CABINET

CRIMINAL JUSTICE BILL

MEMORANDUM BY THE HOME SECRETARY

AT their meeting on 7th March (L.P. (47) 8th Meeting, Minute 4) the Lord President's Committee considered the annexed memorandum (L.P. (47) 39) on the Criminal Justice Bill. At the meeting the Lord Chancellor expressed some misgivings about certain provisions of the Bill which seemed to him to be undesirable, particularly in view of the increasing number of serious crimes committed by juveniles. I have had some further discussion with the Lord Chancellor since the meeting of the Lord President's Committee. We have minimised our differences and the remaining substantial divergence of opinion between us is in regard to the proposal to abolish the powers of Courts to pass sentences of corporal punishment. The Lord Chancellor remains of the view that this is not an appropriate time to introduce this particular amendment of the criminal law. My own view on the matter is that it would be impossible to drop this provision which was included in the 1938 Bill and passed Committee Stage owing to the support of Labour members.

The drafting of the Bill, which is to be ready for introduction at the beginning of next Session, has now reached an advanced stage, and I should be glad to have the approval of my colleagues to the proposals outlined in the attached memorandum in order that the drafting of the Bill should be completed.

J. C. E.

Home Office, S.W.1,
16th June, 1947.
ANNEX

[L.P. (47) 39]
[2nd March, 1947]

CABINET

Lord President's Committee

CRIMINAL JUSTICE BILL

MEMORANDUM BY THE HOME SECRETARY

1. The Criminal Justice Bill introduced by Sir Samuel Hoare (now Viscount Templewood) in 1938 received general support from all parties in the House and had passed Committee Stage when the outbreak of war prevented its further progress. It was at the time regarded as a measure long overdue, and it excited no party controversy. Those who have given special study to the question of penal reform and the treatment of offenders represent that a measure dealing with this subject should be introduced as soon as possible.

2. The provisions of the Bill of 1938 have been carefully reviewed. In the light of further consideration and of experience since it was introduced, there are many respects in which the proposals in the Bill can be improved upon, or require amendment. I give below a broad outline of the lines upon which I propose that a new Criminal Justice Bill should be framed; the main differences between these proposals and those in the 1938 Bill are set out in the Appendix to this memorandum.

3. The subject matter of the Bill falls under six heads —

(1) Amendment of the law relating to the probation of offenders.
(2) Restrictions on the imprisonment of young persons.
(3) Alternatives to imprisonment for young persons.
(4) Provisions relating to persistent offenders.
(5) Changes in the penal system and amendments of the criminal law.
(6) Administrative changes.

Amendment of the law relating to probation of offenders

4. The purpose of the proposals under this head is in the main to consolidate the existing law with minor amendments which experience has shown to be necessary, but it is proposed also (as in the 1938 Bill) to give a court power to include in a probation order, with the offender’s consent, where the court is satisfied on medical evidence that the offender’s mental condition, though not justifying his certification as a lunatic or mental defective, is such as to require treatment, a provision requiring him to submit to such treatment for a period not exceeding twelve months. Power will also be given for such a provision to be inserted by a court, with the offender’s consent, on medical evidence, in a probation order already made, and also for the variation or cancellation of such a provision, as may be required.

A valuable development of the probation system has been the exercise by courts of their power to include in a probation order in appropriate cases a requirement that the offender shall reside either in a probation home, where he is given suitable training, or in a probation hostel, from which he goes out to work daily. Probation homes and hostels are established and managed by
private persons and societies, and payment is made by the local authority (the payment ranking for Exchequer grant) for the maintenance of persons required to reside in them as a condition of probation. There is scope for a much more extended provision of such homes and hostels. The Bill of 1938 proposed to give power to local authorities to finance the establishment or enlargement of homes and hostels, but it is now proposed that such financial assistance shall be given direct by the State in the first instance, the expenditure being met in part by subsequent contributions by the local authority; and that probation homes and hostels shall be subject to rules made by the Secretary of State as to their regulation and management, which may include a requirement of approval by the Secretary of State of the person appointed to be in charge. The effect of these proposals will be to give the State the initiative in arranging for the establishment of probation homes and hostels, and to secure the maintenance of proper standards of management.

Restrictions on the imprisonment of young persons

5. The Departmental Committee on the treatment of young offenders emphasised the importance of avoiding the committal of young persons to prison whether on remand or on sentence. Familiarity with prison conditions may not only in itself be harmful to a youthful offender; it may also result in his having less apprehension of imprisonment in future, and so gravely weaken the deterrent effect of the sanction of imprisonment. It is proposed in the Bill to restrict both the imposition of sentences of imprisonment on youthful offenders and their committal to prison on remand or awaiting trial.

