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California's New Penal and Correctional Law

*Earl Warren† and Burdette J. Daniels**

THE LEGISLATURE during its Third Extraordinary Session which adjourned sine die January 31, 1944, passed Senate Bill No. 1, which reorganizes California's Penal and Correctional Systems, and was signed by Governor Warren on February 4, 1944 (Chapter 2, Third Extraordinary Sessions, Statutes 1944).

The enactment of this law provides an organization for the direction of the State's Penal and Correctional Institutions, which creates a centralized administration over all of the functions that heretofore were decentralized, causing conflict and overlapping of jurisdictional and administrative functions.

The Legislature enacted this statute pursuant to the authority it was granted by a Constitutional Amendment adopted November 5, 1940 (Section 7, Article X, California Constitution).¹

For many years California's penal institutions were under the direction of a five-man, part-time, non-salaried Board of Prison Directors. As the affairs of the State's penal institutions became more

†Governor of California. B.L. 1912, J.D. 1914, University of California.

*Legislative Secretary to the Governor.

¹ "Notwithstanding anything contained elsewhere in this constitution, the Legislature may provide for the establishment, government, charge and superintendence of all institutions for all persons convicted of felonies. For this purpose, the Legislature may delegate the government, charge and superintendence of such institutions to any public governmental agency or agencies, officers, or board or boards whether now existing or hereafter created by it. . . ."

"All existing statutes and constitutional provisions, purporting to create such institutions or such agencies or officers or boards, to so delegate such government, charge and superintendence, to so prescribe such powers, duties, or functions, or to so provide for such punishment, treatment or supervision are hereby ratified, validated and declared to be legally effective until the Legislature provides otherwise." CAL. CONST. art X, §7.

complex, due particularly to increased prison population, it became more difficult for such a board to properly handle problems of custodial care and administration. As a result, each institution was more or less functioning in an individual manner, which led to costly and inefficient administration. Also, there existed jurisdictional and administrative over-lapping and conflicting authority between the Board of Prison Directors, Board of Prison Terms and Paroles and the Bureau of Paroles.

This deficiency of administrative organization existing in California's Penal and Correctional Systems has existed for many decades. Its administration originated in 1879 and has never been changed to meet the present development of penal affairs in California which have grown to a state of complexity. The need for a strong centralized administration has been emphasized by investigating committees appointed for the purpose of studying the State's penal systems and authoritative reports made during the past decade.²

The Investigation Committee's reports to Governor Warren referring to the need of a centralized organization to administer the State's penal and correctional institutions concluded: "Ample evidence was adduced before this committee showing that until these several independent systems are supplanted by one administrative department, there is no hope for a proper business administration or an adequate program of custodial care and supervision. Due to the confused and conflicting authority it is impossible for the wardens and the superintendents of the several penal and correctional institutions to operate efficiently. The Committee finds that there is a complete lack of continuity of policy and business administration. Each institution appears to be going in its own separate direction

² Milton Chernin, Legislative Problem No. 17 (Dec. 15, 1934) Bureau of Public Administration, University of California.

Governor's Committee for Investigation of Penal Institutions Report (March 19, 1941).

Report of Committee on State Organization to the Governor and Legislature (1941).

Milton Chernin, Legislative Problem No. 6, (1941) Bureau of Public Administration, University of California.

2 HANDBOOK OF AMERICAN PRISONS AND REFORMATORIES (5th ed. 1942) 205, published by the Osborne Association, Inc.

Senate Interim Committee Report on Penal and Correctional Institutions (1943).

Governor's Investigation Committee on Penal Affairs Final Report, submitted to Governor Warren on January 21, 1944, which was the basis for the present legislation. Cal. Stats. 1944, c. 2, Third Extra Session.

regardless of the effect such policy might have upon the over-all penal problem in the state."³

This conclusion is corroborated by the previous studies and reports on the subject, which leads to but one basic conclusion, that is, the involved and discordant administrative structure of California's penal and correctional systems requires coordination and central organization.

