APPENDIX C

Separation of Types of Prisoners

Effective classification and separation of prisoners for the purpose of preventing character destructive contacts appears scarcely to have been thought of by legislatures, except in terms of age, or, occasionally, in respect to the difference between first offenders and recidivists. Illinois gives perhaps the broadest powers of classification, authorizing such “divisions” as seem expedient in the light of considerations relating to age and character, separation of first offenders from recidivists, psychiatric conditions, and “such other criteria of classification as may be dictated by penological science.” Louisiana also authorizes classification “according to the most modern and enlightened system of reformation.” Michigan requires examination of each individual in order that he may be confined “in the institution suited to the type of rehabilitation required in his case.” These, however, are the exceptional statutes. And even in these states the effective operation of the classification system must depend upon the extent to which actual facilities for it have been provided.

In the great majority of states two or more types of institution have been set up; one for adults, another for younger offenders, and perhaps others, such as “prison camps,” for convicts requiring less rigorous discipline, or less absolute confinement than others. The permissible “classification” is then extended to placement in one or another of these institutions. Within the range of the various institutions existing in the state, the problem of separation and limitation of harmful contacts is well enough solved. But as a rule the range of institutions and consequent opportunity for classification is narrow.
Statutes applicable to jails only are not included herein.

Alabama. Code (1940) tit. 45, sec. 38. "All state convicts under eighteen years of age shall, at the discretion of the director, be separated and worked apart, as far as practicable from all other convicts, at a place to be designated as a reformatory, keeping in view their moral and intellectual improvement," and the director may remove from the reformatory any convict if it appears that "by his conduct he is not benefited" by confinement therein.

The Code Ann. (1928) included the following provision:

Sec. 3585. "The board may order transfer of a convict from one prison to another as it thinks expedient."

California. Statutes and Amendments (1941) ch. 937, sec. 1766. Youthful convicts committed to the Youth Correction Authority may be confined under such conditions as the Authority from time to time considers wise.

Connecticut. Gen. Stats. (1930) sec. 1982. Any prisoner under thirty years of age having less than ten years of minimum sentence to serve and who "in the opinion of the board of directors of the prison, would be benefited by the training provided at the Connecticut Reformatory, may be transferred" thereto. If he proves not amenable to reformatory methods he may be returned to the prison.

Sec. 1837. Prisoners may be transferred from the reformatory to the Junior Republic, if the latter is willing to receive them.

Delaware. Rev. Code (1935) secs. 4134, 4148. Prisoners of tender years and those young in crime must be separated from the older and more hardened criminals.

Georgia. Code Ann. (1933) sec. 77-519. The prison commission is authorized to transfer prisoners from one penal institution to any other penal institution in the state and may require that youthful or first offenders be segregated from other prisoners.

Sec. 77-346. The prison commission is authorized to segregate convicts between the ages of 16 and 21 from contact with confirmed criminals and to transfer any prisoner under 18 to the Georgia State Training School.
Sec. 77-34. "The Prison Commission is authorized to provide separate camps or quarters and to segregate prisoners and convicts according to their individual characteristics or tendencies."

Illinois. Rev. Stats. (1935) ch. 108, sec. 106. (Jones Ann. Stats. 99.089.) The department of public safety may determine divisions of the penitentiary system, to include a psychiatric division and such others "as it may deem expedient in light of considerations relating to the age and character of the inmates, the necessity of preserving first offenders from contact with recidivists, and such other criteria of classification as may be dictated by penological science. . . ."

Ch. 108, sec. 110. (Jones Ann. Stats. 99.093.) The department of public safety has "full power to transfer prisoners from one division to another as often as the nature of the individual case or the exigencies of administration may require."

Iowa. Code (1939) secs. 3732, 3751 ff. The board of control may transfer prisoners from penitentiary to reformatory or from reformatory to penitentiary, but prisoners over thirty years of age must be placed in the penitentiary.

Louisiana. Code of Crim. Proc. (1932) art. 1432. The board of control may make rules "for the grading and classifying of the convicts according to the most modern and enlightened system of reformation. . . ."

Maryland. Ann. Code (1939) art. 27, sec. 788. Board of correction may transfer prisoners back and forth between the house of correction and the penitentiary whenever it deems that "prison discipline" will be furthered thereby.

