NEW ideas of preventive treatment for convicted criminals would hardly be translated into actual practices without legislative sanction. To the extent that existing legislation does permit departure from the traditional procedures and allows the employment of substitute methods, some change from the merely punitive methods may in fact develop without specific legislative direction. But without such permission the change could not develop. Nor would it be likely to develop in the absence of something more than mere permission, some affirmative authorization. Assuming, then, that the newer philosophy of preventive treatment has attained such standing that the wish to put it into practice is a dynamic force, the extent to which existing statutes authorize, or at least permit, such practices becomes a pertinent and important inquiry.

The improvements which the new philosophy would make in preventive treatment, the departures from the traditional merely punitive system, are in four major fields.

1. It would emphasize the avoidance of character-deteriorative contacts and conditions during the period of treatment.

2. It would provide for segregation from society during the whole period of an individual’s known dangerousness, regardless of the amount of “punishment” he could be said to “deserve.”

3. It would utilize all the possibilities of training in trade
skills, of education, medicine, surgery, and any other means whereby each individual’s capacity, as well as his will, to lead a law-abiding existence might be developed and strengthened.

4. It would render to convicted criminals an affirmative and active assistance in their efforts to abstain from further crime.

The question, then, is to what extent existing legislation does permit, authorize, or possibly direct the practical utilization of any of such procedures.

a. *Release Without Imprisonment*

Statutes now generally depart from a strictly punitive theory to the extent of not absolutely requiring punishment after conviction, either by imprisonment or by fine.

In almost every state one finds legislation which permits the trial judge to suspend imposition of sentence, or the execution of sentence, and to permit a convict his liberty upon various conditions. The Colorado statute is typical in its provision that when a judge is satisfied that “the ends of justice and the best interests of the public, as well as of the defendant, will be subserved thereby,” he may suspend imposition or execution of any sentence for any crime except first or second degree murder, unless the defendant has previously been convicted of felony.43a

The details of the statutes vary considerably. Some require that the defendant be placed on probation and committed to the supervision of a probation officer. Others permit probation, but do not require it. Some make exception of numerous specific crimes for which punitive sentence cannot be suspended; others permit a wide discretion in the judge with but few specific limitations. But, subject to such variation, recog-

nition of the danger to society from an insistence upon actual imprisonment in every case is well established and, generally speaking, trial judges have been given ample discretionary power to avoid it.\textsuperscript{44}

b. \textit{Release After Imprisonment}

In the event that a judge does not exercise his discretionary power to keep a convict out of prison, but commits him thereto, a certain amount of possibly deleterious contact and association, or possible character-degradation from other causes, necessarily must result. But even in such case the existing law makes considerable definite provision for termination of such influences within a relatively short time.

To say that the originating purpose of these "parole" laws is prevention of further destructive influence upon the prisoner would be an unduly optimistic interpretation of legislative motive. The possibility of release from imprisonment through operation of the "pardon" power appears to have sprung instead from the necessity of a method of rectifying mistakes, or otherwise dealing promptly and justly with what might be considered more or less infrequent and emergency situations. The power of established state parole boards to release on parole does not show indication in its origin of much thought concerning the hurtful effect of prison life and contacts upon particular individuals. On the contrary, everything points to its origin in the release of persons who are no longer dangerous and no longer need to be incarcerated. Perhaps also there is some notion of its wisdom as a reward for exemplary behavior while in prison; a supplement, as it were, to the generally established "good conduct" deductions from length of sentence. And certainly the power of release on parole, whatever its original purpose, has not infrequently been utilized as a

\textsuperscript{44} The various state statutes are noted in Appendix A, p. 95.
method of making room in the penitentiary for newcomers by freeing those whom the parole board believes “have been punished enough.”

Nevertheless, whatever may be the theory or purpose behind the power, the fact remains that in every state some agency is invested by existing law with power to release from prison any person whose fitness for social existence is especially likely to be adversely affected thereby and whose release will not be socially harmful. In every state, either by constitution or statute, a pardoning power has been created which may operate at any time and, with variant exceptions concerning such offenses as treason or murder, in respect to any convict. And this power may be exercised by setting up conditions to which the person pardoned must conform his conduct. It thus amounts in legal possibility, though by no means necessarily so in actual practice, to a power of release on parole exercisable at any time after conviction, regardless of the term of sentence or the length of imprisonment actually suffered.