ADMINISTRATION UNDER NEW CORRECTIONAL SYSTEM LAW⁴

The Legislature has now established a "Department of Corrections" which will be codified as Section 1, Chapter 1, Title 7, part 3, of the Penal Code. The department is composed of a Director of Corrections, Board of Corrections, Adult Authority, Board of Trustees of the California Institution for Women, and the Youth Authority, and succeeds to the powers and duties vested in the following Departments:

1. Department of Penology
2. State Board of Prison Directors
3. Board of Prison Terms and Paroles
4. Advisory Pardon Board
5. Bureau of Paroles
6. California Crime Commission
7. The wardens and clerks of San Quentin Prison, Folsom Prison and the California Institution for Men at Chino.

The functions and duties of the Advisory Pardon Board and the Board of Prison Terms and Paroles are to be exercised and performed by the Adult Authority (Sections 5000, 5001 and 5002 Penal Code).

The new statute vests the Department of Corrections with jurisdiction over the following institutions:

1. California State Prison at San Quentin
 2. California State Prison at Folsom
 3. California Institution for Men at Chino
 4. California Institution for Women at Tehachapi
- (Section 5003 and Section 6081 Penal Code).

³ Final Report of Governor's Investigation Committee on Penal Affairs (Jan. 21, 1944) 7.

⁴ Cal. Stats. 1944, c. 2, Third Extra Session. Senate Bill No. 1.

The Department of Corrections does not have jurisdiction over the correctional schools directly, but the Youth Authority may grant such functions as it may desire by contract with the Department of Corrections pursuant to Sections 356 and 356a of the Political Code. (Sections 6003 and 6004 Penal Code.) Except "that the power of classification and segregation of persons committed to the Authority (Youth) shall be exercised by the Authority (Youth) and shall not be exercised by any other agency". (Section 6003 Penal Code.)

The Director of Corrections under the new statute will succeed to and exercise the powers and duties heretofore expressly vested in either the Board of Prison Directors or the wardens, for example, such functions as contracts for prison maintenance, compensation of employees, property protection, records and registration, prisoners' personal property, Federal prisoner charges, employment of prisoners, and prison-made goods.

Heretofore the administrative functions for contracts for prison maintenance, compensation of employees, employment of prisoners and prison-made goods, were directly vested in the Board of Prison Directors under the following Penal Code provisions, 2050-2056, 2059, 2700-2792, 2870-2877.

The administrative functions such as property protection, records and registration, prisoners' property, Federal prisoner charges, were vested in the wardens of the different institutions by sections 2078, 2082, 2083, 2085, and 2090 of the Penal Code.

The responsibility of custodial care and prison discipline was vested solely in the wardens of the several institutions (Penal Code Section 2079). Under the new prison reorganization statute this duty remains with the wardens, but they are subject to orders and policies established by the Department of Corrections, and a record of all punishments must be submitted to an Adult Authority, which has the power to prescribe rules and regulations with respect to disciplinary matters within the prison, acting through the Director of Corrections.

DIRECTOR OF CORRECTIONS⁵

The office of Director of Corrections is now established under Section 5050 of the Penal Code. He shall be appointed by the Governor, with the advice and consent of the Senate, and his term of

⁵ Upon the enactment of the new prison reorganization statute, Governor Warren announced that he would make his appointments for Director of Corrections and Wardens through the merit system of selection. Hence, the State Personnel Board was in-

office is at the pleasure of the Governor, but before the Director of Corrections may be removed, charges must be preferred against him and a hearing held by the Board of Corrections, which in turn files findings with respect to such charges with the Governor. However, "The Governor may, but need not, abide by the findings of the Board of Corrections, and may retain or remove the Director. If the Governor removes the Director his action shall be final." (Section 5051 Penal Code.)

The Director of Corrections is the "Chief Administrative Officer of the Department of Corrections" (Section 5053 Penal Code), and is charged with the supervision and control of the State prisons and the responsibility for the care, custody, training, discipline and employment of persons confined in the State prisons. (Section 5054.)