Massachusetts. 4 Ann. Laws (1933) ch. 127, sec. 97 ff. Prisoners in the state prison may be removed to the reformatory and returned again to prison, or may be moved from reformatory to state farm or jail.

Michigan. 3 Comp. Laws (1929) sec. 17543-65. (Mich. Stats. Ann. § 28.2125.) Under the rules promulgated by the director with the approval of the commission, the assistant director in charge of the bureau of prisons may cause the transfer or re-transfer of any pris-
oner from any penal institution to which he was committed to any other penal institution, or temporarily to any state institution for medical or surgical treatment.

Sec. 17543-67. Promptly after confinement prisoners are to be given physical examination and classified. The classification committee shall "make and complete a comprehensive study of such prisoner, including physical and psychiatric examinations to the end that he may be confined in the institution suited to the type of rehabilitation required in his case."

**Minnesota.** 2 Mason's Stats. (1927) sec. 10825. "The board of control may transfer from the reformatory to the state prison and from the state prison to the reformatory, whenever, in its judgment, such transfer will be advantageous to the person transferred, or to the institution from which such transfer is made."

**Mississippi.** 2 Code Ann. (1930) sec. 5777. Youthful convicts shall be kept away from hardened criminals as far as practicable.

**Missouri.** 2 Rev. Stats. (1939) sec. 9118. The department of penal institutions may transfer from the reformatory to the penitentiary prisoners who are more than twenty-five years of age, second offenders, and incorrigible prisoners whose presence in the reformatory appears to be detrimental to the well-being of the other inmates. Such persons may be re-transferred to the reformatory at the request of the superintendent with approval of the board of commissioners.

**Nebraska.** Comp. Stats. (1929) sec. 83-1008. The board of control may transfer incorrigible prisoners from the reformatory to the penitentiary.

**Nevada.** 5 Comp. Laws (1929) sec. 11472. "... it shall be the duty of the warden of the state prison to classify and separate the prisoners into three grades as follows: ... those appearing to be corrigible or less vicious ... those appearing to be incorrigible or more vicious, but ... competent to work and ... reasonably obedient ... those incorrigible or so insubordinate as to seriously interfere with the discipline of the prison. ..."

**New Jersey.** 1 Rev. Stats. (1937) sec. 2:192-10. Upon application of the board of freeholders of a county, prisoners in county institutions may be transferred from one institution to another.
Sec. 30:4-83. An inmate of any correctional institution may be transferred to any charitable hospital, relief, or training institution.

New York. 10B McKinney's Consol. Laws Ann. (1938) sec. 135. Commissioner may transfer prisoners from one prison to another with reference to the respective capacities of the several state prisons, or with reference to the health or reformation of the prisoners.

Ohio. Throckmorton's Code Ann. (1940) sec. 2139. Inmates of the Boys' Industrial School whose presence in the school appears to be detrimental to the welfare of the institution may be transferred to the reformatory.

Sec. 2140. Incorrigible prisoners in the reformatory whose presence appears to be detrimental may be transferred to the penitentiary.

Oklahoma. Stats. (1941) tit. 57, sec. 132. "... Said State Board of Public Affairs may, in its discretion, transfer prisoners from the State penitentiary at McAlester to the reformatory at Granite, and may likewise transfer prisoners from the reformatory at Granite to the penitentiary at McAlester, when in its judgment it is necessary so to do; to separate the confirmed and incorrigible criminals from those who do not require the restrictions placed around them that the confirmed criminal requires; provided, that the authority to transfer prisoners herein given shall never be used to impair the efficiency of, or to destroy, either of said penal institutions."

Oregon. 8 Comp. Laws Ann. (1940) sec. 127-610. All persons in the penitentiary between the ages of eighteen and twenty-one may be transferred to the state training school by the governor, "provided, that in the event that any minor transferred from the penitentiary to the state training school should prove incorrigible, then the governor ... shall be authorized to transfer such minor from the state training school to the penitentiary."

Pennsylvania. Purdon's Stats. Ann. (1930) tit. 61, sec. 491. Whenever there is a vacancy in the reformatory there may be selected from among "the youthful, well-behaved, and most promising convicts in the state prisons," certain prisoners to be transferred to the reformatory "for education and treatment ... thereof."