In addition to this “pardoning power” nearly every state has by legislation vested authority in some agency to “parole” prisoners, as distinct from “pardoning” them, whenever certain conditions have been fulfilled. These are the so-called “parole” laws. The scope of this power varies considerably in different states and, as already pointed out, its primary purpose is not the prevention of socially harmful character degradation through prison experiences. Nevertheless, it is a legally existing power which could be utilized to that end, if it could be utilized promptly. In general, however, it can hardly be accepted as a provision suitable to the particular end under discussion—preventing the creation of criminal tendencies through the adverse effects of prison experience—because the necessary delays before it can be put into operation would ordinarily make its use too late.
In a few states the release from confinement may be made at any time after sentence, without delay. In these states it might well be used for the particular purpose of protecting society by forestalling character-destruction in particular cases where trial judges have failed to exercise their own powers in that respect. In other words, the power of parole, under the existing law of these states, could be utilized as a supplement to the judicial power of probation. To what extent it is so used no data are available, but the idea that it ought to be so used has been so seldom, if ever, explicitly asserted that one may doubt its use to that end at all. And even in those states where no minimum period of imprisonment is required before release, the established rules of some releasing boards prevent a promptness of action requisite to the particular purpose.\textsuperscript{45}

c. \textit{Separation of Different Types of Prisoners}

The evil effect of prison associations upon the individual might to some extent be minimized by limiting the type of his possible contacts, through careful classification of prisoners into several institutions or divisions of an institution. In this way youth might be segregated from maturity, the novice from experience, relative innocence from indurated viciousness. There are now statutes in many states authorizing a certain amount of “classification” of convicts. Possibly some of them are broad enough in their terms to permit a fairly varied classification based on the needs of numerous groups of different individual types.

Thus, in addition to a psychiatric division, the legislation of Illinois now provides that the Department of Public Safety may determine such divisions of the penitentiary system “as it may deem expedient in light of considerations relating to the age and character of the inmates, the necessity of preserv-\textsuperscript{45} These statutes are noted in Appendix B, p. 106.
ing first offenders from contact with recidivists and such other criteria of classification as may be dictated by penological science. . . .” The Department has “full power to transfer prisoners from one division to another as often as the nature of the case or the exigencies of administration may require.”

Such a provision, written in general terms, seems all that might be needed, so far as legislation rather than actual facilities is concerned, for the utmost effort in preventing character-degradation or intensification of criminal tendencies through prison life. So, too, the Louisiana statute, though of a different type and somewhat vaguer in its wording, is broad enough in its language to permit all such necessary classification. It provides simply that 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. . . .”

The great majority of the classification statutes, however, are limited to a differentiation between youth and maturity. Thus the Alabama statute merely provides that “convicts under eighteen years of age shall, at the discretion of the director, be separated and worked apart . . . keeping in view their moral and intellectual improvement.”

Still other statutes are obviously drafted in terms only of actually existing facilities and do not contemplate anything more than a proper use thereof, without regard to any possibilities of classification for protective purposes in general. Thus the Iowa statute merely gives the prison board of control power to transfer prisoners from penitentiary to reformatory and from reformatory to penitentiary. And the Con-

48 Alabama Code (1940) tit. 45, sec. 38.
49 Iowa Code (1939) secs. 3732, 3751.
necticut law provides that any prisoner under thirty years of age and having less than ten years of his 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 susceptible to reformatory methods he may be returned to prison.\(^{50}\)

Speaking generally, it must be said that unless a convict is kept out of prison by action of the trial judge, or is promptly released therefrom by action of a parole board, the danger of character-degradation in particular cases is not avoidable. There are few existing facilities for the necessary separation of various types and, with the exception of such statutes as those of Illinois and Louisiana, existing legislation does not expressly authorize penal authorities to establish satisfactory group divisions within existing institutions.\(^{51}\)

2. SEGREGATION DURING THE WHOLE PERIOD OF DANGEROUSNESS

So far as relates to protection of the public safety by continued segregation, or at least continued supervision, during the period of known dangerousness, little that is directed specifically to that end appears upon the statute books.

