affected by provisions of the new statute in an indirect way. Although a prisoner serving a sentence containing a minimum (formerly a State Prison sentence) must still serve two thirds of such minimum sentence before he may be paroled, as under the old law, this base upon which parole eligibility is computed (the minimum sentence) is now for the first time reduced by the number of days allowed as deductions from sentence for good conduct in prison.\(^6\) Also, by Section 73 of the new law, the Parole Board must now grant hear-

\(^{\text{1}}\) G.L., c. 275, §1.
\(^{\text{2}}\) G.L., c. 279, §24.
\(^{\text{3}}\) Instead of the "State Prison" (at Charlestown or Walpole), the "State Prison Colony," the "Massachusetts Reformatory," the "Reformatory for Women," the "State Farm," and the "State Prison Camp" (at Plymouth and Monroe) each of these institutions will hereafter be known as the "Massachusetts Correctional Institution at ——" (the city or town in which they are located).
\(^{\text{4}}\) Acts of 1955, c. 770, §102, amending G.L., c. 279, §34.
\(^{\text{5}}\) It may now be possible for the courts, for the first time, to sentence a male offender to an indeterminate term at this institution since the limitation of such sentences to the former Massachusetts Reformatory (now the Massachusetts Correctional Institution at Concord) has now been removed (§99) and no other limitation is prescribed. The problem is largely academic, however, as all persons now sentenced to any of the state institutions are delivered to the Reception Center from which they may be transferred to any of the state correctional institutions.
\(^{\text{6}}\) Acts of 1955, c. 770, §69, repealing and replacing G.L., c. 127, §133.
ings to prisoners for parole consideration ninety days before their eligibility date rather than one month after such date, as was formerly the law. The new rate of deductions from minimum (for parole eligibility) and from maximum sentence (for discharge) have been increased for all sentences except those from four months to one year. Further, parolees may now be discharged from supervision if certain conditions are met before their sentences have expired. This is a new feature in the law. The net result of these changes is to make prisoners eligible for earlier release and earlier discharge, although Section 69 of the new law requires that prisoners serving sentences containing a minimum serve at least one year before parole.

Formerly, prisoners serving life sentences were not eligible for parole. To obtain release it was necessary for them to receive an executive pardon with or without parole conditions or a commutation of sentence to a term of years by the Governor and Council after which they become subject to the laws governing parole. Under Section 70 of the new law, lifers are made eligible for parole after serving twenty years of their sentence, except for those serving a life sentence for murder in the first degree. Also, the 1951 law which permits juries to recommend a life sentence in certain cases for persons convicted of murder in the first degree, but which also provided “In no event shall a person convicted of murder in the first degree be eligible for parole,” has been amended by Section 78 to permit the parole of such lifers if their sentences have been commuted by the Governor and Council to a term of years.

A person sentenced to “State Prison” as an “habitual criminal” receives the maximum term provided by law for the offense for which he was last convicted (unlike the usual inmate who has a minimum-maximum term). In the past such persons have been considered as ineligible for parole since they would either be lifers, and ineligible for that reason, or be serving sentences with no minimum and the parole law permits parole on “State Prison” sentences only after two thirds of the minimum sentence has been served. Under the new law the “habitual criminal” now becomes eligible for parole consideration after serving one half of his sentence less the total number of days he is entitled to have deducted for good conduct while confined.

10 G.L., c. 279, §25.
11 Id., c. 127 §133. This latter interpretation might well have been questioned on the reasoning that for parole purposes the definite sentence of habitual offenders could be considered to be the minimum as well as the maximum. The official interpretation has never been tested.
12 Acts of 1955, c. 770, §70, inserting §§133A and 133B in G.L., c. 127. It is clear that the base upon which the rate of good conduct deductions should be computed in the case of an habitual criminal serving a sentence with a term of years (maximum sentence only) should be the maximum sentence. With regard to habitual criminals serving life sentences, however, the new law fails to provide a base upon
Another feature of the new law seeks to make more equitable the punishment imposed upon persons charged with crime and who, through indigence or other reasons, are confined while awaiting and during trial. Section 101 of Chapter 770 gives discretionary power to the court imposing sentence to order that the period spent in confinement prior to sentence, or some portion of it, be considered as a part of the sentence already served.