He is to advise with the Board of Prison Directors respecting the prisons for adult males. (Penal Code Section 6035.) He shall also advise with the Board of Trustees of the California Institution for Women "in the establishment of general policies for the operation and maintenance" of that institution and for the "establishment of general policies for the care, custody, treatment, training, discipline and employment of those confined in the institution." (Section 3325 Penal Code.)

The Director is a member of the Board of Corrections and may participate and vote in all of its meetings except when the Board is trying charges against the Director, a warden or superintendent.

The Director may, in emergency when the Adult Authority is unable to act, transfer prisoners in one State prison to another, and he

structed by the Governor to conduct such examinations. A nation-wide written examination was held and an oral examination was conducted at Sacramento by a Board consisting of James V. Bennett, Director of Federal Bureau of Prisons; R. Justin Miller, Associate Justice, United States District Court of Appeals (Washington, D.C.); Sanford Bates, Member of Board of Parole of New York; Mrs. Harold Nachtrieb, former Director of the California League of Women Voters, and Mr. Arch Tinning, President of the State Personnel Board.

Upon the recommendation of this Board, Richard A. McGee was appointed Director of Corrections by the Governor on May 1, 1944. Mr. McGee is a graduate of the University of Minnesota with the degrees of B.S. and M.A.; was an instructor of Industrial Education at the University of Minnesota; Supervisor of Education, Federal Penitentiary, Fort Worth, Kansas; Warden of New York State Penitentiary at Riker's Island; Deputy Commissioner of Corrections, Department of Corrections of the State of New York; Supervisor of Public Institutions for the State of Washington, from which position he resigned to take the Directorship of California's new Department of Corrections; President of the American Prison Association; and Editor of the *Prison World*, which is the official organ of the American Prison Association.

shall immediately report such transfers to the Adult Authority. (Section 5080 Penal Code.)

ADULT AUTHORITY⁶

The Adult Authority is composed of three members, each of whom is appointed by the Governor with the advice and consent of the Senate, for a term of four years, with staggered terms. The chairman of the Adult Authority shall be designated by the Governor from time to time. One member of the Authority shall be an attorney at law, one shall have practical experience in handling adult prisoners, and one shall be a sociologist in training and experience. (Section 5075 Penal Code.) Each member of the Adult Authority shall devote his entire time to the duties of his office. (Section 5076 Penal Code.)

The members of the Authority may be removed by the Governor after a full hearing for misconduct, incompetency or neglect of duty. (Section 5081.)

⁶ At the time the Governor announced his appointments of Members of the Adult Authority he stated that it would be his policy to have the chairmanship rotated yearly among the three members of the Authority.

On May 1, 1944, Mr. Lewis Drucker was appointed a Member of the Adult Authority, for the term expiring May 15, 1947, and designated chairman. Mr. Drucker was a former Deputy Attorney General, and served under Governor Warren when he was the Attorney General. He has had many years experience in the Los Angeles County Superior Court as an Acting Commissioner of the Court and presided over many cases as Judge pro tem.

Mr. Walter A. Gordon, previously appointed by Governor Warren as a Member of the Board of Prison Terms and Paroles, was appointed Member of the Adult Authority on May 1, 1944, for the term expiring May 15, 1947. Mr. Gordon brings with him his previous experience in handling parole matters from his activities as a Member of the old Board of Prison Terms and Paroles. He also has had many years of practical experience in handling adult prisoners as an officer of the Berkeley Police Department, under the direction of Chief of Police August Vollmer.

The other appointment to the Adult Authority is Dr. F. Lovell Bixby, which was made by Governor Warren on May 1, 1944, for the term expiring May 15, 1945. He is a psychologist and sociologist, having directed his study principally among inmates of the Federal Prison System. He was actively engaged in prison work in the state of New Jersey, from which he became Assistant Director of the Federal Bureau of Prisons, in which capacity he devoted a major portion of his time to vocational training of prisoners and directed pre-parole programs. He was Executive Officer of the Osborne Association, Inc., which organization is devoted exclusively to the study of prison administration and its related problems. Later he became Warden of the Federal Reformatory at Chillicothe, Ohio, where he received national recognition in establishing industrial and vocational programs for inmates, and where he conducted an air mechanic school which is one of the first to be established in any prison in the country. Dr. Bixby comes directly from his wardenship at Chillicothe to take up his new duties as Member of the Adult Authority.