(1) Imposition of imprisonment by a court

Under the existing law a court may not order a person under the age of 14 to be imprisoned; and may not order a person under the age of 17 to be imprisoned unless the court certifies that the offender is too unruly or too depraved to be detained in a remand home (the maximum period for which detention in a remand home may be ordered is one month).

It is proposed to provide:

(i) that a court of assize or quarter sessions shall not impose imprisonment on a person appearing to the court to be under 16 years of age;
(ii) that a court of summary jurisdiction shall not impose imprisonment on a person appearing to the court to be under 17 years of age;
(iii) that a court of summary jurisdiction shall not impose imprisonment on a person appearing to the court to be under 18 years of age if it could order him to be detained in a detention centre (see paragraph 6 below);
(iv) that a court, whether a court of summary jurisdiction, assize, or quarter sessions, shall not impose imprisonment on a person under 21 unless, after obtaining and considering information as to the circumstances, including the offender's character, it is of the opinion that no other method of dealing with him is appropriate;
(v) that power should be given to prohibit by Order in Council courts of summary jurisdiction from sentencing to imprisonment persons under 21, or such lower age as may be specified in the Order—any such Order to be laid before Parliament in draft.

(2) Committal to prison on remand or awaiting trial

Under the existing law a person under the age of 17, if remanded or committed for trial in custody, must be sent to a remand home unless the court certifies that he is too unruly or too depraved to be detained in a remand home. A person over the age of 17 remanded or committed for trial in custody can only be sent to prison.

It is proposed to provide for the setting up of State remand centres which will take those persons under 17 who are at present sent to prison on remand or committed for trial, on a certificate of unruliness or depravity, and also all persons between the age of 17 and 21 who are remanded or committed for trial in custody. These centres will be set up in various parts of the country as opportunity occurs, and accordingly it is proposed to provide that courts in the area concerned shall be notified when a remand centre is available for their area, and on receipt of such notification they shall be prohibited from sending persons under 21 to prison on remand or committal for trial.
8. Alternatives to imprisonment for young persons

If young offenders are to be kept out of prison it is essential that alternative methods of treatment should be available. The alternatives generally available at present are:

(i) Binding over;
(ii) Probation order, with or without a condition of residence;
(iii) Fine;
(iv) For persons up to 17, committal to an Approved School, or detention in a remand home for not more than a month;
(v) For persons between 16 and 23, detention in a Borstal Institution.

There are many cases in which the first three methods are inadequate, and the last two methods inappropriate to the offender. It is proposed to provide special institutions, called detention centres, in which persons between 14 and 21 may be sentenced to be detained for a period of three months or, exceptionally, up to six months. The purpose of sentences of detention in detention centres is to provide a means of dealing with the young offender who does not require the training provided in an Approved School or Borstal, but needs to be pulled up more sharply than can be achieved by fining or making a probation order. This punishment is intended to be primarily deterrent, since effective training could not be attempted in so short a time. The basis of the treatment will therefore be brisk discipline and hard work, but the staff will be selected and trained with a view to bringing to bear such educative and reformative influences as are practicable. These centres will be set up gradually throughout the country, and when a court of summary jurisdiction has been notified that a centre is available to which it may commit offenders, the court will be prohibited from sentencing to imprisonment any person under the age of 18 (see paragraph 5 (1) (iii) above).

The proposal in the Bill of 1938 for the establishment of compulsory attendance centres where young offenders would be required to attend after working hours, has been dropped, as further consideration has shown that there would be insuperable difficulties in giving practical effect to it. Similar difficulties have led to the abandonment of the proposal in the 1938 Bill to empower Courts to order offenders under 17 to be detained overnight in police stations on not more than three occasions.

The Bill of 1938 also gave powers for the establishment of residential institutions for young offenders to be known as Howard Houses, from which the offenders would go out to their daily work. It is now considered that the intention of this provision will be better achieved by a more extended provision and use of probation homes and hostels, which the proposals under paragraph 4 above are designed to assist, and accordingly the proposals relating to Howard Houses have been dropped.

7. Provisions relating to persistent offenders

The existing law provides that a person who, having been sentenced to penal servitude, is found by a jury to be a habitual criminal may be sentenced to a term of preventive detention of from 5 to 10 years. A charge of being a habitual criminal may not be included in an indictment without the consent of the Director of Public Prosecutions, and a person may not be found by a jury to be a habitual criminal unless the jury find on evidence that he has at least three times previously been convicted of a crime and is leading persistently a dishonest or criminal life. It is a defect of the existing system that a sentence of preventive detention can only be passed in addition to a sentence of penal servitude, and this is one reason why sentences of preventive detention are rarely passed at present.

