The History of Pennsylvania's Juvenile Institutions: A Sesquicentennial Review

Leonard Packel

Follow this and additional works at: https://digitalcommons.law.villanova.edu/vlr

Part of the Evidence Commons, and the Workers' Compensation Law Commons

Recommended Citation
Available at: https://digitalcommons.law.villanova.edu/vlr/vol22/iss1/4

This Article is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.
THE HISTORY OF PENNSYLVANIA'S JUVENILE INSTITUTIONS:
A SESQUICENTENNIAL REVIEW

Leonard Packel†

I. INTRODUCTION

Whereas an association of citizens of this commonwealth hath been formed in the city and county of Philadelphia for the humane and laudable purpose of reforming juvenile delinquents, and separating them from the society and intercourse of old and experienced offenders, with whom, within the prisons of the said city, they have heretofore associated, and thereby exposed to the contamination of every species of vice and crime; and the members of the said association having prayed to be incorporated, Therefore . . . .

WITH THIS PREAMBLE to the act incorporating the House of Refuge, the Commonwealth of Pennsylvania set forth the foundation of its strategy for dealing with juvenile delinquency: the separation of juveniles from adult offenders in its correctional institutions. While Pennsylvania has been committed to this aim for 150 years, only in the past year has the goal of complete separation of juveniles from adult offenders approached fulfillment. The purpose of this article is to describe the history of Pennsylvania's efforts to achieve this goal, in the hope that the historical record will assist in charting a course for the future.

II. THE HOUSES OF REFUGE

The early part of the nineteenth century appears to have been a period much like the present, at least in the amount of concern manifested toward the problem of crime and its control. This concern led to the development of two important institutions for crime control — the prison for adult offenders and the house of refuge for delinquent children.

The prison was a necessary outgrowth of the reform of early American criminal laws. After the revolution, the states began to

† Professor, Villanova University School of Law. B.S., University of Pennsylvania, 1957; J.D., Harvard University, 1960.

2. See text accompanying notes 149-76 infra.
reduce the number of offenses for which capital punishment could be imposed and to abolish other traditional forms of punishment, such as the use of stocks and whipping. Confinement in jails replaced these sanctions. Theretofore, the jails had served primarily to confine persons awaiting trial, petty offenders, and debtors. The disadvantages of confining convicts with untried and petty offenders led, initially, to the development of separate cells for convicts, and, finally, to separate institutions for convicts — the state penitentiaries or prisons.³

Likewise, the need to separate young offenders from older, more hardened criminals was perceived, and the house of refuge was envisioned as the institution to effect this separation. The refuge movement in this country originated with the Society for the Prevention of Pauperism in New York City. Certain members of the Society had been particularly interested in the problem of young people and crime. Having visited the prisons, they became convinced that confinement of children with older offenders converted the prisons into colleges of crime. They concluded that a new institution for children was needed, an institution which would stress the reformation of the child as much as the protection of society. Asserting that delinquent children were primarily the victims of neglect and poverty, deserving of education and reformation rather than punishment, they urged government officials, as "fathers of the people," to exercise "parental care" for these poor unfortunates. The Society for the Prevention of Pauperism was dissolved in 1823 but was replaced by the Society for the Reformation of Juvenile Delinquents. The primary goal of the new Society, the establishment of a house of refuge, was accomplished when the New York Refuge opened its doors on January 1, 1825.⁴

It is probable that the New York movement inspired the establishment of the House of Refuge in Philadelphia.⁵ In February 1826, a committee of citizens was appointed to prepare articles of incorporation for a Philadelphia House of Refuge,⁶ and the Refuge was created by legislation a month later,⁷ on March 23, 1826. In addition to separating juvenile offenders from adult offenders, the legislation contained other significant and lasting innovations. It provided that commit-

6. Id. at 169.
ments were not limited to a definite term, as were criminal sentences at that time, but instead were indeterminate to the age of majority for boys and to age eighteen for girls.\textsuperscript{8} Indeterminate sentencing remained a characteristic of Pennsylvania's juvenile justice system until recently.\textsuperscript{9} Another important aspect of the legislation was its grant of authority to the managers of the Refuge to bind out consenting children as apprentices.\textsuperscript{10} While the apprenticeship system has been abolished,\textsuperscript{11} it, in conjunction with the indeterminate sentence, contained the germ of the present system of parole.

Although the Refuge was a private association, the legislature, in 1827, authorized an appropriation of $10,000 to the institution and empowered the commissioners of Philadelphia County to appropriate a similar sum.\textsuperscript{12} This 1827 legislation also permitted any judge of a court of oyer and terminer or quarter sessions of any county in the state to commit to the House of Refuge any child convicted of an offense punishable by imprisonment in the penitentiary.\textsuperscript{13} Thus, the Refuge became a statewide institution for delinquent children.

The Refuge\textsuperscript{14} received its first boy on December 8, 1828.\textsuperscript{15} The institution which welcomed him bore substantial resemblance to the prisons which were built at that time. The grounds were enclosed by a stone wall two feet thick and twenty feet high. The cells, each seven by four feet, could accommodate 172 children.\textsuperscript{16} Of greater importance, perhaps, than the physical structure was the penal philosophy of the Refuge. Unlike the adult prisoners at the Eastern State Penitentiary, the inmates of the Refuge were not kept in separate and solitary confinement. Rather, the Refuge placed considerable emphasis upon education, labor, religious, and moral instruction and provided some recreation for the children as well.\textsuperscript{17}