Most criminal defendants sentenced to the former Massachusetts Reformatory and the Reformatory for Women have in the past been committed under our laws which provide for “indeterminate sentences.” The court in such a case has committed the convicted offender to either institution without prescribing any definite term of imprisonment.\(^{13}\) The length of sentence has been determined by the automatic application of the statute depending upon the offense committed. Thus, a female so sentenced for certain listed offenses may be confined for no more than five years; if sentenced for other prescribed, lesser offenses, for not more than two years.\(^{14}\) The provisions for male offenders are similar.\(^{15}\) Such sentences have usually been imposed upon the less confirmed, more reformable type of offender. There was and is no minimum period in the law which must be served before such a prisoner becomes eligible for release on parole.\(^{16}\) Although Section 99 amends the former provisions concerning indeterminate sentences affecting male prisoners (no change was made in the laws concerning females) the essential features of the former law have been retained. No longer, however, need the male offender be under thirty years of age, as formerly, to receive an indeterminate or indefinite sentence. Also, such sentences, which were formerly restricted to the two former reformatories, may now be given (by implication) to any of the state correctional institutions. Some clarification of the law on this matter seems called for. The former law (G.L., c. 127, §31) provided that persons eligible “may be sentenced to the Massachusetts reformatory.” The new statute says merely “may be sentenced for an indefinite term.” The words “in the Massachusetts reformatory” are again omitted in the new law, which also deals with “indefinite sentences.” It therefore seems that the legislative intent was to permit such sentences to the other correctional institutions. However, this should have been and was not made manifest in Section

\(^{13}\) G.L., c. 279, §§17, 32.

\(^{14}\) Id. §18.

\(^{15}\) Id. §§33.

\(^{16}\) Rules of the Parole Board provide for eligibility at stated times for indefinite sentences depending on the length of sentence and prior convictions and ranging from six months to twenty months.
33 of Chapter 127 which prescribes the maximum sentences for crimes resulting in such sentences and which is concerned with persons sentenced to the “Massachusetts reformatory.” This section was left unchanged. General Laws, c. 279, §24 was also left unchanged and thus still provides that sentences to what was formerly the State Prison will be of the maximum-minimum type.

§12.3. Reorganization at the top level. By Section 1 of the new act the Department of Correction is completely reorganized at the top level. The then existing offices of Commissioner of the Department and the two Deputy Commissioners were abolished and the appointment of a new Commissioner was authorized by Section 114. The creation of the positions of three Deputy Commissioners was authorized by Section 1, Subsection 2. The three new deputies now have specifically assigned duties under Section 8 and are given a title commensurate with their tasks. A glance at their titles gives some insight into the philosophy behind the entire act: one is to be Deputy Commissioner for Institutional Services; another is Deputy Commissioner for Classification and Treatment; and the third is Deputy Commissioner for Personnel and Training. The necessity of obtaining experienced and qualified leadership is made clear by the requirement that the Commissioner “shall . . . have had at least five years of adult correctional administrative experience and have an established record of high character and qualities of leadership.” The new deputies must have similar qualifications. Maximum annual salaries for these key posts have been increased substantially—from $8000 to $15,000 for the Commissioner and up to $10,000 for the deputies. The term of office of the Commissioner (three years) and of the deputies (at the pleasure of the Commissioner, with the approval of the Governor and Council) remains unchanged.

The powers and responsibilities of the Commissioner have been greatly enlarged. Formerly, with respect to employees working in the prisons, the Commissioner had the authority to appoint only the head and assistant head of the institutions in the Department. Under Section 11, Subsections 2 and 3 of the new law he is authorized to appoint and remove, subject only to civil service and other protective statutes, all officers and employees of the various institutions. This includes the treasurer of each institution and prison industries supervisors and instructors and agents who sell prison industries products as well as custodial officers and other personnel. Other duties formerly imposed on the warden and superintendents are now transferred to the Commissioner: i.e., the Commissioner now will appoint acting heads of institutions when these positions become vacant; he and not the “warden of state prison” will establish the rules and regulations by which that institution will be governed. A recommendation of the Wessell Committee that the Commissioner have authority to trans-
fer personnel freely among the institutions of the Department was, by Section 121, given limited legislative expression in that such transfers can be made only with the employee's consent or as a temporary measure, in an emergency situation.

