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TREATMENT AND CORRECTION OF CRIMINALS AS PROPOSED BY THE MODEL PENAL CODE

*Sanford Bates**

The Model Penal Code in its present form devotes considerable space to the problems of the treatment and correction of convicted criminals.¹ Inasmuch as a good portion of this space has to do with provisions for administration rather than provisions concerning the rights of individuals, there may be some question as to the wisdom of dealing with these problems in a *penal* code. In some states, laws governing the conduct of penal or correctional institutions appear in what is sometimes known as an administrative code.²

It was the decision of the American Law Institute, however, that in order properly to cover the subject of penal law, it would be important to propose statutes having to do with the treatment and correction of convicts. The staff of the Institute discovered that many, if not most, of the state laws included statutes governing this matter. These statutes vary from restrictions upon the practice of punishment through solitary confinement to provisions as to the amount of food to be served to inmates. The Institute felt that the Model Penal Code presented an opportunity not only of bringing some kind of system into the fundamental question of sentencing, or its alternative, but also of stating some basic principles as to how the prisoner should be treated after he was committed. Therefore, the Code does more than merely define crimes and set the limits of their punishment. In Part III, it formulates in statutory form, the opinion of the drafters as to how the penal law can most effectively be administered.

Any discussion of the Code provisions on treatment and correction of criminals would be incomplete, however, without at least mentioning the provisions in Part I of the Code which limit the sentencing power of the Court³ and regulate the amount of punishment which can be prescribed.⁴ Section 7.01 attempts to bring some kind of order out of the present chaos of the sentencing practices throughout the fifty states by putting limits on the court's authority to impose a sentence of imprisonment. Such a sentence can be given only in those cases in which the court feels that imprisonment is necessary for the protection of the public because:

- (a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (b) the defendant is in need of correctional treatment that can be

* LL.B.; Member of Massachusetts and Federal Bars; Former Director, United States Bureau of Prisons; Former Commissioner of Institutions and Agencies for the State of New Jersey.

The author also served as Special Consultant for Sentencing and Treatment of Offenders and for Organization of Correction in the preparation of the Model Penal Code.

1 MODEL PENAL CODE §§ 301.1-405.4 (Proposed Official Draft, 1962) [Hereinafter cited as CODE].

2 *E.g.*, MO. STAT. ANN. §§ 216.010-570 (1962).

3 CODE §§ 7.01-.04.

4 CODE §§ 6.07-.09.

provided most effectively by his commitment to an institution; or
(c) a lesser sentence will depreciate the seriousness of the defendant's crime.

The Code also provides a solution to the multiple sentence difficulty.⁵ This provision removes some of the problems encountered by correctional administration when several different courts, or the same court at different times, have imposed sentences which conflict with one another.

But while Part I, and to a slight extent Part II, have a basic bearing on treatment and correction, it is in Part III that correctional administrators will be primarily interested. This part includes the subjects of probation, administration of fines, and the handling of short-term and, as the Code describes them, long-term prisoners. The basic approach of the Code is not to do away with the common law distinction between felonies and misdemeanors, but to assume that minor offenders, who by practice or tradition are sent to a local or county institution, usually a jail, will be provided for in accordance with the Article on Short-Term Imprisonment.⁶ Those receiving longer terms, which have traditionally been served in prison, penitentiary or reformatory, are covered under the Article on Long-Term Imprisonment.⁷ Following the articles on probation, fines, short-term or jail commitments and long-term commitments, the Code has a set of provisions covering release on parole and loss and restoration of the rights incident to conviction or imprisonment.

It needs to be said at this point with reference to Part III, as well as the entire Model Penal Code, that it was drafted in such a way as to include what might be considered an ideal statute. The drafters fully realized that smaller states would find it difficult to comply to the fullest extent with the proposed provisions in Part III and Part IV. Each state, consequently, has the opportunity to consider the provisions of the Code as ideal statutes proposed by a group of well advised correctional administrators and to determine for itself the extent to which its statutes should conform with it.

I.

The statutes proposed by the American Law Institute having to do with the treatment of the individual offender after his commitment are divided into five articles. The first (Article 301) treats the matter of probation, including the suspension of the sentence and the matter of revocation of probation.

This article is in a sense an implementation of the provisions in Section 7.01. In that section, and the sections immediately following, there is a clear indication that the guilty defendant should be sentenced to imprisonment only as a last resort. This provision will be found to be new in most states. So, to avoid criticism of this part of the Code as being too lenient, the Code clearly states criteria for the use of probation and for the imposition of sentences.