Whenever an individual is recognized as being "insane" there is of course widespread and detailed legislation calculated to protect society against him. When the necessity can be shown to exist, there is no dearth of authority for keeping such a one indefinitely segregated. The only problem arises in respect to individuals who are not "insane" in the significance traditionally given to that term in the interpretation of statutes concerning it. Where the line is to be drawn between


\(^{51}\) The various statutes are noted in Appendix C, p. 113.
"insanity" which subjects an individual to confinement, and conduct abnormalities which make him socially dangerous but leave him "sane" is quite unguessable. Mr. Horace B. English; in his *Student's Dictionary of Psychological Terms* (1928) gives this definition: "Insane, Insanity. Terms of such vague psychological meaning that their only application now lies in the legal sphere; it is any mental disorder of the sort which brings a person under special legal custody and immunities." But even lawyers cannot be said to have clearly delimited the particular mental condition for which indefinite confinement is authorized by law. Suffice it, then, to assume that an individual may be recognized as socially dangerous, in the sense of showing a propensity for crime not observable in the great mass of the population, and yet not be subject to segregation from society under the laws relating to insane persons. The question is, to what extent do other statutes permit indefinite segregation of such a person during the period of known dangerousness?

a. *Repetitious Offender Statutes*

A number of states have enacted legislation providing unusually long terms of imprisonment, even unto confinement for life, of persons who have been three or four successive times convicted of major crime. It is true that confinement for a long period of time does in fact protect the public from any continuing dangerousness on the part of the person confined, and to this extent the so-called third and fourth offender laws do operate in a protective as well as a punitive sense. Nevertheless, the text of such statutes indicates that their primary purpose is the prevention of repeated crime through threat of increased punishment therefor, rather than a serious effort to distinguish presumably incorrigible persons from those not so likely to offend repeatedly, and to keep the
former segregated from society because of their known incorrigibility. These laws make no pretense of application to persons who are known to be dangerous, but who have not yet actually been convicted of the permitted number of major offenses. On the other hand, they do apply to every person who has been so convicted, without provision for investigation of his actual dangerousness.

The Michigan statute is characteristic of this type. It provides that "A person who, after having been convicted within this state of a felony . . . commits any felony within this state, is punishable upon conviction as follows: If the subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than one-half of the longest term nor more than one and one-half times the longest term prescribed for a first conviction of such offense. . . ." For a third conviction he must be sentenced to not less than the longest term nor more than twice the longest term provided for a first conviction. A fourth conviction must result in imprisonment for life if the first offense could have been punished by five years' imprisonment.53

53 Michigan, 3 Comp. Laws (1929) sec. 17338 ff. (Michigan Stats. Ann. § 28.1083). The attitude of many courts toward these statutes also indicates that their real purpose is more drastic punishment, rather than segregation because of dangerousness. Thus, the Indiana Supreme Court in Kelley v. State, 204 Ind. 612, 185 N. E. 453 (1932) in rejecting a contention that the statute was "not based on principles of reformation" but was "an ex post facto law authorizing punishment for crimes committed prior to the passage of the act," said, "The statute does not impose an additional penalty on crimes for which the defendant had already been convicted. It simply imposes a heavier penalty for the commission of a felony by one who has been previously twice convicted. . . . The punishment is more severe because the defendant is an habitual criminal."

So, too, Judge Crane in People v. Gowasky, 244 N. Y. 451, 155 N. E. 737, 58 A. L. R. 9 (1927), "The punishment for the second offense is increased because of his apparent persistence in the perpetration of crime and his indifference to the laws which keep society together; he needs to be restrained by severer penalties than if it were his first offense."

But while such statements are characteristic of judicial opinions where the
The California statute is at least a trifle more suggestive of long imprisonment as a segregative measure rather than as a merely punitive one, in its provision that "in exceptional cases" the trial court, acting within sixty days of the commencement of the imprisonment, may render judgment that the particular individual is not in fact a "habitual criminal" and therefore need not be subjected to the long imprisonment.

b. Indeterminate Sentence Statutes

The so-called "indeterminate sentence" laws of many states are obviously measures designed to regulate the length of segregation with some relation to the necessity for segregation. They are not truly "indeterminate" segregation laws, because the maximum period of segregation must be in fact specifically stated in the sentence, or is fixed by the statute itself. When the maximum period has elapsed the prisoner must be released regardless of his unfitness for social freedom. On the other hand, he cannot as a rule be released before a minimum period of imprisonment has passed, however clear may be his fitness for freedom. But between these limits it may fairly be said that, theoretically at least, a convict's release or continued confinement is made to depend upon the compatibility of his

constitutionality of the statutes has been questioned, one finds in an occasional opinion some suggestion, albeit confused with the punitive notion, of a more primarily segregative purpose. The California Supreme Court, In re Rosencrantz, 205 Cal. 534, 271 Pac. 902 (1928), after declaring that life imprisonment for a repeated felony was not so disproportionately harsh a penalty as to shock the moral sense and hence did not constitute cruel and unusual punishment, added, "When a person has proven himself immune to the ordinary modes of punishment, then it becomes the duty of government to seek some other method to curb his criminal propensities that he might not continue to further inflict himself upon law-abiding members of society. This, we think, may be done even to the extent of depriving him permanently of his liberty."