The above indications of change in the direction of increased authority and commensurate responsibility in the head of the Department are supplemented by other provisions which seek to make more uniform and integrated the entire system. Prisoners are to be "constantly employed" in all institutions rather than in the State Prison alone, and trade training is to apply to all institutions rather than to the Concord institution alone. Defective delinquent and drug addict departments may be set up in any correctional institution rather than only in the institutions at Bridgewater, Framingham, and Concord.

§12.4. Advisory Committee on Correction. An important innovation is the establishment by Section 1, Subsection 3 of an entirely new body within the Department, an Advisory Committee on Correction. This non-salaried committee is to consist of nine members to be appointed by the Governor with staggered three-year terms. It will have the limited function of giving advice and making recommendations to the Governor and Commissioner and "no other powers or duties." In the words of the Wessell Committee,¹ this body should serve to "create a broad base of public understanding of the needs of the correctional system, and to support the commissioners of correction . . . in their development of strong leadership throughout their . . . department[s]." The Wessell Committee envisioned the Advisory Committee as serving this function also for the probation and parole services, but the statute has restricted its concern to the Department of Correction.

§12.5. Personnel training. In response to criticism of the lack of training provided employees, particularly custodial officers, the new law establishes a training school for officers under the direction of the Deputy Commissioner for Personnel and Training.¹ Newly appointed officers will receive up to eight weeks of training in prescribed subjects. Officers presently employed who are under the age of fifty years may also attend courses of training. The importance of having trained personnel is again emphasized by placing upon the new Director of Parole Service the responsibility to develop and operate a "staff orientation and a continuing in-service training program" for parole agents under his supervision.

§12.6. Parole Board provisions. The make-up and personnel of the Parole Board (five members, three men and two women) and the restriction that the women members sit on women's cases only have not been changed despite recommendations to this effect in the Wes-

§12.4. ¹ Senate No. 750, pp. 38, 39 (1955).

§12.5. ¹ Acts of 1955, c. 770, §11(9); G.L., c. 125, §9.

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sell Report. The Board retains its function as an Advisory Board of Pardons. The new law does provide more authority to the Chairman of the Board, raises the salaries of all members, and requires that the men members devote full time to the work. The former positions of Supervisor of Parole for Men and Supervisor of Parole for Women have been abolished and a Director of Parole Service has been established to assume supervision of all parole agents. To a much greater extent than in the prison program, the new statute fails to enact the recommendations made by the Wessell Committee in the area of parole. A recommendation by this Committee which would, in effect, limit the membership on the board to “qualified” persons and which would remove such appointments from the area of politics by providing for “panel selection” was not enacted although the new law does recognize the importance of special qualifications in the new Commissioner and his deputies.

§12.7. Improved prisoner treatment methods. In recent years the role of our prisons as rehabilitative instrumentalities has been stressed and the importance of punishment has been de-emphasized. When it is realized that over 95 per cent of our prisoners are eventually released to the community this emphasis on the corrective aspect of prison programs is justified.

With this general philosophy as a base, the Wessell Committee made many recommendations to effectuate changes in the methods of treatment employed in our penal institutions. Many of the recommendations of this Committee needed no statutory implementation but could be complied with by administrative action aided by larger appropriations. Within this category falls the appointment of additional professional and other specialized personnel: a director of research; specialized personnel to direct educational, vocational training, recreational, psychiatric, psychological and other treatment procedures; trained chaplains; a deputy director and case work supervisors in the Parole Board.

Other recommendations of the Wessell Committee were carried out in the new law. One of the most important of these was the abolition of solitary confinement as part of the sentence imposed by the court and its elimination as punishment for infractions of institution rules and for other purposes both in state and county institutions. In its stead so-called isolation units have been substituted for the enforcement of discipline by Sections 30 and 31. There is more to the amendment than a change of name. The “solitary cell” under the

§12.6. 1 Senate No. 750, pp. 51, 52 (1955).
3 Senate No. 750, p. 52 (1955).
4 See §12.3 supra.

§12.7. 1 Senate No. 750, pp. 22, 38, 56 (1955).
former law is described thusly in the statute: "... properly ventilated and furnished with a form of boards, not less than six and one half feet long, eighteen inches wide and four inches high from the floor, and with a sufficient amount of bedding to protect the health of the inmate from injury."  

Prisoners in solitary confinement were ordinarily fed bread and water only. The new "isolation unit . . . shall provide light, ventilation and adequate sanitary facilities, may contain a minimum of furniture, and shall provide at least one full meal a day." Confinement in such units is limited to fifteen days in state institutions and ten days in county institutions for any one offense.