Article 301, in itself, contains a series of provisions which, if adopted, would remove some of the controversial questions now existing in many states with reference to probation. One provides for the imposition of conditions and in-

5 CODE § 7.06.

6 CODE §§ 303.1-.10.

7 CODE §§ 304.1-.10.

dicates action to be taken if these conditions are not complied with.⁸ This section is admittedly more considerate of the rights of the offender on probation than the present law in many of the states.

Under § 301.3, only the judge can revoke probation and he can do so only after a summons or arrest of the defendant and a hearing before the court. This provision is somewhat different from those existing on this point in many states. It has been felt that the action by the court, under which the defendant has been found guilty, and the placing of the defendant under the control of the probation officer sufficiently preserved the legal rights of the offender. However, the Code requires more than the decision of the probation officer to terminate probation; it places this matter within the power of the court. There is likely to be objection to this increase in the rights of the defendant and the contention might properly be made that this procedure gives to the defendant two separate trials.

Another instance, where concern for rights of the defendant is shown, has to do with the use of a pre-sentence report. The Code does not go so far as to say that the entire pre-sentence report shall be shown to the defendant or to his attorney, but it does say that the court should quote to the defendant the statements appearing in the pre-sentence report and allow the defendant or his counsel the right to answer.⁹ There was considerable discussion on this very matter in the meetings of the Advisory Council and the present statute is a fair compromise. It gives the defendant the opportunity to question the validity or accuracy of any statement appearing in the pre-sentence report and yet, to an extent, protects the persons quoted in the report from a reprisal.

In brief, it can be said that Article 301, in connection with Section 7.01, recommends using probation wherever such can be employed without danger to the public. This *prima facie* use of probation and, as later developed, of parole as the normal method of disposition, rather than confinement, represents an outstanding change in philosophy. It is to be expected that its operation would materially reduce the number of persons being sent to prison and jail, and, consequently, lead to the more humane treatment of criminal offenders.

II.

Article 302 comprises the second of the five articles making up Part III of the Code. This article provides for the time and method of payment of fines.¹⁰ The Code makes a wise and humanitarian suggestion that probation should be used as a method of collecting fines;¹¹ imprisonment for nonpayment of a fine is not to be utilized unless the court finds that the refusal to pay is contumacious, that is, in deliberate resistance to authority.¹² It would seem that this provision will reduce a practice which has met much criticism heretofore, namely, the commitment of men to jail, not for their crime, but for their poverty.

8 CODE § 301.1.

9 CODE §§ 7.07 (5).

10 CODE §§ 302.1.

11 CODE §§ 302.1 (2).

12 CODE § 302.2.

Further provision is made for allowing a prisoner to work out his fine at a rate of \$5.00 per day or such other daily allowance as the court may designate.¹³ The final provision of the article gives the prisoner the right to appeal to the court to relieve him of the fine.¹⁴

In general, Article 302 carries out the general objective of the drafters to relieve the prisoner, particularly the indigent prisoner, from the harsh and illogical use of the fine as punishment.

III.

The main problem. — Article 303, entitled "Short-Term Imprisonment," recognizes that the weak spot in our whole American correctional system is manifested in the more than 3,000 local, county or municipal institutions to which are committed well over a million offenders each year. Roughly speaking, half of these people will be sent to the jail in lieu of bail for safekeeping until they appear in court for trial. The other half of the persons affected by this Article 303 are the so-called misdemeanor, or minor type of offender including the drunk, vagrant, the family deserter and the petty thief. It has been one of the most regrettable anomalies of our treatment of the offender that the man guilty of a serious crime is treated with more consideration than the petty offender forced to spend time in a county or municipal institution. A murderer, robber, burglar, or rapist is usually sent to a state penitentiary or reformatory, which because of its size and more adequate financing, is able to attempt the process of rehabilitation which becomes literally impossible in a small, short-term institution.

Article 303 makes significant progress towards meeting this situation. There is no doubt that the complete remedy would be to discontinue the attempt made through our counties and localities to do two widely different things in the same place and with the same equipment. The correct solution of this problem, which is being undertaken by a few counties, and some of the larger cities, is to separate completely persons awaiting trial from those serving short sentences. The code could have provided for that, but financial and political obstacles would appear to make this complete solution well nigh impossible of achievement.