\begin{itemize}
  \item \textsuperscript{8} *Id.* § 6 (repealed 1927).
  \item \textsuperscript{9} The indeterminate commitment until the age of majority remained until the passage of the Juvenile Act of 1972, which provides that juvenile commitments shall not initially extend for a period longer than three years or the maximum for the offense if it had been committed by an adult. *Pa. Stat. Ann.* tit. 11, §§ 50-323 (Purdon Supp. 1975-76).
  \item \textsuperscript{10} Act of March 23, 1826, ch. 5773, § 6, 1826 Pa. Laws 82, 84-85 (repealed 1927).
  \item \textsuperscript{11} The apprenticeship program was not statutorily abolished until 1927. *See* Act of May 11, 1927, No. 454, § 1, 1927 Pa. Laws 961.
  \item \textsuperscript{12} Act of March 2, 1827, ch. 5918, §§ 1-2, 1827 Pa. Laws 283-84.
  \item \textsuperscript{13} *Id.* § 4.
  \item \textsuperscript{14} A tract of land was purchased for the Refuge at 15th and what is now Fairmount Avenue in Philadelphia. Teeters, *supra* note 5, at 170-71.
  \item \textsuperscript{15} *Id.* at 175.
  \item \textsuperscript{16} *Id.* at 171. By 1833, the facilities had expanded to accommodate 279 children.
  \item *Id.*
  \item \textsuperscript{17} *Id.* at 181.
\end{itemize}
In 1831, the constitutionality of the Refuge Act and the management of the institution were challenged in the case of *Commonwealth ex. rel. Joseph v. M'Keagy*. The relator, Lewis L. Joseph, a thirteen-year-old boy, had been committed to the Refuge for vagrancy by his father, Abraham Joseph. Some time thereafter, it appears that his father, having belated second thoughts, attempted to retrieve Lewis and, this action failing, sought a writ of habeas corpus in the court of common pleas of Philadelphia. In ruling on the case, the court decided several important issues. First, it concluded that an indeterminate commitment to the age of majority for a juvenile convicted of vagrancy was constitutional even though the maximum commitment for an adult vagrant was only thirty days. The court reached this conclusion by reasoning that the juvenile commitment was not intended to punish the child, but to make him “an object of public care and solicitude.” Observing that the “guardians of the poor” had long exercised such authority over abandoned and orphaned children, the court asserted:

Now, if the poverty or crime of the parent may submit the poor but virtuous infant to the operation of this sort of authority; why is it that in some shape, and if necessary, in a more decided shape, the public cannot assume similar guardianship of children whose poverty has degenerated into vagrancy.

However, the court found that Joseph was not guilty of vagrancy and, therefore, his commitment on that basis could not be sustained.

The managers of the Refuge advanced an alternative argument for denial of the writ of habeas corpus — that the elder Joseph had relinquished all parental rights over his son by committing him to the Refuge. The court, however, determined that the Refuge could receive children only as provided by law, and the law permitted commitments only of children convicted of vagrancy or other crimes. The court stated: “I am quite satisfied that the legislature never contemplated giving the managers of the Refuge a general discretion to receive from all quarters such children as they should deem proper subjects, and most assuredly they never meant to constitute the

18. 1 Ashm. 248 (C.P. Phila. 1831).
19. Id. at 254–55.
20. Id. at 255.
21. Id. at 252–54.
22. Id. at 253.
23. Id.
24. Id.
25. Id. at 258.
26. Id. at 259.
Refuge a place to correct refractory children. Thus, Joseph was discharged from custody.

Although correcting "refractory children" may not have been its primary concern in establishing the Refuge, the legislature clearly emphasized that intention as a prominent one by amending the Refuge Act in 1835. The amendment permitted parents, guardians, or next friends to file complaints before the minor judiciary charging that the child's incorrigibility or vicious conduct rendered his control beyond the power of the parent, guardian, or next friends. Also, the amendment allowed persons other than those having custody of the child to file similar complaints, but in such cases an allegation that the person having legal custody was unwilling or unable to exercise proper control was also required. The constitutionality of a commitment of an incorrigible child was tested and upheld in 1839 in the case of *Ex parte Crouse*. Commitments for incorrigibility became a very significant aspect of delinquency law, and they remain so to the present day.

The concept of the house of refuge appears to have been accepted by 1850 when the legislature authorized the establishment of a House of Refuge of Western Pennsylvania to provide similar services for the western part of the state. This institution was formally opened on December 13, 1854, in the Ninth Ward of Allegheny, with a physical structure equally as forbidding as that of the Philadelphia Refuge. In 1873, the Board of Managers decided to move the institution to the countryside and, more importantly, to adopt the cottage or family system of operation. Derived from European

---

27. Id.
30. Id.
31. 4 Whart. 9 (Pa. 1839).
33. Act of April 22, 1850, No. 339, §§ 10-22, 1850 Pa. Laws 538 (repealed 1953). As adopted, the statute was virtually identical to the amended version of the earlier refuge act. See notes 7-10 & 28-30 and accompanying text supra.
34. 1 Auditor General of Pennsylvania, State Prison Hospitals, Soldier's Homes and Orphan Schools 103 (1897) [hereinafter cited as State Prisons]. The plant was later acquired by and became a part of what is now known as the State Correctional Institution at Pittsburgh. Id. at 14. In 1872, the name of this institution was changed to the Pennsylvania Reform School. Act of March 20, 1872, No. 16, § 1, 1872 Pa. Laws 27-28.
35. See State Prisons, supra note 34, at 103.
penologists, the cottage system was operated in an open setting, not surrounded by high walls. Instead of living in large cell blocks, the children were housed in individual buildings or cottages, supervised by houseparents, in an approximation of a family situation. At this new western institution on the Morganza Farm in Washington County, there were eight "families," each under the care of a first officer, a second officer, and a matron.

The Philadelphia Refuge followed the lead of its western counterpart in moving to a rural setting. In 1892, it moved its boys department to Delaware County, becoming known as the Glen Mills School; the girls department made a similar move in 1910, and it is now known as the Sleighton Farms School. Both departments adopted the cottage system.

In 1876, the charter of the Western Refuge, then known as the Pennsylvania Reform School, was amended to provide that sixteen of the twenty-six managers were to be appointed by the Governor, thus placing the institution under the control of the state government; control of the Philadelphia Refuge remained private. Such mixing of private and state juvenile institutions is a surviving characteristic of our juvenile justice system.

In 1913, the name of the Pennsylvania Reform School was changed to the Pennsylvania Training School; later, it became known as the Youth Development Center at Canonsburg. This western institution was finally closed in 1968.