A new facility is provided by Section 29 for the punishment and treatment of "any inmate whose continued retention in the general institution population is detrimental to the program of the institution." It had been discovered in an earlier study of our prisons that a relatively small number of inmates in the different institutions had such a disproportionate and adverse influence on the general inmate population and program that it was felt they should be segregated from the general population. The Wessell Committee confirmed this finding. The new law enacted a recommendation of this Committee by providing for a "segregated unit" to be established in any of the institutions. Such units "shall provide regular meals, fully furnished cells, limited recreational facilities, rights of visitation and communication by those properly authorized, and such other privileges as may be established by the Commissioner." Inmates so confined are not considered as hopeless rehabilitative prospects since the law further provides for periodic medical and psychiatric examinations and treatment under the supervision of the Department of Mental Health.

§12.8. New plan for prisoner work pay. Since 1928 the value of providing an incentive to prisoners in the form of pay for the diligent performance of work assigned has been recognized in our laws. Work pay not only encourages those confined to develop good work habits which will be helpful to them upon their release but also tends to increase the output of prison industries, thus increasing the profits to the Commonwealth from the sale of prison-made goods. However, though pay to prisoners was formerly authorized by the General Laws, payment was allowed only from prison industries profits and "only when and if the state comptroller is of the opinion that profits from prison industries are such that compensation should be paid." The result has been, with few exceptions, that prisoners have not received pay. Under the new law inmates are now to be paid for "good and

4 G.L., c. 127, §47.
5 Id. §§41, 44.
7 Senate No. 750, p. 33 (1955).

§12.8. 1 G.L., c. 127, §48A.
satisfactory work.” The new statute directs the Commissioner to establish a system of compensation which will be subject only to appropriation from the General Fund. This and other sections of Chapter 770 formally recognize that for truly wise economy, if for no other reason, prison industries should be considered primarily as a part of the correctional process and only secondarily as a source of income for the Commonwealth. As in the old law, pay will be on a graduated scale in accordance with the skill and industry of the prisoner. Under the former provisions one half of an inmate's earnings could be paid over to his dependents with one half of the remainder held for the inmate until his release and the balance to be spent on the prisoner's behalf in prison. The new law makes no provision for dependents. Instead, one half may be spent on behalf of the inmate and the remainder is to be accumulated to his credit and paid to him upon his release.

§12.9. **Prisoner Reception Center.** The one feature of the new law in the area of improved methods of treatment which has the greatest potential significance is the establishment of the Reception Center previously referred to. Section 20 provides for the establishment of such a unit at one of the male inmate prisons to receive and classify all males except those committed to Bridgewater. The Center is to be established by the Commissioner with the approval of the Governor and Council. Female prisoners will undergo a classification process at the Framingham institution. Both units will be under the supervision and control of the Deputy Commissioner for Classification and Treatment. This same official is now given the responsibility of approving the classification procedures in the county jails and houses of correction under the provisions of Section 21. This responsibility was vested in the Commissioner under the former law. Prisoners will be examined at the Reception Center, following which they will be transferred to one of the institutions where they will serve the balance of their sentences. The importance and effectiveness of this innovation will be largely determined by whether or not the “specialized personnel” previously referred to are engaged to administer the unit and can make it more than a perfunctory first step in the commitment process. This in turn may depend upon the size of the Department appropriation which the legislature will approve.

§12.10. **Institutional prisoner transfers.** By the provisions of Section 58 the Commissioner now has authority to transfer among any of the state institutions and between any of these prisons and the county institutions (with the approval of the sheriff) except that the usual defendant given a “State Prison” sentence cannot be transferred to the county institutions without the approval of the Governor and Council. This one section replaces the sixteen sections of the old law concerned with transfers and adds to the Commissioner’s former authority only the unlimited authority to transfer from the Concord

§12.10. 1 G.L., c. 127, §§97-111.
institution to the "State Prison." Formerly only those Reformatory inmates convicted of a felony could be transferred to State Prison.\(^2\) The ability of the Commissioner to transfer inmates with "State Prison" sentences to the Bridgewater institution is not clear. The specific provision permitting such transfers of prisoners who are "infirm in body or mind" (G.L., c. 127, §98) has been repealed. Section 58 of Chapter 77 negatively denies such authority unless the Governor and Council approves, except for defective delinquents and drug addicts. However, the statutes concerned with the removal of insane prisoners to the state hospital at the Bridgewater institution have not been changed. (G.L., c. 123, §§103-105.)