California Penal Code (1941) sec. 644.

Because these statutes are not essentially provisions for segregation during dangerousness, but merely establish high maximum penalties, their collection in the appendix is thought unnecessary.
return to social freedom with social safety. And inasmuch as an extremely high proportion of convicts sentenced under such laws are released before the maximum authorized period of segregation has elapsed, it seems reasonable to say that these statutes, to the limited extent of their existence, provide a possible period of segregation sufficiently long for satisfactory public protection in most cases.

There is a serious insufficiency in this type of legislation, however, in that it does require eventual release of every convict no matter how incompatible with public safety that release may be. Moreover, for many kinds of wrongdoing in respect to which a high probability of repetition is easily demonstrable, the maximum term of authorized imprisonment is relatively short.

Hence, while the indeterminate sentence laws, if wisely administered, may suffice to keep a certain type of criminal segregated from society so long as his dangerousness to public safety continues, they are quite inadequate to the safety problem as a whole.

c. Statutes Permitting Segregation “Until Cured”

This lack has been perceived in occasional states and rectified to some extent by truly indefinite segregation provisions for certain specific types of probably repetitious offenders. In these statutes the term of confinement makes no pretense of being related to the heinousness of the crime committed, but is expressly declared to endure for the whole time that the offender’s dangerousness continues. At present such statutes represent only a tentative beginning toward the ideal of public protection through segregation, rather than through punishment. They are few in number and they apply only to a narrow range of dangerous types of person. In content, though all of them are of limited application, their individual limitations
differ materially. Some, like that of Illinois, apply only to "sex offenders"; others, like the Massachusetts statute, to "mentally defective" or "habitually delinquent" persons charged with any sort of crime, who are not insane or feebleminded. 56

Some analogy, albeit a remote one, may exist between this problem of segregation of persons who are socially dangerous because of a tendency to repeated crime and the confinement of persons who are dangerous because of a tendency toward intoxication. Several states authorize segregation of inebriates, under a variety of circumstances and for a variety of periods, and some statutes put the segregation squarely upon a basis of dangerousness to the public. 57

Taken all together, however, these various statutes do no more than touch the edges of the difficulty. "Insane" persons

56 A list of such statutes will be found in Appendix D, p. 121.
An interesting type of statutory confinement because of dangerousness to the public—but a matter of insufficient significance to warrant thorough search for other instances—is the Connecticut statute (Gen. Stats. (1930) sec. 1904) which provides that an inmate of any penal or charitable institution whose discharge would be dangerous to public health because of venereal disease must be detained "until he may be discharged . . . without danger to the public health."

But compare section 2374 of the same statute to the effect that if a person confined in a jail or penal institution for ten days or more is found to be suffering from any malignant, infectious or contagious disease, he shall be treated therefor and if he is not cured during the term of his confinement, the local health authorities shall be notified.

In Alabama the statute, Acts (1939) no. 228, p. 369, provides only that if a prisoner is discharged while still subject to an infectious venereal disease, written notice of the fact must be given to the health officer of the county to which he is returned.


57 A number of characteristic statutes, though not a complete list, will be found in Appendix E, p. 129.
may be confined for the sake of public safety. Persons dan-
gerous to health may be confined. But men who have been
punished as much as their committed crimes deserve cannot,
under existing laws, be confined merely because it is evident
that if released they will offend again.

3. REHABILITATION

For the rehabilitation of persons while in confinement there
is ample statutory authority—which does not mean ample fa-
cilities—for some procedures, and virtually no authority—
nor facilities—for other procedures.

a. Training in Trade Skills

Possibly the most important type of rehabilitative activity
—important because of the number of individuals to whose
needs it would be suited—is training in trade skills. If it be
true, as many criminologists believe, that poverty is a potent
cause of crime and that poverty is often the result of inability,
through lack of skill, to compete successfully in the job of
self-support, it follows that proper training in trade skills
should be an effective method of crime prevention in many
cases. Certainly the development of education in trade skills
is a notable feature of the modern attitude toward under-
privileged groups generally. If it is valuable for persons who
have not yet committed crime, it must be equally valuable as
a means of public protection against persons whose repetition
of crime it is desirable to prevent. Statutes directly or indi-
rectly relating to the use of such training for convicted crim-
inals are relatively numerous, but variant.

The fact that "hard labor," or "labor," is set up as one of
the consequences of conviction signifies nothing concerning
rehabilitative possibilities. Originally, and still persistingly, the provision was merely a part of the penalty—often a mere expression of the feeling that life in jail should not be made easy for persons being punished by confinement. For this purpose it was not important what form the labor took, so long as it kept the laborer at work.