Although the refuges succeeded in many aspects, they did not accomplish a complete separation of juvenile from adult offenders. Significantly, the Refuge Acts did not require that young offenders be sent to the refuges. In fact, refuges were available only to those

36. For a discussion of the history and philosophy of the cottage or family system, see J. Hawes, supra note 4, at 78-86.
37. Id.
38. State Prisons, supra note 34, at 103.
39. Id. at 106.
40. Teeters, supra note 5, at 187.
41. State Prisons, supra note 34, at 103.
offenders who were deemed appropriate subjects. For example, in 1886, the average number of inmates in the two Pennsylvania refuges was 1200. In that year, 576 children were committed to the two institutions, but almost the same number of young people were committed to institutions for adult offenders: collectively, 126 persons under age twenty-one were committed to the Eastern and Western Penitentiaries, and 428 young people were sentenced to county prisons. This situation was not significantly altered by the Pennsylvania General Assembly's enactment of the Juvenile Court Act of 1903 (1903 Act), which established a juvenile court for persons under age sixteen. The Act did not permit the juvenile court to commit juveniles to state prisons or county jails, but since few children under sixteen had been committed to these adult institutions, the reduction in the juvenile population at such institutions was minimal. Moreover, the 1903 Act did not repeal the Refuge Acts, and thus young adult offenders between ages sixteen and twenty-one convicted in criminal courts continued to be committed to the refuges where they mingled with juveniles.

One practical effect of the 1903 Act was that it changed the definition of the term juvenile. Since the Refuge Acts merely provided for the commitment of those persons who were deemed appropriate subjects, a juvenile was defined, in practical terms, as a person committed to an institution for juveniles. After the 1903 Act, the term juvenile meant (and means throughout the remainder of this article) a person tried in juvenile courts.

The delinquency jurisdiction of the juvenile court was extended in 1939 to apply to all persons under age eighteen. Thereafter, fewer adults were committed to the refuges by the criminal courts, and

48. Id. at 74. The total commitments numbered 576, but 129 of these were readmissions, primarily of children who had not succeeded in placements. Id.
49. Id. at 44.
50. Id. at 61.
53. See 39 Pa. Bd. of Comm'rs of Pub. Charities Ann. Rep. 128 (1908). In 1908, of the 740 persons admitted to the Refuges, 279 were over 15 years of age. Id.
54. See note 46 and accompanying text supra.
55. See Act of April 23, 1903, No. 205, § 1, 1903 Pa. Laws (repealed and superseded 1933).
by 1952, these institutions were reporting only a minimal number of commitments of persons over the juvenile court age. By 1966, as a matter of policy, neither Glen Mills nor Sleighton Farms was accepting persons after their eighteenth birthday.

III. THE INDUSTRIAL REFORMATORIES

In the years following the Civil War, the population in the Eastern and Western Penitentiaries had begun to strain the resources of those institutions. As a result, the legislature authorized the construction of a penitentiary in the central part of the state, capable of holding 250 prisoners. In 1881, while construction proceeded at a site in Huntingdon County, Governor Hoyt suggested that the legislature consider converting the proposed penitentiary at Huntingdon into a "reformatory" institution.

The acquisition of the site at Huntingdon coincided with a major development in American penology: the rise of the industrial reformatory. The industrial reformatories, like the houses of refuge, were intended to separate young offenders from more experienced offenders. The reformatory residents were most commonly between the ages of sixteen and thirty. As its name implies, the purpose of the reformatory was to encourage reformation rather than to punish. The principal characteristics of reformatory administration were the indeterminate sentence, a grading system to provide an objective measure of each inmate's progress, and finally, parole for those inmates demonstrating that they had benefited from the program of reformation. Although the program appears to have been quite similar to that of the houses of refuge, historians generally have concluded that the ideas for the reformatory were attributable not to this source, but to European prison systems. The first of these institutions in this country opened at Elmira, New York in 1877.

The Pennsylvania Legislature appointed a committee to investigate the suggestion of the Governor, and visits were made to the

57. See Survey, supra note 42, app. B, at 18. Only 20 persons who had reached the age of 18 were committed to the Refuges in 1952. Id.
58. See PA. DEP'T OF PUB. WELFARE, PENNSYLVANIA INSTITUTIONS FOR DELINQUENT CHILDREN 4, 8 (1966) [hereinafter cited as PENNSYLVANIA INSTITUTIONS].
60. STATE PRISONS, supra note 34, at 119–20.
61. See L. Robinson, supra note 3, at 120–52.
62. Id. at 123.
63. Id. at 120–52.
64. See H. Barnes, supra note 3, at 398; B. McKelvey, AMERICAN PRISONS 59–64 (1972); L. Robinson, supra note 3, at 120.
65. B. McKelvey, supra note 64, at 68.
site at Huntingdon, the Reformatory at Elmira, and to the Philadelphia House of Refuge. The committee recommended that the Governor's proposal be adopted, and in 1881, the earlier legislation was amended to permit the construction of a state industrial reformatory at Huntingdon. The 1881 Act provided merely that the institution house male criminals between the ages of fifteen and twenty-five convicted of any criminal offense so long as they had not been previously sentenced to a state institution, but before Huntingdon opened, the legislature again amended the Act to incorporate the entire reformatory system of discipline, including indeterminate sentencing, a grading system, and parole. By contrast, the physical structure of the Reformatory, with its walls and cells, more closely resembled a prison than the juvenile institutions which were beginning to employ the cottage system.

In 1937, the legislature, concluding that the Huntingdon institution, renamed Pennsylvania Industrial School, was too much like a penitentiary to accomplish its reformatory objectives, authorized the construction of a new Pennsylvania industrial school. The new institution was located at Camp Hill in Cumberland County; it opened in 1941 with the transfer of the Huntingdon inmates.

The majority of the commitments to Huntingdon during the nineteenth century were persons between sixteen and twenty-one years of age. But unlike the refuges, to which the minor judiciary committed many persons for incorrigibility and vagrancy, Huntingdon could accept only persons committed by the criminal courts. The 1903 Act, however, permitted the juvenile courts to commit to an "industrial school." Apparently the juvenile courts interpreted this

---

68. Id.
70. State Prisons, supra note 34, at 118-19 (illustrations of the Reformatory). After its opening, the Reformatory filled quickly, with 478 persons being committed by December 31, 1890. Id. at 124.
74. See text accompanying note 68 supra.
language to include Huntingdon because they did commit juveniles to this institution. Although the number of juvenile court commitments at Huntingdon never exceeded a handful, for some reason the courts did commit a considerable number of juveniles to Camp Hill, the successor institution.

