

defective delinquent, the court shall . . . order him to be committed . . . for an indeterminate period without either maximum or minimum limits.”⁷

Various constitutional attacks have been made in the courts on the Defective Delinquent Act, including the indeterminate sentence feature of Section 9(b). The courts have held such attacks to be baseless:

A. Although the proceedings are predicated upon a previous conviction for certain specified criminal offenses, the accused is not put twice in jeopardy for the same offense because Article 31B is not a penal statute imposing a new penalty for an established crime or crimes. It is not a penal statute because the emphasis is on confinement and treatment rather than punishment or deterrence, and because Article 31B is like statutes that provide for a civil inquiry into the sanity of a person. The character of the Act is not altered because it deals only with convicted criminals or utilizes some methods of criminal law adjudication and review.⁸ “A proceeding under the Defective Delinquent law . . . is in substantive matters a civil proceeding . . . it is the intention of the General Assembly that such proceedings be regarded as civil in nature as to procedural matters as well.”⁹

B. The due process and equal protection clauses of the Fourteenth Amendment are not violated by the statute. The attack contended that the length of confinement under an indeterminate sentence was unreasonable because of unjust discrimination between persons

in similar circumstances who may not have been convicted, or have been convicted of crimes the penalty for which is more limited. *Since the detention is civil in nature, Article III Section 60 is not strictly applicable.* A state has the power to restrain the liberty of persons found dangerous to the health and safety of the people. Several states provide for indefinite confinement of sexual psychopaths. The length of confinement does not extend beyond the reasonable necessity for sequestration. The extent of detention depends primarily upon medical findings as to diagnosis and prognosis, rather than a finding of the elements of a criminal offense. Detention is preventive and therapeutic and not punishment.¹⁰

In *Sas v. State of Maryland*, the following statement is found:

“While the sentence prescribed for the defective delinquent is fixed by the law as an indeterminate sentence, it nevertheless requires yearly administrative review of his record by the Patuxent staff and an opportunity to the petitioner at fixed times to have a judicial review of his status. The procedural protection here furnished exceeds that provided in either the Minnesota Psychopathic Personality Statute, or the Virginia Sterilization Act, both of which were upheld by the Supreme Court. In the Minnesota case . . . the penalty was indeterminate confinement but the Court felt that the right to petition for release was adequate procedural protection for this provision of the Act.”¹¹

⁷ MD. CODE ANN. art. 31B, §9(b) (1951).

⁸ *Eggleston v. State*, 209 Md. 504, 513-14 (1956).

⁹ *Blizzard v. State*, 218 Md. 384, 386 (1958).

¹⁰ *Eggleston v. State*, 209 Md. 504, 515.

¹¹ *Sas v. Maryland*, 334 Fed.2d 506, 515 (4th Cir.).

Cases referenced: *Pearson v. Probate Ct.* 309 U.S. 270 (1940). *Buck v. Bell*, 274 U.S. 200 (1927).