The functions of the Adult Authority are the classifying of prisoners, transferring them from prison to prison, granting of good conduct credits, fixing of sentences, granting and revoking paroles, and advising on pardons. (Sections 5077 and 5080.)

The Adult Authority is required to thoroughly investigate each prisoner, and this includes investigation of all pertinent circumstances of his life and the antecedents of the violation of law because of which he has been committed to prison. Each prisoner must be interviewed at least once by a member of the Authority. Upon the basis of such examination and study, the Adult Authority shall then classify the prisoner and determine the prison in which he is to be confined. (Section 5077 Penal Code.) In connection with this study and classification of prisoners, the new statute directs that a psychiatric and diagnostic clinic shall be established at one of the State prisons. The work of this diagnostic clinic shall include a scientific study of each prisoner, his career and life history, the cause of his criminal acts, and recommendations for his care, with a view to his reformation and to the protection of society. "The recommendation shall be submitted to the Adult Authority and shall not be effective until approved by it. The Adult Authority may modify or reject the recommendation, as it sees fit". (Section 5079 Penal Code.)

The Adult Authority may transfer prisoners from one prison to another. (Section 5080 Penal Code.)

Under the new statute the Bureau of Paroles is placed under the Adult Authority, which has the power to appoint all personnel, whereas under the old statute the Bureau of Paroles was subject to the jurisdiction of the Board of Prison Directors, and in addition, the Authority is authorized to prescribe the nature, type and duration of punishments that may be meted out to convicts, and also succeeds to the power of the Board of Prison Directors to restore civil rights suspended during imprisonment or lost by sentence of life imprisonment. It determines whether the prisoners are insane, and may send them to State hospitals for treatment. It may authorize the temporary removal of prisoners upon certification of the prison physician. It may permit the transfer of prisoners to harvest camps, determine what portion of money earned is to be forfeited for an infraction of prison rules, and allow extra meritorious credits for good behavior. Under this latter function the old law provided the State Board of Prison Directors was to grant and revoke credits upon the recommendation of wardens. (Penal Code Sections 2920-2926.)

YOUTH AUTHORITY

The Youth Authority as established under the Youth Authority Act (Chapter 1, Div. 2.5 of the Welfare and Institutions Code), is now made a part of the Department of Corrections, and its three members are members of the Board of Corrections, otherwise the Youth Authority remains independent but with power to contract with the Department of Corrections for the performance by that Department of any of the powers and duties vested in the Youth Authority. (Sections 5001, 6000, 6025, 5055, 6002, and 6003 Penal Code.) As previously stated, the Youth Authority as a group can classify and segregate persons committed to it (Section 1725 of the Welfare and Institutions Code). This power vested in the Youth Authority cannot be contracted away to the Department of Corrections. (Section 6003 Penal Code.) The new statute provides that the full-time member of the Youth Authority (two members under the Act are part time) may make the contract to transfer certain of its powers to the Department of Corrections (Section 6001 Penal Code and Section 1725 Welfare and Institutions Code). Certain cautionary provisions are incorporated in the new statute to the effect that where the Department of Corrections acts for and in the stead of the Youth Authority pursuant to contract, the action of the Department of Corrections is considered the action of the Youth Authority. (Section 6004 Penal Code.)

The terms of the members of the Youth Authority are modified by the new statute so as to permit an incoming Governor to appoint a majority of its members two and one-half months after the Governor takes office. (Section 1720 Welfare and Institutions Code.)

Under the old law persons of less than twenty-three years of age at the time of apprehension may have been committed to the Youth Authority. The new statute has reduced this age to twenty-one years. (Sections 1730 and 1735 of the Welfare and Institutions Code.) However, the Authority may retain jurisdiction to the age of twenty-five years when the inmate is convicted of a felony (Section 1771 Welfare and Institutions Code), or up to the age of twenty-three or for two years, whichever is the later, when the inmate is convicted of a misdemeanor (Section 1770 Welfare and Institutions Code), or until twenty-one years or for two years, whichever is the later, when the person is committed by the Juvenile Court. (Section 1769 Welfare and Institutions Code.)