**§12.11. Parole and deductions from sentence.** Reference was made earlier to changes in the parole laws which generally permit earlier release on parole and make eligible for parole certain prisoners who formerly were denied such consideration. In addition to good conduct deductions, prisoners formerly earned days off their maximum sentences for "good work." Section 66 of the new act eliminates the good work credits, but so increases the deductions for good conduct that all inmates in the state institutions will now receive greater deductions for good conduct than they did under the old law for good conduct and good work combined. Also, of course, they will now be paid and their deductions will serve to make them eligible for parole sooner than heretofore.

**§12.12. Prison industries.** Changes have been made in the industries of the prisons. Formerly, the money spent in the operation of this division was restricted to the Prison Industries Fund and expenditures were determined by the Comptroller of the Commonwealth. The new law abolishes this fund and restricts the Commissioner in the expenditure of funds for the rearrangement, modernization, and enlargement of shops and the employment of personnel only by the size of the appropriation in his annual budget. The Wessell Report made many specific recommendations in regard to prison industries most of which can be effectuated by administrative action.\(^1\) Old nineteenth-century laws relating to limitations of the number of prisoners to be employed in certain industries and other matters have been repealed.

**§12.13. Miscellaneous provisions.** There are further changes and additions to the General Laws which are of interest. Although additional legislation was not necessary to permit the action, the new statute by Section 120 "authorizes and directs" the Commissioner to establish and maintain three prison camps in addition to the two now in existence in Plymouth and Monroe.

Specific authority is for the first time granted attorneys to visit prisoners "at such times as may be established under rules promulgated by the Commissioner" by the provisions of Section 27.

The special legislative committee which produced Chapter 770 has

\(^2\) Id. §109B.

\(^1\) Senate No. 750, pp. 35-37 (1955).
been continued in a separate Resolve to consider further the Wessell Committee report with special emphasis upon "... the reorganization of the board of probation [none of the recommendations concerning the probation system having been incorporated into the new law]; the parole board, including compensation of members and employees, the sentencing of convicts, [and] the equalization and adjustment of salary schedules within the Department of Correction..."  

Further legislation may therefore be expected in the near future to complete the long-neglected modernization of our correctional system and to rectify largely technical omissions and errors in Chapter 770 which came about principally because of time limitations in the preparation of this extensive reform.2

B. JUVENILE DELINQUENCY

§12.14. Prevention of delinquency. It has been recognized in recent years that greater emphasis must be placed upon programs designed to prevent the development of delinquents rather than on expensive and often discouragingly ineffectual efforts at reforming the adjudicated delinquent. The key position of our public schools in "spotting" children who exhibit pronounced tendencies of social maladjustment at a very early age has been referred to frequently. Chapter 696 of the Acts of 1955 has inserted a new section in the "Public Schools" chapter of the General Laws (Chapter 71) which seeks to encourage public school systems to take a more active role in preventing the development of delinquents in the primary and elementary grades. Cities, towns, and regional school districts are authorized to employ "school adjustment counselors" who shall have prescribed duties which include counseling children and parents in need of such assistance and engaging in a general program of prevention and treatment with the schools and community agencies and citizens. An important feature of the act is that the Commonwealth will reimburse each of the communities to the extent of $4500 annually toward the salary and expenses of the first such counselor employed and up to $2250 for each additional counselor.

Further legislation in the area of prevention was enacted by the provisions of Section 3 of Chapter 766 of the Acts of 1955. This legislation inserts a new section (69A) into Chapter 6 and provides for the employment by the Youth Service Board of field agents to be assigned to districts covering the entire state to "carry out the delinquency prevention program and purposes of the Board" by aiding the local communities and agencies with "expert advice and service" so as to "help to detect and treat delinquent children before they become involved in serious delinquency."

