

A PROPOSAL TO EXPUNGE ARTICLE III, SECTION 60¹

In 1915, Maryland's voters ratified a constitutional amendment granting to the legislature the power to provide for the manner of releasing convicts upon parole. Article III, Section 60, reads:

"The General Assembly of Maryland shall have the power to provide by suitable general enactment (a) for the suspension of sentence by the Court in criminal cases; (b) for any form of the indeterminate sentence in criminal cases, and (c) for the release upon parole in whatever manner the General Assembly may prescribe, of convicts imprisoned under sentence for crimes."

According to *State v. Fisher*, "the constitutional provision . . . was evidently designed to protect the existing statutory provision from attack on the ground that it violated the separation of powers doctrine, as held in some states."²

The Maryland Constitutional Convention Commission has stated that ". . . this provision is unnecessary in that the legislature has the inherent power to pass general legislation of this type."³ The provision may be eliminated as unnecessary because (a) the Separation of Powers' Doctrine is not violated, and (b) indeterminate sentences do not present a federal constitutional issue.

Article III, Section 60, makes provision for an indeterminate sentence in criminal cases. Court interpretations of the Defective Delinquent Act, Article

31B of the 1951 Code, uphold the indeterminate sentence without reliance on Article III, Section 60. In Maryland the indeterminate sentence is applicable only to defective delinquents because "although the legislature is authorized . . . to provide for indeterminate sentences in criminal cases, it has made no provision for such sentences to the Penitentiary."⁴

"The general purpose of statutes providing for an indeterminate sentence is to make the punishment fit the offender rather than the crime, and the underlying design of such a sentence is to subject the offender to reformatory influences, . . . but such purpose also includes the protection of society from the offender who has not reformed."⁵

The Defective Delinquent Act states in Section 5:

". . . a defective delinquent shall be defined as an individual who, by the demonstration of persistent aggravated anti-social or criminal behavior, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to society so as to require such confinement and treatment, when appropriate, as may make it reasonably safe for society to terminate the confinement and treatment."⁶

The Act states in Section 9(b):

"If the court or the jury . . . shall find . . . that the said defendant is a

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² *State v. Fisher*, 204 Md. 307, 314 (1954).

³ Comm. on Miscellaneous Provisions Md. Constitutional Convention Comm'n, Third Report 1-2 (June 20, 1966).

⁴ *Cumberland v. Warden of Md. Penitentiary*, 225 Md. 636, n. 637 (1961).

⁵ 24B C. J. S. *Criminal Law* § 1993 (a) (1962).

⁶ MD. CODE ANN. art. 31B, § 5 (1961).