The more recent shift from hard labor as a punitive measure, to labor as a means of keeping prisoners psychologically healthy and of keeping idle hands from employment by the devil, is still not a rehabilitative notion. It insists on labor only for the sake of keeping prisoners occupied, and little emphasis is laid upon the type of occupation furnished.\footnote{It may be of some significance as evidence that the rehabilitative idea is not yet clearly grasped, that at the International Penal and Penitentiary Congress, in Berlin, 1935, discussion of the problem of work by inmates in penal institutions confined itself, implicitly, to consideration of work as a therapeutic occupation, with no practical consideration of work as a rehabilitative measure. The resultant resolution was to the effect that “prison work playing an important part in the execution of punishment and lack of work having the most pernicious effect on the prisoners’ character and outlook, sufficient work must be provided for them” by employment on public works, by replacement of machine work by hand labor, and by division of available work hours among a greater number of prisoners.}

Rehabilitative labor, on the other hand, must be primarily educational rather than merely time-consuming. It must be utilized to better a prisoner’s ability to compete in honest self-supporting activity after his release.

But though one finds in the statutes ample authority for prison administrators to provide work for prison inmates, the idea of utilizing that work as a means of training the prisoners in ability for self-support appears only infrequently in the legislation itself. Nevertheless, there are in fact numerous statutes which would at least permit prison authorities to establish in their institutions real courses of training designed to develop and increase the competency of prisoners to earn an honest living after release.
b. Trade Training—Market for Products

Before such statutes are discussed, however, it is necessary to give some attention to other statutes which, if only by indirection, adversely or beneficially affect the practical possibilities of such training. For instance, if training in trade skills is to be utilized to any great extent for the thousands of prisoners whose criminal activities may presumably be reduced by that means, mere practicality requires that there be a reasonable market for the products of that training. Obviously, if the products cannot be sold or otherwise usefully disposed of, it is scarcely conceivable that prison administrators will be either in a frame of mind to develop training courses vigorously, or in a financial position to do so.

Opposition to sale on the open market has come from various interests and is based upon various predicates. In 1934 a committee was appointed under the National Recovery Administration to “investigate the effects of competition between the products of prison labor and sheltered work shops on the one hand and of the cotton garment industry on the other.” This committee listened to numerous arguments and protests and reported that:

“From the Cotton Garment Industry and from Organized Labor arises the most vigorous and determined opposition to the present status. . . . It claims that a continuance of prison-made goods upon the open market will destroy the cotton garment code and push the industry back into the miserable sweat-shop conditions from which it is emerging. . . . Asked whether they would prefer the untrammelled competition of unregulated prison industry to further efforts to coordinate that industry with free-labor industry under the Compact, the representatives of the garment trade answered emphatically ‘Yes.’ They profess absolute disdain of the possibility of effective control of prison manufacture; some of their spokesmen charge every agency of prison management
with direct bad faith. They claim that unless the competition of prison labor is absolutely eliminated, the entire industry will be ruined and its 165,000 employees will be thrown out of employment."

Previous to this investigation there had been set up a "Prison Labor Compact" by which contractors who used prison labor were required to pay that labor at rates based upon the prevailing rate of pay for free labor, thus, presumably, eliminating the influence of "cheap labor" upon the free standard of living.

The committee's own comment upon this objection to sale of prison-made goods is:

"The testimony given by this group is important out of all proportion to its accuracy in detail. A state of mind, whether based on fact, fear, or fancy, is something that must be reckoned with. These manufacturers are determined that competing prison labor must go. . . . Right or wrong, they are prepared to fight on this issue to the bitter end. In this fight they are working hand in hand with labor, and they have the support of large sections of the distributing trade and the consuming public. Such women's organizations as the Federation of Women's Clubs, the Consumers' League and others, have joined the manufacturers and labor in the dissemination of the thought that goods made in a prison are essentially wicked goods that must not enter into commerce." 59

As a result of such opposition, statutes in a large number of states prohibit the sale or other disposition of convict-made goods upon the general market.60

To the extent that these statutes are unmodified by other legislation, they amount to a serious limitation upon any employment of prisoners, even for purposes of mental health and prison orderliness. As a practical matter they would ren-

60 Statutes on this point will be found in Appendix F, p. 134.
der rehabilitative trade training, which requires a wide diversity of marketable products, virtually impossible.