The first reported litigation concerning the commitment of a delinquent to this type of institution involved Camp Hill. In the case of *Commonwealth ex rel. O'Donnell v. Prasse*, a child under age sixteen contested the legality of his commitment to Camp Hill. At that time, the Juvenile Court Law provided that the court could:

(d) Commit a child to an industrial or training school, or county institution or school maintained for such purpose, willing to receive it, for care, guidance and control.

(e) Commit any child over the age of sixteen years to any state industrial school or home for the reformation and correction of youths above the age of sixteen.

The court concluded that a child under sixteen years could be committed to Camp Hill if the institution were willing to receive the child. Moreover, the court stated that Camp Hill was obligated to take children over sixteen if committed by a juvenile court.

In *Holmes' Appeal*, the Pennsylvania Supreme Court, for the first time, addressed the question of whether the Juvenile Court Law permitted the juvenile courts to commit children to Camp Hill. The court almost summarily concluded that even though young offenders

---

76. See, e.g., 36 Pa. Bd. of Comm'rs of Pub. Charities Ann. Rep. 66 (1905) (six children committed to Huntingdon by juvenile courts in that year). Although later records do not indicate the number of commitments to Huntingdon by juvenile courts, records do show that Huntingdon continued to receive persons under the age of 16. See, e.g., 39 Pa. Bd. of Comm'rs of Pub. Charities Ann. Rep. 118 (1908) (six children received in that year); 40 Pa. Bd. of Comm'rs of Pub. Charities Ann. Rep. 69 (1917) (seven children received in that year). Since records at Huntingdon covering the period from 1920 through 1945 do not indicate whether an inmate had been committed in criminal or juvenile court, statistics on juvenile court commitments to Huntingdon for that period are scarce. Nevertheless, it is documented that between June 1, 1937 and May 31, 1938 only seven children under the age of 16 were committed to Huntingdon. 4 Pa. Dep't of Welfare Ann. Statistical Rep. 148 (1938). Independent reports have failed to note the numbers of juvenile court commitments to Huntingdon or its successor institution at Camp Hill before 1943. See Survey, supra note 42, app. B, at 1.

77. See, e.g., Survey, supra note 42, app. B, at 1 (439 children committed by juvenile courts in 1945). The reason might have been the 1939 amendment to the juvenile court law which raised the age limit to 18. See note 53 and accompanying text supra.


convicted in criminal court could be sent there, Camp Hill was not a prison and, therefore, commitment by the juvenile court was proper.82

The Pennsylvania Supreme Court considered the legality of a juvenile commitment to Camp Hill83 once again in the 1970 case of In re Wilson.84 Without discussing the issue,85 the court apparently assumed that commitments to that institution were lawful, despite the fact that adults as well as juveniles were committed to it.86

IV. THE INDUSTRIAL HOME FOR WOMEN

In 1913 the Pennsylvania Legislature authorized the construction of the State Industrial Home for Women (Muncy), to be governed by a reformatory type of administration, similar to that at Huntingdon.87 The courts of criminal jurisdiction could sentence any woman between sixteen and thirty years of age to Muncy.88 Sentences were indeterminate to three years unless the maximum term for the offense was greater than three years, in which case the maximum for the offense applied.89 There was a grading system similar to that of an industrial reformatory.90 The legislature did not adopt the physical structure of the Huntingdon institution, adopting instead a cottage system.91 The Industrial Home was located at Muncy in Lycoming County. By 1924 it could accommodate 100 women.92

Despite the language of the statute concerning courts of criminal jurisdiction, both adults and children were confined at Muncy from the beginning. In fact, it seems that in the early days Muncy was

83. In 1953, the Camp Hill institution was placed under the direction of the Pennsylvania Department of Justice. Act of July 29, 1953, No. 406, § 1, 1953 Pa. Laws 1424-25 (codified at PA. STAT. ANN. tit. 71, § 62 (Purdon 1962)) (amended 1955). In 1959, its name was changed to State Correctional Institution at Camp Hill, but it continued to be operated as an institution for juveniles as well as young adult offenders. Act of October 22, 1959, No. 467, §§ 1, 2, 1959 Pa. Laws 1356-57 (codified at PA. STAT. ANN. tit. 71, §§ 62, 301 (Purdon 1962)) (amended 1965).
85. See id. at 428–32, 264 A.2d at 616–18.
86. See id. at 431 & n.4, 264 A.2d at 617 & n.4.
88. Id. § 15, at 1315 (codified at PA. STAT. ANN. tit. 61, § 566 (Purdon 1964)) (supplemented and amended in 1925 and 1931).
89. Id.
90. Id. § 13, at 1314.
91. Id. § 1, at 1311–12; see text accompanying notes 35–40.
92. 2 PA. DEP’T OF PUB. WELFARE BIENNIAL REP. 26 (1925).

This institution, as was the case with Camp Hill, was transferred to the supervision of the Department of Justice in 1953. Act of July 29, 1953, No. 406, § 1, 1953 Pa. Laws 1424-25 (codified at PA. STAT. ANN. tit. 71, § 62 (Purdon 1962)) (amended 1955). In 1959, its name was changed to the State Correctional Institution at Muncy. Act of October 22, 1959, No. 467, § 1, 2, 1959 Pa. Laws 1356-57 (codified at PA. STAT. ANN. tit. 71, §§ 62, 301 (Purdon 1962)) (amended 1965).
viewed primarily as an institution for juveniles, although it would accept women up to age thirty. Under the supervision of the Pennsylvania Department of Welfare's Bureau of Children, this institution housed a large population of young girls.93 The 1939 amendment to the Juvenile Court Law appears to have specifically authorized juvenile commitments to Muncy. It provided for commitments of children to "any state industrial school or home for the reformation of youths above the age of sixteen,"94 and, of course, Muncy was the only state industrial home. The average daily juvenile population rose from twenty-eight in 1954 to eighty in 1959.95 In 1931, however, the upper age limit of thirty had been removed, so that the institution was no longer serving young offenders exclusively.96 It was not until 1975 that the practice of committing both juveniles and adults to Muncy was tested in the courts.97