THE BOARD OF CORRECTIONS

The Board of Corrections under the new statute is composed of the following:

1. Director of Corrections
2. Three members of the Adult Authority
3. Three members of the Youth Authority
4. Two women members of the Board of Trustees of the California Institution for Women at Tehachapi
5. Two members of the Board of Prison Directors
(Section 6025 Penal Code).

The Board of Corrections shall be the means whereby the Adult Authority, the Board of Trustees of the California Institution for Women at Tehachapi and the Youth Authority may correlate their individual programs for the adults and youths under their respective jurisdictions. (Section 6026 Penal Code.)

The new statute also confers upon the Board of Corrections the duty to study the entire subject of crime in the State, including its causes, methods of prevention and detection, apprehension of criminals, methods of prosecution of persons accused of crime. In other words, the entire subject of penology is to be surveyed by this Board and its findings and conclusions are to be submitted to the Governor at such times as he may request them, and to the California Legislature at each regular session. Also, the Board is to study and make recommendations to the Legislature and the Governor concerning the establishment of a State hospital for the custody and care of criminally insane and narcotic addicts. (Sections 6027, 6028 Penal Code.)

This latter function was formerly performed by the California Crime Commission under Chapter 544 of the Statutes of 1929, which is repealed by Section 45, paragraph (d) of the new prison reorganization bill. (Chapter 2, Third Extraordinary Session, Statutes 1944.)

THE STATE BOARD OF PRISON DIRECTORS

Under the old law the Board of Prison Directors was charged pursuant to the mandates of the State Constitution to superintend and manage the State prisons. (Article 10, Section 2, California Constitution.) They had the power to appoint wardens and clerks and "other necessary officers of the prisons". (Article 10, Section 3, California Constitution.)

In other words, this five-man, part-time, unpaid board was the general administrative and policy forming agency with respect to the management of San Quentin Prison, Folsom Prison and the California Institution for Men at Chino.

The new statute places the Board of Prison Directors in an advisory position to the Director of Corrections, and as previously stated, he is required to advise with this Board concerning general policies for the care, custody, treatment, training, discipline and employment of male prisoners. (Section 6035 Penal Code.)

The Board of Prison Directors are to prepare written reports for the Director of Corrections, the Governor and the Legislature. (Section 6037 Penal Code.)

The provisions of the Penal Code governing the duties and conduct of the Board of Prison Directors have been repealed by the new statute. They are: Sections 2042, 2043, 2044, 2045, 2046, 2048, 2049.

Certain other functions of the Board of Prison Directors such as auditing, rule and regulation power, visitation power (except as is necessary in connection with their advisory functions) are transferred to the Department of Corrections as part of the general powers of the Director of Corrections. (Sections 5057 and 5058 Penal Code.)

BOARD OF TRUSTEES OF THE CALIFORNIA INSTITUTION FOR WOMEN

Section 3299 of the Penal Code as amended by this reorganization bill provides that the Board of Trustees of the California Institution for Women is made a part of the Department of Corrections, and two of its women members are placed upon the Board of Corrections. (Section 6025 Penal Code.)

This Board occupies the same position under the new statute with respect to women prisoners that the Adult Authority occupies with respect to men prisoners. (Section 14 of bill amending Section 3325 Penal Code.) However, the Director of Corrections is to advise with the Board of Trustees in establishing general policies for the operation of the women's prison. This is comparable to the power retained by the Board of Prison Directors over San Quentin, Folsom and the California Institution for Men at Chino. (Section 6035 Penal Code.) In other words, all powers except those similar to the Adult Authority and the Board of Prison Directors are transferred to the Department of Corrections, and the Director of Corrections, with the advice of the Board of Trustees, will operate and manage the women's prison. (Section 6081 Penal Code.)