But in many states these statutes prohibiting sale on the open market do not stand alone, or without some exceptions. Sometimes by implication, often by express statement, the legislation provides a market for the prison-made products other than that of free public sale. Thus the Arizona statute, though it flatly declares that no products of prison labor "shall be sold or exchanged on the open market within the state of Arizona," says further that "sale upon the open market . . . shall not include sales or exchanges between any penal or charitable institutions maintained wholly by the state of Arizona or any of its political subdivisions for use in any such institutions or by the wards thereof." 61

Some statutes merely leave open to prison products the possible market of other state institutions, and let the actual availability of that market depend upon the voluntary cooperation of the other institutional administrators. 62

Still other statutes go much further in providing a market and specifically provide, as in Arkansas, that it is the duty of state institutions to buy from the prisons "as far as possible," or that of Indiana to the effect that "the state, its institutions, except those which produce similar articles, and the political divisions of the state using such articles as may be produced . . . shall be required to purchase such articles at a price fixed by the board of classification of industries." 63

Wherever sale of goods on the general market is not hampered by legislation, and in states where such sale is prohibited but a compensatory market is furnished through purchase by other institutions, it would appear that an ample variety of prison industries for all the needs of rehabilitative trade

61 Arizona, 3 Code Ann. (1939) sec. 47-301, 305.
62 These statutes will be found in Appendix G, p. 141.
A list of such statutes will be found in Appendix H, p. 146.
training is made possible so far as disposition of the products thereof is concerned.

Whether or not the market so provided is sufficient to absorb all the output of a particular type of industry may be questionable. But if one assumes that for rehabilitative training—as distinct from mere occupation of prisoners' time—a considerable variety of industries is desirable, the market provided through purchases by other state institutions ought to be amply sufficient for that particular purpose.

c. **Trade Training—Authority to Establish**

If the market for rehabilitative training products is sufficient, the question—ignoring the problem of finances—becomes one of the authority of prison administrators to institute such activities. In this respect there is wide variation in the content of statutes, from that of Illinois with its explicit command that prisoners shall be employed “so far as practicable in occupations in which they will be most likely to obtain employment after their discharge,” and that the work “shall be directed with reference to fitting the prisoner to maintain himself by honest industry,” 64 to the simple Arizona provision that “the board shall require of every able-bodied convict as many hours of faithful labor in each day, during his term of imprisonment, as shall be prescribed in the rules of the prison.” 65

d. **General Education**

The wisdom of general education as a measure of rehabilitation and possible prevention of repeated crime is recognized

65 Arizona Code Ann. (1939) sec. 47-108. These statutes will be found in Appendix I, p. 151.
in the legislation of a number of states. Perhaps the broadest statute is that of Indiana which provides that the administrators of each penal institution "shall make the necessary provision for . . . such training in character building and moral rehabilitation of the inmates as may be deemed necessary to reclaim the persons who are incarcerated in such institutions, so that at the expiration of their terms . . . they may be returned to society better fortified to resist the temptations which led to their imprisonment and as useful and self-respecting citizens of the community." The Idaho statute is rather more specific, though no broader in its scope, and requires that when a prisoner is received into the penitentiary he shall be given an examination in fundamental studies as taught in the common schools of the state and, unless he passes it, "he shall be instructed in such studies as may be deemed practicable and advisable; and each and every prisoner shall be given such courses from the university extension department as may be found practicable." Superintendents of Idaho reformatories are required to make "suitable provision" for education.

The legislative provisions in other states vary from these broad declarations down to absence of any specific provision.

e. Medical and Surgical Treatment

In contrast with the broad powers given by some statutes for rehabilitative education in general and training in trade skills particularly, the idea that crime is often the product of physical or psychical abnormalities which can be corrected by means of medical or surgical treatment seems not clearly to have been appreciated by legislative groups. One need not

66 Indiana Stats. Ann. (1933) sec. 13-123.
68 A list of the statutes will be found in Appendix J, p. 165.
accept the theories of some criminologists that all crime is reducible to biological causes, nor admit even that much of it could be prevented by physiological alteration in the individual. But it seems to be established beyond peradventure that some criminality does have its inception in correctible physical or mental abnormalities. Whether the trouble be chronic inflammation of the urethral tract, resulting in over-stimulated and criminal sex activity, or be a deficient sugar content in the blood stream which forces a child into petty theft whereby to satisfy his overpowering physical urge for sweets, or be an inferiority complex which causes crime as a self-demonstrative defense mechanism, or whether the motivating cause be some other individual peculiarity of personality, the known instances of conduct correction through correction of the physical causes are too numerous and too well authenticated to be ignored. How numerous such correctible causes are may be matter of undeterminable dispute. Quite possibly they are far more numerous than is generally supposed and the number of demonstrated cases is relatively small only because no real effort has ever been made to discover others.