V. INSTITUTIONS FOR DEFECTIVE DELINQUENTS

The legislature attempted a new approach to the problem of institutionalization of delinquents by adopting the Defective Delinquent Statute in 1937.98 Under the provisions of the new statute, Huntingdon was no longer to be considered an industrial school,99 but was to be known instead as the Pennsylvania Institution for Defective Delinquents.100 Males over the age of fifteen,101 if convicted of crimes or if adjudicated delinquent, could be sent to Huntingdon if they were found to be mentally defective with criminal tendencies.102 Commitment to Huntingdon was in effect a life sentence, since the inmate could be held until released by the committing court.103 In 1953, the

93. 2 PA. DEP'T OF PUB. WELFARE B IENIAL REP. 26 (1925).
96. Act of June 22, 1931, No. 278, § 1, 1931 Pa. Laws 859-60 (codified at PA. STAT. ANN. tit. 61, § 566 (Purdon 1964)).
97. See text accompanying notes 163-72 infra.
99. The new Camp Hill institution was created to fill the role of an industrial school. See text accompanying notes 71 & 72 supra.
101. The preamble to the 1937 legislation indicated that the institution was intended to accommodate only male defective delinquents. Id. Preamble. To further specify the sex of persons covered by the Act, section 3 of the 1937 legislation was amended to read "[w]hen any male person over the age of fifteen." Act of June 20, 1947, No. 289, 1947 Pa. Laws 672, 673 (codified at PA. STAT. ANN. tit. 61, § 541-3 (Purdon 1964) (repealed in part 1968)).
103. Id. § 3, at 810.
legislature authorized the acquisition of a new site for this institution at Dallas.\textsuperscript{104} The new institution, renamed the State Correctional Institution at Dallas (Dallas), was opened in 1960 and populated with inmates transferred from Huntingdon.\textsuperscript{105} Since the term "defective delinquent" encompassed individuals within the jurisdiction of the juvenile court as well as those convicted in the adult criminal courts, these institutions held both juvenile and adult offenders.\textsuperscript{106}

In 1966, the Attorney General conceded in a brief submitted to the superior court that committing juveniles to Dallas beyond their twenty-first birthday was beyond the jurisdiction of the juvenile court.\textsuperscript{107} This concession resulted in the release by the Philadelphia County Court of a number of persons who had been committed to Dallas as juveniles.\textsuperscript{108} In Commonwealth v. Williams, the Pennsylvania Supreme Court accepted the Attorney General's conclusion that commitments to Dallas must terminate when delinquents reach age twenty-one.\textsuperscript{109} Even prior to this decision, however, there had been considerable concern about the validity of the Defective Delinquent Statute.\textsuperscript{110} On July 20, 1968, the statute was repealed, thus terminating this approach to delinquency in Pennsylvania.\textsuperscript{111}

VI. PRIVATE INSTITUTIONS FOR DELINQUENTS

The nineteenth century witnessed a proliferation of private child care agencies and institutions.\textsuperscript{112} Both of the refuges originated as private institutions, although the Western Refuge became a public institution in 1876, and the Philadelphia Refuge received state aid almost from its inception.\textsuperscript{113} However, a number of other institutions retained their essentially private nature, and it appears likely that, on occasion, the minor judiciary committed delinquent children to these institutions rather than to the refuges. In 1893, legislation was passed

\begin{footnotes}
\footnote{105. Comment, Post Conviction Problems and the Defective Delinquent, 12 VILL. L. Rev. 545 (1967).}
\footnote{106. See Act of May 25, 1937, No. 224, § 3, 1937 Pa. Laws 808, 810 (repealed 1968). In November 1965, there were 601 inmates at Dallas, 265 of whom were committed by the juvenile courts. Comment, supra note 102, at 590.}
\footnote{108. Comment, supra note 105, at 587 n.322.}
\footnote{110. See, e.g., Comment, supra note 105.}
\footnote{112. J. HAWES, supra note 4, at 206.}
\footnote{113. See text accompanying notes 5, 12 & 38 supra.}
\end{footnotes}
authorizing commitment of delinquent children to such private institutions.114 This authority has remained a part of our juvenile law.115

Reliable information on private institutions for delinquent children is not easy to locate. However, it appears that the number of these institutions has been gradually diminishing: a 1925 study indicated that there were twenty private institutions;116 a study in 1954 reported seventeen;117 and another study prepared in 1974 indicated that there were only ten remaining private institutions for delinquents.118

A substantial number of delinquents have been committed to private institutions. Available records indicate that the juvenile courts in the year ending September 30, 1906, committed 282 children to the refuges, while sending 435 children to private institutions.119 For the year ending December 31, 1916, 672 children were committed to the refuges by the juvenile courts and 2,583 to private institutions.120 The proportion of children sent to private institutions diminished thereafter: in 1935, about one-half of the approximately 2,200 commitments were to private institutions, and in 1952 about 1,054 of the reported 2,744 commitments were to these institutions.121 In 1973, it was reported that 1,600 children were committed to public institutions and only 574 to private ones.122 Part of the decrease in commitments to private institutions may be attributed to the gradual exclusion of adults at these institutions. While young adults had at times been committed

116. COMM'N APPOINTED TO STUDY AND REVISE THE STATUTES OF PENNSYLVANIA RELATING TO CHILDREN, REP. TO THE GEN. ASSEMBLY MEETING IN 1925 PT. I, AT 53 (1925). Five of the 20 private institutions received state aid. Id.
118. TROUBLED YOUTH, supra note 45, at 34. These institutions are Bucks County Boys Home, New Life Boys Ranch, Cannondale School for Girls, George Junior Republic of Pennsylvania, Gilmary School for Girls, Harborcreek School for Boys, St. Gabriel's Hall, Tekawithia Hills School, Lourdesmont School, and Discovery School for Girls.
120. 47 PA. Bd. OF COMM'RS OF PUB. CHARITIES ANN. REP. 42–45 (1916).
122. GOVERNOR'S JUSTICE COMM'N, PA. DEP'T OF JUSTICE, PENNSYLVANIA JUVENILE COURT DISPOSITIONS 18 (1973). The author suspects that the number committed to private institutions is under-reported. Philadelphia County reported only five commitments. Id. However, personal experience in Philadelphia leads the author to have great doubts about the accuracy of that report.
to private facilities by 1966 almost all such facilities had a stated policy which limited admissions to persons under the age of eighteen.