Sec. 495. Any prisoner at the reformatory may be "temporarily" transferred to the state prison if it shall be shown that, at the time of
his conviction he was more than twenty-five years old, or had been previously convicted of a crime. The board of trustees may also transfer to the state prison any "apparently incorrigible prisoner."

**Rhode Island.** Gen. Laws (1938) ch. 63, sec. 19. The chief of division of jails and reformatories "may in his discretion transfer any inmate" of school for boys, county jail, or penitentiary to reformatory for men "when he believes that such transfer will best serve the purpose of reforming such inmate. . . ." He also may transfer any reformatory inmates to the penitentiary, jail, etc.

**South Carolina.** 1 Code of Laws (1932) sec. 2034. Board of welfare of the industrial school has power to transfer to the state penitentiary "any white female . . . who is more than eighteen years of age, and whose presence in said industrial home for girls appears to be seriously detrimental to the welfare of the institution."

**Tennessee.** Michie's Code Ann. (1938) sec. 12117. "Convicts shall be graded and classified in such a manner as shall be most conducive to prison discipline and the moral status of the inmates." Minors and those who "appear corrigible or less vicious than others, and susceptible to control and observance of prison laws, and disposed to maintain themselves by honest industry after their discharge," shall be kept separate from the other prison inmates. "Only one convict shall be kept in each cell unless absolutely necessary to confine more than one."

**Texas.** 17 Vernon's Rev. Civil Stats. (1925) art. 6166j. "The manager . . . shall have power . . . to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured."

**Utah.** 5 Code Ann. (1943) sec. 85–9–25. Prisoners shall be classified and separated into three types: "those appearing to be corrigible or less vicious than the others and likely to obey the laws . . . ; those appearing to be incorrigible or more vicious, but . . . competent to work . . . , those who are incorrigible, or so insubordinate or so incompetent . . . as to seriously interfere with the discipline or productiveness of the labor of the prison. . . ."

**Vermont.** Pub. Laws (1933) sec. 8819. Prisoners may be transferred from the penitentiary to the house of correction and vice versa,
on the written order of the governor, but "a prisoner shall not be so transferred without his consent."

"A minor confined in the state prison or the house of correction in execution of a sentence may be transferred to the industrial school to serve the remainder of his sentence, upon the written order of the governor."

**Washington.** 10 Remington's Rev. Stat. Ann. (1932) sec. 10249-5. Whenever in its judgment, the welfare of any prisoner or prisoners confined in any penal institution requires that he be removed from one institution to another, the board having control of such institution has authority to order such removal.

**West Virginia.** Code Ann. (1937) sec. 2703. Boy in industrial school who could have been committed to penitentiary, may be returned to court and there resentenced to penitentiary, if industrial school is "unable to benefit him," and he is a detriment there.

Governor may remit sentence of offender under eighteen to penitentiary, to industrial school, if warden of penitentiary and superintendent of industrial school agree such is advisable.

**Wisconsin.** Stats. (1941) sec. 54.07. "With the approval of the governor" the state board of control may transfer any prisoner "whose continued presence there is considered detrimental to the other inmates," from reformatory to the state prison.

In like manner prisoners may be transferred from the prison to the reformatory.

**Wyoming.** Rev. Stats. (1931) sec. 80-306. The governor may transfer prisoners under the age of twenty-five from the state prison to the industrial institute if "public interest and the reform of such convict would be subserved thereby."

**Federal.** 18 U.S.C.A. sec. 745. Prisons shall have "such arrangement of cells and yard space as that prisoners under twenty years of age shall not be in any way associated with prisoners above that age, and the management of the class under twenty years of age shall be as far as possible reformatory."

Sec. 753 ff. "The Attorney General is also authorized to order the transfer of any person . . . from one institution to another if in his judgment it shall be for the well-being of the prisoner or relieve
over-crowded or unhealthful conditions in the institution where the prisoner is confined or for other reasons.”

Secs. 901 ff., providing for additional “institutions for confinement of male persons” give the Attorney General broad powers of control and management, especially (sec. 907) “to facilitate the development of an integrated Federal penal and correctional system which will assure the proper classification and segregation of Federal prisoners according to their character, the nature of the crime they have committed, their mental condition, and such other factors as should be taken into consideration in providing an individualized system of discipline, care, and treatment of persons committed to such institutions.”