Article 303 makes suggestions which should bring about an improvement in this situation. First of all, it recognizes the need for more modern facilities. Counties and other appropriate political subdivisions of the state are authorized to "construct, equip and maintain suitable buildings, structures and facilities for the operation and for the necessary expansion and diversification of local short-term institutions including lock-ups, jails, houses of correction, work farms and such other institutions as may be required."¹⁵ These institutions are expected to provide custody, control and correctional treatment for all persons committed to imprisonment for one year or less. They would also provide a place for temporary detention of persons committed to the

13 CODE § 302.2 (1).

14 CODE § 302.3.

15 CODE § 303.1 (1).

Department of Correction and for the detention of persons charged with crime and committed for hearing or for trial.

Secondly, the office of Director of Correction is created with powers to cope with the problem. By empowering the Director to recommend that the facilities in two or more political subdivisions be combined, the Code does make an approach to the principle of separating those who are guilty from those who have not yet been tried. In order that this may result in something more than a plan on paper, the Code requires the Director of Correction for the state to "annually review, on the basis of visitation, inspection and reports . . . the adequacy of the institutions for short-term imprisonment. . . ."¹⁶ The Code further vests in the Director of Correction complete control over the building of new institutions. He has the right to recommend construction of new institutions,¹⁷ and to veto the construction plans of counties, and cities.¹⁸ In making his recommendations the Director is authorized to indicate whether in his opinion the alteration, expansion, or new construction can best be undertaken by the political subdivisions concerned or by the Department of Correction.

Over the years since we in America adopted the county system for handling minor prisoners and persons waiting trial, a pitifully small number of short-term institutions have had the financial support or intelligent determination even to consider the problem of rehabilitation. By its provisions, the Code directs the Director of Correction to "consider whether the facilities available in the several political subdivisions of the state afford adequate opportunity for the segregation and classification of prisoners, for the isolation and treatment of ill prisoners, for the treatment of alcoholic and drug addicted prisoners, for diversified security and custody, and for opportunities for vocational and rehabilitative training."¹⁹

One may question whether even with this ample authority given to the State Director of Correction the whole problem of inadequate jails and short-term prisons is to be solved. But certainly with an influential and determined Director a very great improvement in the treatment of the short-term prisoner may result.

Warden's Responsibility. — The Code goes into considerable detail in imposing certain duties upon the warden or other administrative head of an institution for minor offenders. He shall keep careful records of each offender, which records shall not be subject to public inspection except by court order or for good cause shown, and shall not be accessible to prisoners in the institution.²⁰ The governing body of each county, city or other appropriate political subdivision is to provide for a Classification Committee from the institutional staff which shall determine the prisoner's program of treatment, training, employment, care and custody.²¹ Other sections of this article provide for transfers

16 CODE § 303.1 (2).

17 CODE § 303.1 (2).

18 CODE § 303.1 (5).

19 CODE § 303.1 (3).

20 CODE § 303.2 (1).

21 CODE § 302.2 (2), (3).

from one institution to another, segregation of prisoners with physical or mental defects, and identification of prisoners with mental disease or defect and the provision for their transfer to a medical facility.²²

The warden or administrative head is expected to establish by regulation a program of rehabilitation and to seek to make available to each prisoner capable of benefiting therefrom academic or vocational training, participation in productive work, etc.²³

Section 303.6 controls the responsibility of the warden for the discipline, control and safe custody of his prisoners and indicates of what the punishment for breach of discipline shall consist. For example, a prisoner in solitary confinement shall be visited by a physician at least once every twenty-four hours. This same section provides "no cruel, inhuman or corporal punishment shall be used on any prisoner."²⁴

The Code requires the warden to keep a careful record of all punishments and breaches of rules,²⁵ to establish work programs for vocational training of prisoners.²⁶ The Director of Correction shall make rules and regulations governing the hours and conditions of labor of prisoners in correctional institutions of the counties, cities, or other appropriate political subdivision of the state.²⁷ The prisoner may have a reduction of his term for good behavior or faithful performance of duties.²⁸

There is also authority to establish in any of these short-term institutions a system, which has been set up in a few states,²⁹ permitting a short-term prisoner to leave the institution during his term to work at his employment, to seek employment, to attend an educational institution, or to obtain medical treatment.³⁰ A provision of this sort in states where it has been in operation provides a system of punitive discipline and at the same time may be so handled as to prevent the prisoner from losing his job or from losing the profits from his labor.