VII. COUNTY INSTITUTIONS

There has never been a significant number of county institutions for delinquent children. Three came into existence early in this century: the Allegheny County Industrial and Training School (Thorn Hill School) and the Gumbert School for Girls (Gumbert) were founded in Allegheny County in 1911 and 1925 respectively; and the Luzerne County Industrial School (Kis-Lyn) was founded in 1912. These institutions, exclusively for juveniles, were rather short-lived. Gumbert closed in 1961; Thorn Hill was taken over by the commonwealth as the Youth Development Center at Warrendale in 1962; and Kis-Lyn closed in 1965.

Although the Philadelphia House of Correction (House of Correction) was authorized by statute in 1871 to accept delinquents over the age of sixteen, it remained primarily an institution for adults. It appears that a considerable number of juveniles were committed to this institution: in 1936, 195 children between the ages of sixteen and eighteen were committed to the House of Correction, and by 1955 the number had risen to 607. To accommodate this increase in juvenile commitments, the city, in 1959, activated a facility known as the Youth Rehabilitation Center, housed in what had formally been the Northern Division of Philadelphia General Hospital located at Second and Luzerne Streets. Children who had been committed to the House of Correction were transferred to this facility. But, two years later, the city transferred this facility to the State Department of Welfare for use as a Youth Development Center, thus closing the sole remaining county institution for delinquent children.

124. Pennsylvania Institutions, supra note 58, at 1-23.
125. Survey, supra note 42, § III, at 11.
VIII. DEPARTMENT OF PUBLIC WELFARE INSTITUTIONS

Perhaps the most significant twentieth century development in institutions for delinquent children in Pennsylvania has been the emergence of the Department of Public Welfare (DPW), initially as a supervisory agency and then as an operator of institutions for delinquents. When the houses of refuge were established, there was no centralized executive control over their activities. In 1869, the legislature created the Board of Public Charities, which was authorized to inspect charitable, reformatory, and correctional institutions, and to report annually the results of such inspections to the legislature.\textsuperscript{133} It was not until the creation of the DPW in 1921 that this inspection and reporting function was expanded.\textsuperscript{134} The legislation which created the DPW abolished the Board of Public Charities,\textsuperscript{135} granting the DPW the power to supervise all penal, reformatory, and correctional institutions, including those institutions, associations, and societies operated for juvenile delinquents.\textsuperscript{136}

In 1953, the legislature divided the supervision over these institutions between the DPW and the Department of Justice, giving the Department of Justice the power to supervise prisons and the DPW the power to supervise juvenile institutions.\textsuperscript{137} The Huntingdon, Camp Hill, and Muncy institutions, which held both adults and juveniles, were transferred from the jurisdiction of the DPW to the Department of Justice.\textsuperscript{138} However, juvenile courts continued to have the authority to commit children to these institutions.

In 1953, the Government Consulting Service of the Institute of Local and State Government, under the auspices of the DPW, conducted a survey of the institutions for delinquent children.\textsuperscript{139} The report concluded, \textit{inter alia}, that responsibility for the institutions was widely dispersed, and that the resources of the institutions were neither interrelated nor coordinated.\textsuperscript{140} The report suggested the following goal:

\textsuperscript{135} \textit{Id.} § 31, at 1157.
\textsuperscript{136} \textit{Id.} § 9, at 1146.
\textsuperscript{138} \textit{Id.} § 1, at 1425.
\textsuperscript{139} \textit{Survey}, supra note 42.
\textsuperscript{140} \textit{Id.} § 1, at 2.
the development of a "comprehensive program of institutional care
designed to insure the successful rehabilitation of juvenile offenders
for an early return to socially acceptable lives in the community." 141
A second report recommended that a unified system of public and volun-
tary institutions for delinquents be established, with all juvenile court
commitments to be made to the DPW, which would then make specific
placements. 142

These studies resulted in the passage in 1959 of legislation authorizing
the acquisition of various sites to be operated by the DPW as youth
development centers for delinquent children under the age of eighteen. 143
Since the inception of this program, these institutions have grown ex-
tensively; there are currently six youth development centers with
a capacity for 1,021 children. 144 All of these institutions employ a
cottage plan in a relatively open setting. 145

Legislation, passed in 1956, authorized the Department of Forests
and Waters to provide and maintain facilities for male delinquents. 146
Today, there are three forestry camps, operated under the auspices of the
DPW, each with capacity for approximately fifty children. 147 The youth
development centers and the forestry camps accept only juveniles com-
mitted by the juvenile courts. 148

141. Id. at 8.

142. GOVERNMENT CONSULTING SERV., INSTITUTE OF LOCAL AND STATE GOVT,
UNIVERSITY OF PENNSYLVANIA, COORDINATION OF THE PROGRAM OF INSTITUTIONAL
CARE OF JUVENILE DELINQUENTS IN PENNSYLVANIA (1954) [hereinafter cited as
COORDINATION OF INSTITUTIONAL CARE].

This legislation was repealed by the Act of June 13, 1967, No. 21, art. 15, § 1501
(20), 1967 Pa. Laws 31, 103-04 (codified at PA. STAT. ANN. tit. 62, § 1501 (Purdon
1968)). The repealing legislation, however, substantially reenacted the provisions of
the earlier Act. Id. §§ 341-43, at 43. In addition, the legislation provided for a coor-
dinated system of private and public institutions, id. § 724, at 67-78, as was rec-
ommended in the report issued by the Government Consulting Service, Institute of Local
and State Government. COORDINATION OF INSTITUTIONAL CARE, supra note 142, at
9-10. The legislature has not yet adopted the recommendation that all commitments
be to the Department of Public Welfare rather than to individual institutions. See note
142 and accompanying text supra.

144. TROUBLED YOUTH, supra note 45, at 10. These institutions include (in order of
creation) Waynesburg, Warrendale, Loysville, South Philadelphia (transferred to
Philadelphia Day Treatment Center site in July 1970), Cornwells Heights, and New
Castle. Id.

145. Id. app. D, at 92-94.

legislation was repealed by the Act of June 13, 1967, No. 21, art. 15, § 1501(18), 1967
Pa. Laws 31, 103 (codified at PA. STAT. ANN. tit. 62, § 1501 (Purdon 1968)). The
provisions of the former act were substantially reenacted in sections 352-53 of the
repealing legislation. Id. §§ 352-53, at 45.