§12.13. 1 Resolves of 1955, c. 132.  
2 For a further analysis of Chapter 770, see the United Prison Association pamphlet, New Correctional Laws of Massachusetts (1955).
§12.15. Detention of juveniles following arrest. Chapter 609 of the Acts of 1955 adds further precautionary measures against the possible harmful effect upon juveniles under arrest of coming in contact with adult prisoners or being subjected to the harsher measures employed in the detention of adult offenders. A giant step in this direction was taken when the first Detention Center for juveniles was authorized by the general enabling act which established the Youth Service Board in 1948. Most juveniles will continue to be released to parents or the local probation officer promptly following arrest. When detention in the local police station or lockup is considered necessary and is authorized, such detention shall henceforth be only in such places which have "received approval in writing of the division of youth service" under the provisions of Chapter 609. This division is now charged with annual inspection of such facilities. Further, the minimum age at which male juveniles can be so detained has been raised from twelve to fourteen years.

The Youth Service Board is also given additional powers concerning the detention and study of delinquents pending final disposition by the court. A particularly interesting innovation is the authority to conduct diagnostic study of juveniles awaiting sentence, on an out-patient basis, when this is requested by the court and consented to by the parents of the children concerned. Formerly this valuable service to the courts was limited to those youths who were in the full-time custody of the board.

The success of the Youth Service Board Detention Center in Boston in providing study facilities for the courts and detaining juveniles charged with offenses with a minimum of harmful effect upon them is attested to by the provisions of Chapter 573 of the Acts of 1955 which authorizes the establishment of another such center in Hampden County. The act will take effect only upon vote of acceptance by the county commissioners after which the commonwealth will pay one half of the annual costs of the institution.

§12.16. Forestry camps for juveniles. The usefulness of forestry camps in the rehabilitation of adult prisoners seems to have been established. New legislation now extends this form of corrective treatment to juveniles in the custody of the Youth Service Board. The establishment of forestry camps on sites approved by the Commissioner of Natural Resources is authorized for the "education and training" of such youths.

§12.17. The county training schools. One of the proposals included in the original bill which later became the law establishing the Youth Service Board was that the so-called county training schools (for school offenders) be turned over to the control of the board.

§12.15. 1 Acts of 1948, c. 310.

§12.16. 1 See §12.13 supra.

This feature was not adopted at the time and the schools situated in the counties of Middlesex, Worcester, Essex, and Hampden continued to be maintained by the respective county governments. It was believed by many that this was a serious restriction on the effectiveness of the new agency since it deprived the Youth Service Board of these added facilities which could be used in providing a more diversified program with greater opportunity for classification of youths committed to its care and more individualized treatment. Two items in legislation enacted in 1955 tend to bring the county schools closer to the state program for juveniles. The first of these adds to the functions of the Youth Service Board the following: "... to visit the county training schools for the purpose of co-ordinating the efforts of the schools with the program of the [Youth Service] board for the treatment, control and prevention of juvenile delinquency. The board shall give advice and assistance to the schools and make recommendations in the public interest." The second legislative reference is the closing of the Worcester County Training School, following a scandal involving its administration, by Chapter 427 of the Acts of 1955. Since the closing, the school has been leased by the Youth Service Board and will be utilized as an additional facility by that agency in its programs.

§12.18. Youth advisory committee. Changes in Advisory Committee on Service to Youth have been made by Chapter 766 of the Acts of 1955. Future appointees to this non-paid body of fifteen citizens shall "be from the different counties in the Commonwealth." Formerly, there was no stipulation as to geographical representation. One of the committee's most important functions has been taken away by Section 3 of this chapter. Formerly the Governor and Council appointed the members of the Youth Service Board from a list of persons submitted by this committee. This procedure (similar to the "panel committee" selection of Parole Board members advocated by the Wessell Committee) is now discarded and appointments will henceforth be simply by the Governor and Council.

§12.19. Interstate compact on juveniles. Massachusetts has followed the lead of at least ten other states in joining an Interstate Compact on Juveniles with the passage of Chapter 687 of the Acts of 1955. The general purposes of this compact are similar to that en-
acted in 1937 concerning adult offenders.\footnote{1} The act provides for a cooperative arrangement between signatory jurisdictions concerning the supervision of delinquents on parole or probation in one state but living in another; the return from one state to another of non-delinquent juveniles; the return of delinquents who have escaped or absconded; and the similar return of non-delinquent runaways, and other miscellaneous matters.