The Departmental Committee on Persistent Offenders recommended that there should be two types of sentence of detention: one of from 2 to 4 years, suitable to less hardened offenders, with a view both to the protection of the public and to the provision of the training and discipline calculated to check the offenders' criminal propensities, and one of from 5 to 10 years for hardened offenders, with a view not only to remedial treatment but to their relegation from society for a prolonged period.

It is proposed to follow these recommendations in the provisions of the Bill and to provide for two forms of sentence for persistent offenders, one whose purpose will be the training and, if possible, the reformation of the offender,
which it is proposed to call "extended training," and the other, which will be primarily custodial in character and intended for hardened offenders (though the possibility of training will not be excluded) to be termed "preventive detention." Some of the offenders in the latter category may require, for the protection of society, to be segregated from society for an even longer period than ten years, and it is therefore proposed to provide for a maximum sentence of preventive detention of fourteen years.

A sentence of extended training will be for not less than two or more than four years, and may be imposed on any person over 21 convicted on indictment of an offence for which a sentence of two years' imprisonment or more may be passed, and having at least two previous convictions of offences for which, on conviction on indictment, such a sentence could be passed. A sentence of preventive detention will be for five to fourteen years, and may be imposed on a person over 30 who is convicted on indictment of an offence for which a sentence of two years' imprisonment or more may be passed, and has at least three previous convictions on indictment of offences for which a sentence of two years or more could have been passed, and has, for at least two of these, been sentenced to imprisonment.

**Borstal training, or extended training.**

8. **Changes in the penal system and amendments of the criminal law**

(1) The most important provisions under this head are the abolition of hard labour, of the "Triple Division" of offenders, and of penal servitude.

The distinction between imprisonment with and imprisonment without hard labour has long ceased to have any practical effect. The conception of hard labour is a survival of the old days of solitary confinement and labour on the crank and treadmill. Solitary confinement has long been abolished, and nowadays all prisoners who are fit for labour are employed in association on work of one kind or another, and the nature of the work depends upon what is available at the particular prison and not on the prisoner's classification. The Statutory Rules make no distinction at all between the treatment of prisoners sentenced to "hard labour" and others. It is accordingly proposed to abolish imprisonment with hard labour.

It is also proposed to abolish the statutory classification of convicted prisoners into offenders of the First, Second and Third Divisions, which has long been superseded in practice by methods of classification designed not only to prevent contamination, but to take account of all the circumstances of the individual case.

There is now no distinction in the conditions under which a sentence of imprisonment and a sentence of penal servitude is served, except in so far as it is necessary to adapt these conditions to the requirements of longer sentences, and many convicts in fact serve their sentences in local, not in convict prisons. It is accordingly proposed (as recommended by the Departmental Committee on Persistent Offenders) to abolish penal servitude. This involves the abolition of release on conditional licence, popularly known as "ticket-of-leave." It is proposed in substitution for this system to give courts power in certain cases where they pass a sentence of twelve months or more to require the offender to keep an appointed society informed of his address. If the offender fails to do so he may be required to keep the police informed of his address and report to the police in the same way as a convict on licence under the existing law.

The effect of these changes will be that there will in future be only one form of prison sentence, namely, imprisonment, and the nature of the treatment of an offender sentenced to imprisonment will be determined according to the character, record and requirements of the individual by the prison authorities, who will under the Bill be given full powers to classify and manage their establishments so as to secure the individual treatment of offenders.

(2) It is proposed, in accordance with the recommendation of the Departmental Committee on Corporal Punishment, to abolish the powers of courts to pass sentences of corporal punishment. In the Committee on the 1938 Bill this proposal was resisted by a majority of the Conservatives on the Committee. It was supported by the Labour members. The power to impose corporal punishment for certain grave offences against prison discipline will be retained, but it is proposed to limit the amount of such punishment to the maximum recommended by the Committee, viz., 18 strokes of the cat or birch in the case of a prisoner over 21, and 12 strokes of the birch in the case of a prisoner under 21.

(3) In 1936 by Order in Council under the Prevention of Crime Act, 1908, the limit of age within which an offender could be sentenced to Borstal detention
was raised from 21 to 23. Experience has shown that the application of Borstal training to this age-group is not wholly successful. These are mature young men, many of them married and with families, who have often served several prison sentences. They must be segregated from the younger offenders, and to treat them as a group by themselves has bad results—they need the steadying influence of older men. It is accordingly proposed to revert to the age limit of 21 for Borstal training. The young men of this age group will in future, if they receive sentences of suitable length, be trained with older prisoners in the Training Centres for adults; some of them may qualify for the new sentence of extended training (see paragraph 7 above).