147. TROUBLED YOUTH, supra note 45, at 10.

148. Id. app. D, at 92.
IX. THE JUVENILE ACT OF 1972

On December 6, 1972, the Pennsylvania General Assembly passed the Juvenile Act of 1972 (1972 Act), which codified and revised much of the juvenile delinquency law then in effect. By that time, the institutional arrangements for juveniles fell into three categories: the private institutions; the youth development centers and forestry camps operated by the DPW; and the state correctional institutions at Camp Hill and Muncy, operated by the Department of Justice. Of these institutions, only the Camp Hill and Muncy institutions had custody of adults convicted in the criminal courts as well as juveniles.

Section 25 of the 1972 Act permits the courts to enter an order with regard to a delinquent child:

(3) Committing the child to an institution, youth development center, camp or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Department of Public Welfare.

(4) Committing the child to an institution operated by the Department of Public Welfare or special facility for children operated by the Department of Justice.

With regard to commitment, section 27 of the Act provides:

A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of adults convicted of a crime, unless there is no other appropriate facility available, in which case the child shall be kept separate and apart from such adults at all times.

Thus, section 25(3) appears to sanction the commitment of delinquents to private institutions, and both sections 25(3) and 25(4) seem to authorize commitments to DPW institutions.

It is not clear whether the 1972 Act prohibits the practice of integrating adults and juveniles at the state correctional institutions at Muncy and Camp Hill. The initial question is whether these institutions are "special facilities for children operated by the Department of Justice," and, therefore, institutions to which juveniles may be com-


150. Glen Mills and Sleighton Farms, the successor of the original House of Refuge, are now, for most purposes, indistinguishable from the other private institutions.


152. Id. § 50-324(a). Section 14 of the 1972 Act also refers to commitments, but that section probably applies only to facilities used for detention prior to a delinquency hearing or criminal trial. Id. § 50-311.
mitted under section 25(4) of the 1972 Act. Muncy and Camp Hill held juveniles at the time the 1972 Act was passed and had done so throughout their existence under the authority of prior legislation and case law. On the other hand, these institutions were not operated exclusively for children, and it could be argued that they were not, therefore, "special facilities for children." Certainly, had the legislature intended to authorize their use, it could have specifically named these institutions in the sections of the 1972 Act providing for the disposition of juvenile offenders.

The issue is further complicated by the failure of section 27 to set forth criteria for a court to utilize in deciding whether Camp Hill or Muncy are "penal institutions or other facilities used primarily for the execution of sentences of adults convicted of a crime." Is the determinative factor the number of adults and juveniles, the type of program, the physical facilities, or some combination of these and other factors?

Even if the court were to determine that either Camp Hill or Muncy is a penal institution, such a holding would not foreclose the commitment of a delinquent child to Muncy or Camp Hill under the provisions of section 27. The child could still be committed if there were "no other appropriate facility available," so long as the child was kept "separate and apart from such adults at all times." However, this language also presents difficulties. Does the wording imply that the trial court must examine every other institution and program available in the commonwealth? Another question is whether the "appropriateness" of available facilities is to be determined with a view to the needs of the child for rehabilitation or the needs of the community for security.

In addition to the difficulties in interpreting sections 25 and 27 when viewed separately, there is the additional problem of defining the relationship between the two sections. If either Camp Hill or Muncy is a "special facility for children," perhaps section 27 is not applicable at all. Nothing in the 1972 Act indicates that an institution may be both a special facility for children and a penal institution. In fact, it would seem that these terms are mutually exclusive.

In the case of Commonwealth ex rel. Parker v. Patton, the superior court confronted for the first time a case in which a juvenile contested his commitment to Camp Hill on the ground that the 1972 Act prohibited the commitment of juveniles to that institution. The court concluded that Camp Hill was a "special facility for children

---

153. See text accompanying notes 78-97 supra.
155. Id.
operated by the Department of Justice" within the meaning of section 25(4) of the 1972 Act. The court reasoned that "since there is no other facility in existence under this category except Camp Hill, the Act necessarily refers to Camp Hill."\footnote{157} Even though Camp Hill was determined to be a special facility for children, the court proceeded to apply section 27, thus deciding without discussion that an institution could be both a special facility for children and a penal institution. However, the court could not agree upon the criteria to be utilized in deciding whether Camp Hill was a penal institution. Instead, it concluded:

In the present Pennsylvania situation, lacking as we do a better institutional facility or juvenile rehabilitation program than we have at Camp Hill, we could argue needlessly as to whether Camp Hill is primarily a penal institution or a rehabilitation facility. . . . It is clear from the record in the cases that there are no other more appropriate facilities available in Pennsylvania than those provided at Camp Hill.\footnote{158}

The opinion omits reference to the criteria employed by the court in concluding that no other more appropriate facilities existed.

Although the court made no specific finding that Camp Hill was a penal facility, the effect of the decision was to hold Camp Hill to the standards applicable to penal institutions under section 27. The Camp Hill authorities were required, "in the absence of separate institutions for juvenile delinquents and adult criminals, to provide separate facilities for the needs of the two groups, or to provide for the separate use of the same facilities avoiding at all times any intermingling of the two groups."\footnote{159} Thus, while recognizing the goal of separation, the court perceived no obligation under the 1972 Act to mandate completely separate institutions. The superior court reaffirmed this decision one year later in the case of \textit{Commonwealth ex rel. Peterson v. Patton}.\footnote{160}

\footnote{157} 225 Pa. Super. Ct. at 230, 310 A.2d at 415.

\footnote{158} \textit{Id.} at 221, 310 A.2d at 416 (citations omitted). Two companion cases were decided on the same day which were controlled by \textit{Parker}. See \textit{Commonwealth ex rel. Stokes v. Patton}, 225 Pa. Super. Ct. 222, 310 A.2d 417 (1973) (writ of habeas corpus denied); \textit{In re Redding}, 225 Pa. Super. Ct. 223, 310 A.2d 416 (1973) (order committing child to Camp Hill for probation violation affirmed). This fact explains the court's use of the plural ("cases") in the quotation.