But be that as it may, the fact that repeated crime does sometimes spring from physical or mental causes which can be eliminated by proper treatment, is sufficiently well recognized to warrant search for other such cases and to call for effort by medical or surgical treatment to prevent repetition of crime. One might therefore expect to find considerable legislative provision for such procedures. But nothing of the sort appears in the statute books.

There are, to be sure, many statutes providing for medical or surgical care of the inmates of prisons, but these are all quite obviously directed toward routine preservation of health. The Alabama code, for example, requires specifically only that prisoners be examined for venereal disease and that
those found so infected, and other persons found to be af­flicted with tuberculosis, be confined separately from other prisoners and be given treatment. The laws of Arkansas re­quire the full time of a physician whose duty is to provide all necessary medical services for prisoners, prescribe diets for the sick, keep health records, and otherwise function as a prison physician.

But while it seems implicit from the content of the various statutes that what might be called "corrective medicine" was not in the mind of the legislatures which enacted them, many of the statutes are nevertheless broad enough in their actual expression to furnish a general authority for prison adminis­trators to put such corrective measures into operation if the de­ sire to do so were present and the financial conditions made it possible. Thus the Kentucky statute makes it a duty of the board of corrections "To study the sources and causes of crime, delinquency, and dependency and as far as possible suggest and put into effect such remedial measures as may be of bene­fit to the Commonwealth in the prevention and ultimate eradication of anti-social acts and conditions . . . ."

In Iowa the board of control is directed "to encourage the scientific investigation, on the part of executive heads and medical staff of the various institutions, as to the most suc­cessful methods . . . of treating the persons committed thereto. . . ."

In regard to many of these statutes it might be said, as has been said of the situation in England:

"We do not agree with the view that crime is a disease, or that it is generally the result of mental disorder. We believe, however, that a certain amount of persistent crime—as well

69 Alabama Code (1940) tit. 22, sec. 265; tit. 45, sec. 158.
70 Arkansas Digest of Stats. (1937) sec. 12704.
71 Kentucky Carroll's Stats. (1930) sec. 216a–3.
72 Iowa Code (1939) sec. 3329.
73 A list of such statutes will be found in Appendix K, p. 172.
as first offense with which we are not concerned—is due to abnormal mental factors. . . . We do not consider that any special statutory provisions are necessary or even practicable at the present time to carry out this experiment. But we believe that if advantage is taken by Local Authorities of the powers conferred on them by the Mental Treatment Act, 1930 . . . (there might be) some reduction in the amount of certain forms of persistent crime.”

4. ASSISTANCE AFTER RELEASE FROM CONFINEMENT

The social importance of guidance and actual assistance in the avoidance of wrongdoing after release and return to society of persons who have been convicted of crime is clearly recognized almost everywhere—except in the statute-books. Privately established and supported agencies do widespread work along those lines, which has been notably effective in preventing the return of individuals to crime.

The Prison Association of New York, for example, expended nearly $5,000 during 1940 solely for the support and relief of persons recently released from prison who might otherwise have been forced into crime. They interviewed 1800 men released from prison, furnished 800 nights' lodging, 3000 meals, gave out $4200 in money, and found 300 jobs. In its report, the Association makes the sapient statement that:

"Probably the greatest problem presented is the need of employment for parolees and probationers. The handicap of an institutional record combined with restrictions involving union membership, defense project contracts, loss of citizenship rights, the effect of the Alcoholic Beverage Control Law which prohibits ex-prisoners from working with establish-

74 Report of the Departmental Committee on Persistent Offenders, presented by the Secretary of State for the Home Department, London (1932, Cmd. 4090) p. 46.
ments possessing liquor licenses,\textsuperscript{75} and other barriers met by parolees serve as deterrents to the obtaining of gainful employment. The problem is complicated and can be solved only with the whole-hearted cooperation of the general public.\textsuperscript{76}

The Women's Prison Association of New York City does valuable work in finding jobs for women released from prison, gives them board and lodging until work can be found, affords them some of the training in trade skills necessary to holding even a simple job, and offers a place for such luxuries as laundry facilities and the mending of clothes until the ex-prisoner has had time to re-establish herself otherwise. The Osborne Association maintains an Employment and Relief Bureau but pertinently comments that:

"Helping men get jobs is not the only service rendered by the Bureau. In many cases it is necessary to finance lodgings, food, laundry and car-fare for the ex-prisoner until he can secure a job, and in other instances it is necessary to help him secure better clothing, provide bus or train fare to a job, help him get tools or personal belongings out of pawn, and so forth."