This summary is an attempt merely to give a sample of the provisions whereby the Code undertakes to improve conditions in the jails and short-term institutions. Here again one must admit that there are many duties and obligations imposed upon the local warden or jailer and the situation will be such in many of the smaller jurisdictions that these attempts at rehabilitation cannot be carried out without more financial assistance and better trained personnel. As a matter of fact, as will appear in discussing the fourth article of Part III, on long-term imprisonment, the Code requirements for treatment in a short-term institution are nearly as great as those imposed upon the state penal institutions. However, it can be said again that the activities required are of a sort which in the judgment of the American Law Institute should be

22 CODE § 303.3.

23 CODE §§ 303.5.

24 CODE §§ 303.6 (3).

25 CODE §§ 303.6 (4).

26 CODE §§ 303.7 (1).

27 CODE §§ 303.7 (3).

28 CODE § 303.8.

29 In Wisconsin, this system is established under the so-called "Huber Law." See WIS. STAT. ANN. § 56.08 (Supp. 1963).

30 CODE § 303.9.

established and maintained if the present unsatisfactory system of caring for the short-term prisoner is to be improved. Only a few states have statutes adequate to provide good leadership and cooperation with the county authorities in the development of a good short-term institution.

IV.

The fourth article (Article 304) in Part III of the Code has to do with the operation of the prisons, reformatories, prison camps and other institutions which are collectively referred to as "long-term institutions" and are quite customarily under the direct control of a Department of Correction. Again, it needs to be pointed out that Part IV entitled "Organization of Correction" more or less dovetails with the part of Part III now under discussion.

Article 304 outlines in detail the services to be rendered by the institutions to which the long-term prisoner is to be sent. A key institution among this constellation of institutions is a reception center which shall be operated by a reception-classification board headed by the Director of Corrections.³¹ This reception center and the reports issued from it are fundamental to the program of rehabilitation on an individual basis. Article 304 also outlines the types of institutions which would be needed to provide a satisfactory system and the law provides for these types of institutions — those of maximum security character, of medium security institutions, and of minimum security institutions — with descriptions and examples of each.³²

The Code proposes the setting up of special institutional facilities for young adult offenders and a medical-correctional facility for prisoners with difficult or chronic medical or psychiatric problems. It assumes that in this group of institutions there would be one or more institutions exclusively for females and one or more misdemeanor institutions of the kind described heretofore as short-term institutions. A classification committee is established with duties including the segregation and transfer of prisoners with physical or mental diseases or defects. In brief, the Code outlines programs which involve medical care, food and clothing, rehabilitation programs and discipline and control.

The section on employment and labor of prisoners³³ recommends what is known among penologists as the "state use program." That is, prison labor may manufacture goods only for use by the tax-supported institutions of the state or its subdivisions. The Code forbids the selling, contracting or hiring out of the labor or time of any prisoner except prisoners working for other departments of the state. The rules and regulations for the labor of prisoners shall be approved by the Director of Correction.

The Director of Correction is allowed to formulate rules governing compassionate leave from institutions, permitting the attendance of a prisoner at the funeral or last illness of a relative, and also to grant a pre-parole furlough not to exceed two weeks to a prisoner whose parole date has been fixed.³⁴ The purpose of such a furlough is to enable a prisoner to secure employment, to

31 CODE § 304.1.

32 CODE § 304.2.

33 CODE § 304.8.

34 CODE § 304.9.

find living quarters for himself and his family, and generally to make more effective plans and arrangements toward his release on parole. A final section of this Article³⁵ provides for the manner of release of a prisoner from the institution, requiring that he be returned any personal possessions taken from him upon commitment and that he shall be furnished with decent clothing appropriate for the season of year, a transportation ticket to the place where he will reside and any earnings that have been set aside for him in the wage fund.

Again, enough samples have been cited to indicate that here the Code attempts to define in legal phraseology what a modern program of rehabilitation implies. It does not forbid punishment or discipline. It does require that punishment shall not be arbitrarily imposed, that the prisoner has a right to be heard, and that the record of all punishments be forwarded to the central office.³⁶ In its entirety this part of the Code contains what the American Law Institute considers the necessary elements of a penal program which is based, not alone upon punishment or discipline, but upon a genuine attempt to understand each prisoner and to offer to him that type of corrective treatment which will assist him in any effort that he might make to live within the law as a responsible citizen of his community.