(4) It is proposed to give courts of summary jurisdiction power, where they are satisfied of the guilt of an offender, to order, if they think it necessary, medical enquiry and report on his mental condition before determining the method of dealing with him; and also, if satisfied by the evidence of medical practitioners that the offender is of unsound mind, to make a reception order under the Lunacy Act, 1890.

(5) It is also proposed to make various amendments of the criminal law in procedural and other matters in which experience has shown the existing law to be defective.

Administrative Changes

9. The Bill will also make provision in regard to various matters of administration, the most important of which is the transfer of the management and control of Broadmoor Criminal Lunatic Asylum from the Home Office to the Board of Control.

10. There are two issues upon which controversy is likely to centre in connection with these proposals. The first is the abolition of the powers of courts to pass sentence of corporal punishment. This was the subject of a unanimous recommendation by the Departmental Committee on Corporal Punishment which reported in 1938 after a most careful and exhaustive enquiry into the whole subject. I propose that the new Bill, like the Bill of 1938, should contain a provision to carry out this recommendation.

The second issue is the question of the abolition or suspension of capital punishment. During the Committee Stage of the 1938 Bill an amendment was moved to suspend the death penalty for a period of five years. The Select Committee on Capital Punishment, 1929–30, recommended the abolition of capital punishment for an experimental period of five years, and an amendment in this sense is likely to be moved if a new Criminal Justice Bill is introduced. I would propose that any such amendment should be resisted on the ground that it is inappropriate that such a far-reaching change in the law should be included in a Criminal Justice Bill, and that, if any such change in the law were to be effected it should be after full consideration in a separate Bill dealing solely with this subject.

11. I should be glad to have the approval of the Committee for the proposals I have outlined above.

J. C. E.

Home Office, S. W. 1.
2nd March, 1947.
### APPENDIX

**Principal Modifications of the Proposals in the Criminal Justice Bill of 1938**

<table>
<thead>
<tr>
<th>Proposals of 1938</th>
<th>New Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial financial assistance towards the establishment of new probation homes and hostels to be given by local authorities, subject to grant.</td>
<td>Initial financial assistance towards the establishment of new probation homes and hostels to be given by the Exchequer, the expenditure being met in part by subsequent contributions by the local authority (paragraph 4).</td>
</tr>
<tr>
<td>In addition to State remand centres, State remand homes to be provided for the purpose of observation of persons under 17 on whose mental condition a medical report is required.</td>
<td>Power to approve probation homes and hostels, and to make rules for their regulation and management (paragraph 4).</td>
</tr>
<tr>
<td>Compulsory attendance centres for offenders of 17 to 21, and juvenile compulsory attendance centres for offenders of 12 to 17.</td>
<td>Such observation to be carried out in local authority remand homes or, where facilities for observation are not available, in State remand centres (paragraph 5 (2)).</td>
</tr>
<tr>
<td>Howard Houses for offenders from 16 to 21.</td>
<td>These proposals have been dropped.</td>
</tr>
<tr>
<td>Punishment of offenders under 17 by detention at a police station overnight on not more than three occasions.</td>
<td>Provision of detention centres to which offenders between 14 and 21 may be committed by courts of summary jurisdiction for detention for 3, or exceptionally up to 6, months (paragraph 6).</td>
</tr>
<tr>
<td>Imprisonment not to be imposed on offenders between the ages of 16 and 17 unless the offender is certified to be too unruly or too depraved to be detained in a remand home.</td>
<td>Prohibition of imposition of imprisonment by courts of summary jurisdiction on offenders under 17 (paragraph 3).</td>
</tr>
<tr>
<td>Corrective training from 2-4 years for persons between 21 and 30.</td>
<td>Imprisonment not to be imposed by courts of summary jurisdiction on offenders under 18, if the court can order the offender to be detained in a detention centre (paragraph 5 (1)).</td>
</tr>
<tr>
<td>Preventive detention for 2-4 years, or in certain cases for 4-10 years, for persons over 30.</td>
<td>Reduction to 21 of the upper limit of age for committal to Borstal detention (paragraph 8 (3)).</td>
</tr>
<tr>
<td>Extended training from 2-4 years for persons over 21 (paragraph 7).</td>
<td>Preventive detention for 5-14 years for persons over 30 (paragraph 7).</td>
</tr>
</tbody>
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