The Board of Trustees are to continue to handle parole matters. (Section 6081 Penal Code and Section 3325 Penal Code as amended.)

The Superintendent of the women's prison at Tehachapi was heretofore appointed by the Board of Trustees as a confidential employee exempt from civil service. However, under the new statute the Superintendent will be appointed by the Governor upon recommendation of the Director of Corrections and subject to the advice and consent of the Senate. (Section 6050 Penal Code.) The superintendent occupies the same position with respect to removal as that occupied by the Director of Corrections and the wardens of the other prisons. (Section 5051 and 6050 Penal Code.) Subject to control of the Department of Corrections and the Director of Corrections, the Superintendent has immediate charge of the women's prison the same as the wardens of the other institutions. (Sections 13 and 14 of Bill.)

PERSONNEL AND CIVIL SERVICE

"The present employees of the prison system, except those at the California Institution for Women at Tehachapi, are exempt from the Civil Service Act [Constitution, Article 14, Section 4 (a) (11)]. This exemption from civil service under the new statute is continued until January 1, 1945, for all present positions transferred to the Department of Corrections and any new positions in the Department not exclusively for the Youth Authority and for the Board of Trustees of the California Institution for Women at Tehachapi. (Section 6051 Penal Code.) In order to preserve the continuance of the civil service exemption until January 1, 1945, the wardens are made the appointing authorities, but such appointments are subject to the Director of Correction's approval and also subject to his removal.

On January 1, 1945, civil service is made applicable to all employees of the prison system. The employees are classified and given either permanent status in a permanent position, or permanent status in a duration position (which ends when the war ceases), (Section 152.6 State Civil Service Act) after a six months probationary period.

The Director of Corrections is the appointing authority for all civil service positions in the Department of Corrections except those under the Youth Authority, parole employees of the Board of Trustees of the California Institution for Women at Tehachapi (Section 6053 Penal Code), and parole employees of the Adult Authority (Section 30 of Bill, Section 2401 of the Penal Code as amended.)

DEPARTMENT OF JUSTICE

Section 376 which is added to the Political Code establishes a "Department of Justice", which is under the direction and control of the Attorney General. This Department is composed of:

1. Attorney General
2. State Bureau of Criminal Identification and Investigation
3. Division of Narcotic Enforcement

(Section 376a Penal Code.)

The State Bureau of Criminal Identification and Investigation is supervised by a Board of Managers (Deering Act 1904). This Board is composed of the Attorney General; also a Chief of Police, a Sheriff, and a District Attorney, who are appointed by the Governor. (Section 2 of Deering Act 1904.)

Under this reorganization bill the Attorney General is designated as head of the Bureau, and the Board of Managers becomes an advisory agency to him. The position of Superintendent of the Bureau is unchanged except that the Attorney General and not the Board of Managers is his supervisor.

The Chief of the Division of Narcotic Enforcement instead of being appointed by the Governor and exempt from civil service, is now appointed by the Attorney General pursuant to the Civil Service Act. (Section 11,101 Health and Safety Code as amended.)

DETECTIVE LICENSE BUREAU

The Detective License Bureau which was under the jurisdiction of the Board of Prison Directors, under the new statute is transferred to the Department of Professional and Vocational Standards, and the Director of the Department assumes the functions of the Board of Prison Directors respecting this agency. The personnel of the Bureau is blanketed in under the Civil Service Act. (Section 7501 Business and Professions Code as amended.)

CONCLUSION

It has recently been stated by recognized authorities in penal administration that the new California Prison Reorganization Statute is one of the most forward steps taken in this country concerning prison organization. The California Legislature in enacting this law

has centralized the penal and correctional systems to a practical working degree, and unquestionably many thousands of dollars will be saved the taxpayers by consolidating administrative functions under a single-headed organization rather than to have them distributed among different boards and bureaus as heretofore was the case.

Also, a modern approach will be made toward the rehabilitation of those unfortunate members of society who find themselves confined in one of our State institutions, by the establishment of a diagnostic clinic and a well rounded vocational training and pre-parole program.