V.

Comment has been made upon four of the articles under the general title of "Treatment and Correction." We now come to the fifth of these Articles headed, "Release on Parole."

In preparation of the material for this part of the Model Penal Code there was probably more discussion and argumentation than in any other. Perhaps this was because, generally speaking, people are not very interested in what happens to a man in jail or prison, but they have been kept in somewhat of a state of alarm by critics of the parole system when questions arise as to when a prisoner shall be released and how he shall be treated thereafter.

In considering the matter of parole, as in considering the matter of probation, an earlier part of the Code involving the authority to parole prisoners must be consulted. Section 6.10 states that an offender sentenced to an indefinite term of imprisonment in excess of one year shall be released conditionally on parole at or before the expiration of the maximum of such term. The drafters were impressed by the argument that the safest way to release men from prison was not to turn them out summarily with no provisions for their future support but to release them under a system of parole. Release on parole contemplates careful study of his prospects and other conditions which, it is hoped, will not only assist in his own readjustment but will protect the public from his possible return to criminal habits.

Article 305 supplies the details under which parole shall be granted, supervision undertaken, and revocation ordered. Section 305.1 fixes the date of the eligibility of an indefinite term prisoner. All sentences to state prison are to be

35 CODE § 304.10.

36 CODE § 304.7.

on a minimum and maximum basis, that is, a sentence, say, of not less than three nor more than ten years.

Section 305.1 further defines the time when a prisoner may receive parole consideration. For good behavior and faithful performance of duties the prisoner's term is reduced by six days for each month of such term. It is further provided that for especially meritorious behavior a further reduction of not to exceed six days for any month of imprisonment shall be made. For example, suppose that a prisoner is sentenced for not less than two nor more than five years and is a model prisoner all of that time. In addition, suppose he has shown some specially meritorious behavior. He would be entitled to get a reduction from his two years. He may see the Board when 288 days have gone by. This does not mean that he will necessarily be paroled at that time. It means that when he does go, which may be at any time before the expiration of his maximum time, he will go out under parole supervision.

Under Section 305.2, the parole term itself can be reduced for good behavior. This would mean the end of some present practices in many states of a very long term in prison followed by several years of controlled behavior while on parole.

The sections of Article 305 provide with some detail as to preparations for a parole hearing.³⁷ It is specifically provided that a prisoner shall not only have a hearing, but shall be rendered reasonable aid by the staff in making preparation for his parole plan. He is also to be permitted to advise with any persons whose assistance he reasonably desires, including his own legal counsel, in preparation for a hearing before the Board of Parole. Originally, the drafters felt that the prisoner should have the assistance of counsel at the hearing. Later on, however, this matter was reconsidered and the present language was substituted giving him the right to advise with legal counsel but not necessarily to permit counsel to appear at his hearing.

Section 305.9, which deals with the criteria for determining the date of first release on parole, was the subject of considerable discussion both before the American Law Institute and elsewhere. The provision finally agreed on is incorporated in paragraph one of Section 305.9.

The reason for the difference of opinion on this provision of the Code was a fear on the part of parole administrators that it would confer certain rights upon the prisoner and handicap the Board in arriving at a decision which they thought was in the interest of the public at large. The present draft on this particular subject says that whenever the Board of Parole considers the first release of an eligible prisoner, it *shall be the policy* to order his release *unless* the Board is of the opinion that his release should be deferred because:

- (a) there is substantial risk that he will not conform to the conditions of parole; or
- (b) his release at that time would depreciate the seriousness of his crime or promote disrespect for law; or
- (c) his release would have a substantially adverse effect on institutional discipline; or

³⁷ CODE §§ 305.6-7.

- (d) his continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.

It cannot be said that the majority of parole administrators have approved this particular part of the Code. Most feel that with the adoption of this section, the present state of the law, which defines parole as a matter of grace and not as a right, will be modified to favor the prisoner.

Paragraph two of Section 305.9 recites some of the factors to be taken into account before the Board shall make a determination to release a prisoner. These factors include such matters as the prisoner's personality, the adequacy of his plan, his ability and readiness to assume responsibilities, his intelligence and training, his family status, his employment history, the type of residence, neighborhood and community in which he plans to live, and his past use of narcotics or habitual and excessive use of alcohol, his physical or mental make-up, his prior criminal record and the prisoner's attitude toward authority, his conduct in the institution, particularly whether he has taken advantage of the opportunities for self-improvement. Finally, the prisoner's conduct and attitude during any previous experience on probation or parole, and the recency of such experience are to be considered. A following section³⁸ lists in detail the data and information to be furnished to the Parole Board in order that it may consider all of the points above referred to.