C. OTHER LEGISLATION

\textbf{§12.20. Criminal information bureau.} The Special Commission to Investigate Organized Crime and Gambling\footnote{1} (commonly referred to as the "Crime Commission") submitted its first report\footnote{2} to the General Court in January, 1955. The Commission concluded, among other things, that the Commonwealth was restricted in its efforts to reduce and eliminate crime of an organized variety (especially gambling) for reasons which include the geographical limitations imposed by law upon police and prosecutors and the failure of any one agency of government to assume the state-wide, specific, and continuous kind of effort which is required in order to be effective in combating this problem. The establishment of a new agency within the State Police to cope with this situation was proposed and the proposal, with some modification, became law with the passage of Chapter 771 of the Acts of 1955. The new Criminal Information Bureau created by this act will be maintained by State Police Personnel and will serve to maintain files of information pertaining to "... organized crime, organized illegal gambling, and other illegal activities generally described as rackets ..." and to persons engaged in such activities. Primarily, the Bureau will work with local police departments on the common problem by receiving information from and advising and educating these departments and furnishing specific information to them from its files. However, the new agency is more than an additional source of information for municipal police since it is authorized to gather information concerning the criminal acts referred to and the persons engaged in such activities "by investigation of its own" and is further empowered under certain circumstances to deny requests by local police departments for specific data from its files with the approval of the Commissioner of Public Safety.

\textbf{§12.21. Sex offenders.} The perplexing and seemingly chronic problem of what to do with sex offenders was again dealt with in further legislation enacted this year. It is with this type of offender against our criminal laws that the demand for punishment often becomes

\begin{footnotesize}
\footnote{1} G.L., c. 127, §§151A-151G.
\footnote{2} Senate No. 590 (1955).
\end{footnotesize}
the dominant motivating force in prescribing statutory sanctions. The emotions aroused in the public generally following highly publicized "sex crimes" frequently find expression in demands that prison sentences for such offenders be made mandatory. Under this view not even the sound discretion of the trial judge, who can imprison such a defendant if he wishes to, can be trusted.

Chapter 763 of the Acts of 1955, by amending the probation laws and inserting three new sections into the statutes involving criminal offenses, provides that any person who is convicted of any of the enumerated sexual offenses involving children under sixteen years of age and who has previously been convicted of committing any of these offenses when he was over the age of twenty-one must be sentenced to State Prison for a minimum of five years and may not be placed on probation or granted parole before that minimum period. The offenses concerned are: rape by force of a girl under sixteen years; assault with intent to commit rape upon a girl under sixteen years; and any unnatural and lascivious act with a child under the age of sixteen. The penalties for first offenders convicted of the first and third such offenses remain the same, but defendants now convicted of assault with intent to commit rape upon a girl under sixteen years of age, even if first offenders, must be sentenced to State Prison for life or a term of years. Previously no distinction was made between repeaters and first offenders; both were subject to State Prison sentences or could be placed on probation in the discretion of the court.

The philosophy of this approach may be compared to legislation passed in 1954 and examined in the 1954 Survey wherein other methods of coping with the problem of the sex offender were enacted. The need for medical-psychiatric attention and long-term supervision (rather than mandatory imprisonment) was properly emphasized in this revision of the law. Greater latitude and flexibility in sentences for this type of offender would seem to promise greater protection to the community in the long run than measures further to restrict the sentencing power of our judges.

D. Judicial Decisions

§12.22. Self-incrimination: Immunity from prosecution. Should the state for any purpose be able to compel testimony from persons which would ordinarily amount to a confession of crime or an admission tending to prove a criminal act? Article XII of the Declaration of Rights provides: "No subject shall . . . be compelled to accuse, or furnish evidence against himself."

A pivotal question in this regard concerns the power of the legislature to compel such testimony by immunizing the witness from prose-
cution, and the breadth of the immunity required for the purpose. An early Massachusetts decision, *Emery's Case*, held that the immunity conferred by the following language was less extensive than the constitutional protection, and was, therefore, insufficient to bar the claim of the Article XII privilege: “... the testimony of any witness ... or any statement made or paper produced by him ... shall not be used as evidence against such witness in any civil or criminal proceedings in any court of justice ...”

In *Cabot v. Corcoran*, decided December 16, 1954, the Supreme Judicial Court held effective to confer immunity the following provision: “... he [the witness] shall not be prosecuted or subjected to penalty or forfeiture for or on account of any action, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise ...”