A considerable number of private institutions are engaged to greater or less extent in thus protecting the public against reversion to crime by released prisoners.\textsuperscript{77}

In contrast with this effort of private agencies is the startling dearth of statutory provision for state activity designed for similar protection of society.

Supervision, in the sense of an effort to discover if a prisoner released on parole misbehaves himself, is commonly provided for in words, even if not with sufficient finances. Moreover, so far as concerns persons who have not actually been discharged from prison but are only released into freedom...

\textsuperscript{75} To which the report might have added the unwillingness of army authorities to accept ex-convicts in the service, or in production of war material.


\textsuperscript{77} A partial list of such agencies appears in Appendix O, p. 217.
on parole, there is language in many statutes which would authorize active assistance toward law-abiding behavior if the financial necessities thereof were provided. The Kentucky statute is fairly typical. It provides that parole officers shall keep informed concerning the "conduct and condition" of each person under their supervision and shall report thereon. In addition it is made their duty to "use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or Department of Public Welfare to aid and encourage persons on probation or parole and to bring about improvement in their conduct and condition." 78

The California law is outstanding in originally making an appropriation of $29,500 for the purpose of assisting paroled and discharged prisoners to secure employment, furnishing them tools, and giving them other assistance, and, more recently, permitting the local board of paroles to draw for such purposes against a general appropriation.

The Iowa law also is socially more far-sighted than that of other states and provides a fund of $1,250 from which a parolee under certain conditions can borrow not to exceed $25. 79 But as a general proposition it may be said that legislation directed toward prevention of repeated crime by means of assistance to persons discharged from prison simply non est. 80

This lack of legislation even authorizing aid to ex-prisoners is most apparent in respect to those who have been fully released, either by removal of their parole restrictions or by discharge because the term of sentence has been completed. The Indiana provision is illustrative:

"Hereafter, whenever any person shall be discharged from the Indiana Reformatory or the Indiana State Prison, the su-

78 Kentucky Acts (1936) ch. 30, sec. 7.
79 Iowa Code (1939) ch. 188, sec. 3797ff.
80 Statutes relating to supervision and aid of persons on parole will be found in Appendix L, p. 182.
perintendent or warden thereof shall procure for him and deliver to the proper railroad conductor, a railroad ticket to any point to which such person may desire to go, not farther from said prison than the point from which he was sentenced, give him $10 in money, a durable suit of clothes, and, from the first day of November to the first day of April, an overcoat. The suit of clothes shall not cost to exceed $6 and the cost of the overcoat shall not exceed $5."

With these clothes and his ten dollars he is turned out into a hostile world, and the state is legally unconcerned with him—until he is again arrested.

For prisoners who are to be released on parole, a job of some sort is usually a prerequisite to release. If the statute itself does not so require, the rules of the parole board usually do. Moreover it appears to be a fairly common practice for the parole officials themselves to assist prospective parolees in finding such work or, perhaps more accurately, for the officials to find a job into which the parolee can be released. But there is no similar requirement that the prisoner have a job, or be provided with one, before absolute release at the end of his sentence. Neither law nor regulation requires a job as prerequisite to such release. Nor does it appear that officials make any great effort toward that end, although a number of the private associations already referred to are active in helping the released prisoner to find honest work.

After a prisoner has found a job, or had one found for him, and has been released on parole, there is in general no pro-

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81 Indiana, 4 Stats. Ann. (1933) sec. 13-257.
The statutes covering this matter will be found in Appendix M, p. 194.
Much the same situation seems to prevail in England. "The arrangements for the re-instatement in industry of persons discharged from detention will obviously be of great importance to the success of the (rehabilitative) scheme. At present the work of assisting prisoners on discharge rests as regards persons discharged from the local prisons on a number of local aid societies which are voluntary bodies receiving a small Government grant, but dependent for most of their funds on charitable subscriptions." Report of the Departmental Committee on Persistent Offenders, presented by the Secretary of State for the Home Department, London (1932, Cmd. 4090) p. 31.
vision that he must continue in some sort of self-supporting occupation as a condition of his continued freedom. And even more obviously, there is no such provision in respect of persons who have been absolutely released. Anything, therefore, which is done by officials to help either parolees or ex-convicts generally to find new employment is entirely a voluntary assistance not provided for by law. Neither do the laws as now written require anyone to assist such ex-prisoners in finding new jobs when an old one is lost.