The parolee is eligible for discharge from parole when he has finished the minimum parole term less reductions for good behavior.³⁹ Some administrators do not favor this particular policy because they feel that there would be no way to determine adequately good or bad behavior while a person was out of the institution and only under occasional supervision.

This Code then gives to the Parole Board the right to require certain conditions of parole.⁴⁰ Not only must the parolee refrain from engaging in criminal conduct, the Board may also require that he must meet his family responsibilities, that he must devote himself to approved employment, that he must remain within certain limits fixed in his certificate, that he must report as directed to his parole officer, that he must reside at the place fixed in his certificate of parole, that he must have no firearm or other dangerous weapon in his possession unless granted written permission, that he must submit himself to available medical or psychiatric treatment, if the Board shall so require, that he must refrain from associating with persons known to him to be engaged in criminal activities, or that he must satisfy any other conditions especially related to the cause of his offense and not unduly restrictive of his liberty.

Section 305.14 gives to the Parole Board the right to require as a condition of parole that the parolee live in a hostel, boarding home, hospital or other special residence facility.

Detailed procedure is described in other sections of this article as to the revocation of parole and a hearing by the Parole Board as to the fault of the

38 CODE § 305.10.

39 CODE §§ 305.6.

40 CODE § 305.13.

parolee as alleged.⁴¹ Instead of revoking the parole, after hearing, the Board may choose one of a number of alternatives. It may merely reprimand and warn the parolee, or it may intensify parole supervision and impose one or more of the following requirements: (1) that reductions for good behavior be forfeited, (2) that the prisoner be remanded to a residence facility, (3) that he be required to conform to one or more additional conditions of parole.⁴² Detailed provisions also appear in the law as to the manner of taking custody of a parolee and the issuing of a warrant or other authority authorizing the parolee's detention up to the time of the Board's hearing and the decision as to his violation.⁴³

Certain sections of Article 305 would permit the parole of a prisoner from a state institution even though there was another charge pending against him. Heretofore, this had been impossible as many Boards of Parole refused even to hear an application for discharge as long as any other warrant or detainer had been filed, either within or without the state. Under the proposed Code, procedure is set up to permit the Board to parole a prisoner, who is eligible for release, to a warrant or detainer under certain prescribed conditions.⁴⁴

It cannot be denied that the parole provisions of the Model Penal Code quite generally favor the prisoner. He may consult a lawyer on his hearing, have counsel on his revocation hearing or, he can have assistance from the staff. The Code certainly carries the intimation that the burden of proof would be on the Board in the matter of release. In these respects, Article 305 recommends procedures which make it easier for a man to get a parole and more difficult to return him. Nevertheless, it appears that the Board is enjoined to be more careful in the matter of releases, even to the outlining of the data and information that they must have. The conditions of parole are still fairly rigid but the paragraph with reference to sanctions makes it rather difficult to contrive his return to imprisonment.

As above stated, heretofore the courts have generally considered parole as a privilege and not a right, and ruled in such cases that if the Board of Parole acted strictly in accordance with the provisions of the statute the court would not interfere.⁴⁵ There have, however, been a few court decisions which seemed to hold that the action of the Board be reviewed by court,⁴⁶ and the tendency among some courts is to grant more rights to the parolee than heretofore. In order to meet this situation the Code affirms the finality of the Parole Board's determination with the following section:⁴⁷

No court shall have jurisdiction to review or set aside, except for denial of a hearing when a right to be heard is conferred by law:
 (1) the action of an authorized official of the Department of Correction or of the Board of Parole withholding, forfeiting or refusing to restore a reduction of a prisoner parole term for good behavior; or

41 CODE § 305.15.

42 CODE § 305.16.

43 CODE § 305.16 (2).

44 CODE § 305.18 (3).

45 *Burns v. United States*, 287 U.S. 216 (1932).

46 *Compagna v. Hiatt*, 100 F. Supp. 74 (N.D. Ga. 1951).

47 CODE § 305.19.

(2) the orders or decisions of the Board of Parole regarding, but not limited to, the release or deferment of release on parole of a prisoner whose maximum term in prison has not expired, the imposition or modification of conditions of parole, revocation of parole, or determination or restoration of parole supervision or the discharge from parole or from reimprisonment before the end of the parole term.