Procedurally, the case was before the Supreme Judicial Court on a report without decision, and with facts stipulated, on the petition of the Crime Commission, before whom the witness claimed his Article XII privilege in response to questions concerning lotteries, even though the stated immunity had been tendered to him. The Supreme Judicial Court denied the petition to compel testimony for the reason that the Commission on the hearing date in question was functioning under a “joint order” of the General Court rather than a resolve signed by the Governor and thus did not have its full powers. However, the Court ordered, in response to a joint request for declaratory relief, that the respondent could in the future be compelled to testify.

In reasoning to this conclusion, the Court surmounted two major obstacles interposed by the respondent. The first objection was that the immunity was insufficient because it did not and could not give him immunity against prosecution for federal crimes. In answer, the Court cited numerous state court decisions including one from this Commonwealth, wherein the Supreme Judicial Court stated, “We are of the opinion the privilege against self-incrimination extends only to crimes which may be prosecuted within the latter [domestic] jurisdiction, and the rule of protection is confined to what may tend to subject the witness to penalties within this jurisdiction and under the state sovereignty.” Reinforcing these citations, the Court cited the leading case of *United States v. Murdock*, where the United States Supreme Court said, “The principle established is that full and complete immunity against prosecution by the government compelling the
witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

Turning to the logic of the question, the Court noted the practical difficulties which would ensue if the Constitution of this Commonwealth conferred upon a witness a privilege against self-incrimination with respect to federal crimes. Today, with the expanding concept of interstate commerce, and the proliferating growth of federal controls, there are many actions which are criminal under both state and federal laws. Especially is this true of "organized" crime such as the Commission was created to investigate. If the state Constitution was held to protect against incrimination as to federal crimes, then, since the state cannot confer immunity as to the federal crimes, and since evidence of the commission of a crime within the state would constitute one element of proof of the federal crime, investigation of even the state aspects of such dual crimes would be constantly blocked by an irrefutable claim of privilege. Noting these general considerations, the Court dismissed the proposed immunity as a practical impossibility.

The respondent's second objection was that the immunity conferred by the order was insufficient even under state law, in that it does not furnish an immunity in all respects as broad as the constitutional privilege. The Court felt that the order was framed to meet the difficulty pointed out in Emery's Case where the immunity extended only to "any statement made or paper produced by him" and was defective in not extending to all "matters or causes in respect of which he shall be examined, or to which his testimony shall relate." The present immunity, in the eyes of the Court, successfully overcame this objection, inasmuch as, under it, the witness is not to be prosecuted for or on account of anything concerning which he has either testified or furnished evidence. "It was designed to grant an immunity as broad in all respects as the privilege, and it should be so construed." 8

§12.23. Fair trial: Comment on defendant's failure to testify or call witnesses. In Commonwealth v. Domanski,1 comment (by the prosecutor) on a defendant's failure to testify was held to be insufficient ground for reversal when the trial judge ordered it stricken from the record and adequately covered the matter in his charge to the jury.

A more important issue in the case concerns a further comment by the prosecutor on the failure of the defendant to call witnesses other than himself in his defense. This comment was not stricken from the record and no reference was made to it in the charge to the jury. It was held to be reversible error.

In regard to comments which may properly be made, the failure of a defendant in a criminal case to call witnesses other than himself on his own behalf stands on a different footing than his own failure to


testify. In this situation there is no statute limiting inferences or presumptions which may be drawn. The constitutional protection against self-incrimination is less directly in point although it remains as the only argument in support of the contention that unfavorable inferences should not be drawn. In the *Domanski* case, the Court quoted extensively from two earlier cases and outlined the circumstances under which adverse comment should be allowed. Ordinarily, the jury should be instructed not to draw inferences from the neglect of a defendant in a criminal case to call witnesses. However, comment may be made and inferences drawn if the Commonwealth has introduced "strong" evidence of guilt and the defendant could "easily" call witnesses other than himself to explain if he were innocent. And, lastly, the principle of allowing comment is one to be "applied cautiously with strict regard for the rights of persons accused." Comment which is unfair under the above rules may not amount to reversible error, however, as the Court implies that proper instruction to the jury could cure the error. The defendant in the *Domanski* case was in the custody of federal authorities and there was nothing during the course of the trial to suggest that he had witnesses available who were not brought forward.

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2 See G.L., c. 233, §20.
3 Mass. Const., Declaration of Rights, Art. XII.
6 Other questions of law were raised by the defendants in this case which are not discussed here due to limitation of space. One such question concerning the jurisdiction of the state court to try them while they were in federal custody is considered in §11.3 *supra.*