\footnote{159} 225 Pa. Super. Ct. at 221, 310 A.2d at 416.

\footnote{160} 230 Pa. Super. Ct. 6, 326 A.2d 444 (1974). In that case, the juvenile challenged his detention at Camp Hill by writ of habeas corpus. \textit{Id.} The Juvenile Division of the Court of Common Pleas of Erie County upheld the child's claim that Camp Hill was not an appropriate facility for juvenile inmates under the 1972 Act. \textit{Id.} at 7, 326 A.2d at 445. The superior court reversed the lower court's order. \textit{Id.} at 8, 326 A.2d at 446. Noting \textit{Parker}'s directive that children and adults must be segregated at Camp Hill, the court stated: "We have not been informed that the authorities at Camp Hill are not moving forward in compliance with that directive." \textit{Id.} at 8, 326 A.2d at 445.
On April 14, 1975, the Attorney General of Pennsylvania challenged the supervisor court's ruling. He advised the superintendent of Camp Hill that the "department [would] resist through all lawful channels the placement of any deprived or delinquent child in Camp Hill after August 15, 1975, and that appropriate action will be taken to review the status of juveniles now incarcerated." The Attorney General predicated this action upon his belief that the *Parker* decision would be abandoned if the issue were subjected to additional litigation, a belief based upon the impracticability and inhumanity of isolating delinquents from other inmates at Camp Hill. The Attorney General focused on the failure of the opinion in *Parker* to address the question of whether Camp Hill is a "special facility for children." Furthermore, the Attorney General saw no convincing rationale for concluding that Camp Hill was a "special facility," since the legislation creating Camp Hill indicated that it was to be used only for adults and not for delinquents.

The inevitable confrontation between the Attorney General and the courts occurred in *In re Haas*. In that case, a juvenile court committed a delinquent girl to the state correctional institution at Muncy. The Attorney General had advised the lower court that Muncy was an inappropriate place for the commitment of a delinquent, and her counsel filed a petition to vacate the commitment. The lower court, relying upon *Parker*, denied the child's petition and issued a rule against the superintendent at Muncy to show cause why he should not be held in contempt for failing to accept the child into the institution and for failing to provide a "separate facility" for her. These orders were appealed to the superior court by the child and the Attorney General.

On appeal, the superior court ruled that the lower court's reliance on *Parker* was misplaced. In the opinion of the court, several reasons precluded the extension of the ruling in *Parker* with respect to Camp Hill to Muncy. The court first referred to the fact that, "the institution at Camp Hill has long been recognized as a special place of confine-

---


164. *Id.* at 425, 339 A.2d at 99.

165. *Id.*

166. *Id.* at 424-25, 339 A.2d at 99-100.
ment and rehabilitation for younger male prisoners."\textsuperscript{167} Muncy, on
the other hand, was not a special facility for children: "Muncy, both
under the law and in actual practice, is a state penitentiary . . . . Its
title indicates that it is a State Correctional Institution."\textsuperscript{168}
The court further stated that the permissibility of housing both
adults and juveniles at Camp Hill rested upon three factors: "(1)
There was no other suitable facility available for the juvenile inmates.
(2) The joint use was an interim measure. (3) The juvenile inmates
could be kept separate from the adult inmates, and at the same time
receive a full recreational, academic, and vocational rehabilitative
program."\textsuperscript{169} The court found the first and third factors lacking in
the Haas case. With regard to the first factor, the court noted that,
since the trial court had not inquired into all of the other available
facilities, it could not be said "that the lower court considered all
possible facilities before deciding to commit the appellant to Muncy."\textsuperscript{170}
As for the third factor, the court concluded that there was not an
adequate separate and independent program for the child at Muncy.\textsuperscript{171}

It seems reasonable to conclude that the court in Haas was not
merely distinguishing Parker from the case before it, but was in fact
applying a different set of standards than it had applied in the earlier
case. Both Muncy and Camp Hill are "state correctional institutions"
and Muncy had held delinquent girls before Camp Hill existed. Further,
in Parker, the superior court did not require the lower court to explore
all other alternatives to Camp Hill; it did so in Haas. In the Haas
case the court did not mandate a separate program for adults and
juveniles, as it had in Parker.

The Haas court, in addition to applying a different standard,
may have been indicating its willingness to reconsider its decision in
Parker. In a footnote to the opinion, the court referred to the Attorney
General's letter in which he expressed doubt that Camp Hill was au-
thorized under the 1972 Act to receive juveniles,\textsuperscript{172} and the court gave
no indication that it disagreed with the position taken by the Attorney
General. That aside, the practical result of the court's decision in Haas
was to make Camp Hill the only institution in the commonwealth
which still held both adults and juveniles.

\textsuperscript{167} Id. at 426, 339 A.2d at 100.
\textsuperscript{168} Id. at 429, 339 A.2d at 101-02, quoting Commonwealth v. Stauffer, 214 Pa.
\textsuperscript{170} Id. at 431, 339 A.2d at 102 (footnote omitted).
\textsuperscript{171} Id. at 432, 339 A.2d at 103.
\textsuperscript{172} Id. at 101 n.2, 339 A.2d 428-29 n.2.
X. *In re Scott* ———

After the Attorney General’s letter of April 14, 1975, the Pennsylvania DPW initiated a program designed to find alternatives to the commitment of juveniles to Camp Hill. There were 467 children in Camp Hill in March of 1975, but this number began to diminish rapidly as alternative placements were found for the juveniles in Camp Hill. The courts, apparently in response to the Attorney General’s letter, made no new commitments to the institution, and by May of 1976, only fifty juveniles remained.

On May 25, 1976, a juvenile court made the first commitment to Camp Hill since August 15, 1975, in *In re Scott* ———. The juvenile, the Attorney General, and the superintendent of Camp Hill appealed. In this author’s judgment, a real possibility exists that the superior court will overrule its holding in *Parker* and conclude that juvenile commitments to Camp Hill are no longer permissible.

Should the court overrule *Parker*, the last institution in Pennsylvania holding both adult convicts and juvenile delinquents will no longer hold juveniles, and the goal of the House of Refuge, of separating juvenile delinquents from “the society and intercourse of old and experienced offenders,” will finally be realized 150 years after the creation of that institution.

---