VI.

In addition to the five articles herein discussed which are properly classified under the general heading of "Treatment and Correction" the American Law Institute thought it wise to include a recommendation with reference to the matter of loss and restoration of rights incident to conviction or imprisonment. For many years the statutes of the various states have differed on this question, especially in reference to the exercise of the franchise or the automatic deprivation of certain rights. Section 306.1 offers a uniform definition as to what should be the basis of disqualification or disability and provides that:

[N]o person shall suffer any legal disqualification or disability because of his conviction of a crime or his sentence on such conviction unless the disqualification or disability involves the deprivation of a right or privilege which is (a) necessarily incident to execution of the sentence of the court; or (b) provided by the Constitution or the Code; or (c) provided by a statute other than the Code, and the conviction is of a crime by such statute.

The Code goes on to say that "proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness is not a disqualification or disability within the meaning of this article."

The Code also provides that:⁴⁸

A person holding any public office shall forfeit such office if (1) he is convicted under the laws of this State of a felony or under the laws of another jurisdiction of a crime, which if committed within the State, would be a felony; or (2) he is convicted of a crime involving malfeasance in office or dishonesty; or (3) the Constitution or a statute other than the Code so provides.

On the matter of voting and jury service the Code provides simply that a person who is convicted of a crime shall be disqualified (1) from voting in a primary or election but only so long as he is committed under a sentence of imprisonment and (2) from serving as a juror until he has satisfied his sentence.⁴⁹

Other sections of this particular article apply to the testimonial capacity of a prisoner and his right to be represented by an attorney or trustee while in prison. A procedure permitting the removal of disqualifications or disabilities by a court order is also provided.

Evidently, the Law Institute, having committed itself to the general proposition that commitment to a penal institution was, partially at least, for the purpose of achieving a rehabilitation of the prisoner, felt it would hardly be consistent to prolong the disqualifications beyond the time of the sentence. While not undertaking in this Code completely to remove any stigma or disqualification, it

48 CODE § 306.2.

49 CODE § 306.3.

did propose a statute which if adopted by a majority of the states would make uniform this whole matter of disqualification or disability.

VII.

This writer, who has spent many years in supervising the conduct of penal and correctional institutions, feels quite confident that Part III of the new Model Penal Code presents a humane and workable program for the rehabilitation of the prisoner.

The American Correctional Association has recently published a thorough statement entitled "A Manual of Correctional Standards." This volume offers suggestions which if adopted would establish a rehabilitation system in our institutions in place of one which is largely punitive. To a considerable degree, Part III of the Model Penal Code is based on these same principles but has restated them in the form of statutes.

In its attempts to simplify the present widely divergent regulations about concurrent or consecutive sentences, the Code presents a definite and clear-cut statement of the law. In the same way that other parts of the Code have attempted to set reasonable limits to the length of sentences, Part III of the Code has set certain limits on the extent and character of the treatment to be accorded the prisoner.

There have been instances among the states of the United States of America where the real purpose of rehabilitation has been destroyed by the very length and severity of the sentence. Many persons familiar with the penal laws of other free countries have long felt that sentences in the American courts were too long. The Code attempts to limit the length of sentence and to carefully define which prisoners should receive the extended terms.

Part III becomes a part of the whole picture of the Model Penal Code. It authorizes the Director of Correction or the warden of the prison to maintain order in his institution through suitable disciplinary measures, but it also enjoins upon him the difficult task of rehabilitation and restoration of the individual prisoner to a law abiding existence.

As intimated earlier, some of our fifty states will find it difficult to implement all of the provisions in Part III. Some may feel that parts of the statute suggested are too specific or too detailed in their character. But Part III does present a program which all states can strive to implement, and further, Part IV of the Code sets up the kind of departments or institutions which would most likely be able and willing to carry out such a program.

If a state wishes to present an effective answer to those present day critics who claim that prisons do more harm than good and that men come out of prison with a capacity and an attitude which is worse than when they entered, it is the opinion of this observer that such state will find the answer spelled out in detail in Part III of the Model Penal Code. All correctional administrators and dedicated men and women, who have sought to find the answer to the problem of rehabilitation under most difficult situations, should welcome a new ally in the American legal profession as represented by the American Law Institute, the propounders of the Model Penal Code.