

## The New Patuxent Legislation

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It became apparent in the fall of 1976 that another Patuxent "ripper" bill would be introduced into the Maryland general assembly at its 1977 session. A similar bill had been passed in the House of Delegates in the 1976 session but had not succeeded in the Senate. Since then the Maryland Coalition Against Patuxent had increased its activities, and it was clear that the days of the Patuxent Institution might be coming to an end. At the same time a special Commission established by the Governor to investigate the management of dangerous and violent offenders in the state came to the conclusion that an institution similar to Patuxent was a necessity but that the current Patuxent model was in for difficult times with the legislature. As a result, the Chairman of the Commission, Mr. Alan Wilner, who was then also the Governor's assistant for legislation, presented a proposal to alter the Patuxent Institution. I had the privilege to serve as a consultant to this Commission and assisted in the redrafting of Mr. Wilner's original recommendation. The Board of Patuxent Institution also had an opportunity to criticize this proposal. Shortly thereafter the final report of the Contract Research Corporation was published. As a result of substantive differences, the Commission and the CRC staff met in conference. Amendments to the administration bill were prepared and submitted to the Legislature. I know of no further changes in the bill that eventually passed both houses.

The general idea underlying this "new" Patuxent legislation was to do away with the indeterminate sentence and to make Patuxent a treatment arm of the Department of Correction for those inmates who would volunteer for treatment. Associated with this change was the creation of a mandatory twenty-five year, non-parolable (except by Patuxent) sentence for third-time violent offenders. Thus the indeterminate sentence and the entire concept of "commitment" to Patuxent, with its repetitive court hearings, would be eliminated, but treatment in a special setting would be maintained.

Governor Marvin Mandel requested the introduction of this new Patuxent legislation to the 1977 general assembly of Maryland. This was accomplished in House of Delegates No. 907, which was amended slightly and then passed by both houses of the legislature in April, 1977, and signed into law by the Governor on May 26, 1977. This new law became effective July 1, 1977.

The introduction to House of Delegates No. 907 reads as follows: "An Act concerning aggressive and violent offenders for the purpose of providing new and different alternatives for dealing with aggressive and violent offenders; amending the definition of a crime of violence to include the use

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\*See the Introduction to this Patuxent issue.

of a handgun in the commission of a felony or other crime of violence; clarifying the definition of correctional institution as including Patuxent Institution and local or regional jails and detention centers; providing a minimum mandatory sentence for certain persons who have been convicted of three violent crimes; providing for the nonsuspension of such sentence and the conditions under which a person receiving it may be paroled; rewriting the provisions of law concerning defective delinquency and Patuxent Institution; defining terms; providing for Patuxent Institution, its governance and staff; prohibiting certain conflicts of interests; providing procedures for the referral and transfer of persons to Patuxent; providing for the rights, treatment and rehabilitation, release, and retransfer of persons transferred to Patuxent; providing for the assembling, review, confidentiality and dissemination of certain information; making persons committed to Patuxent subject to the Interstate Agreement on Detainers; providing certain transition provisions with respect to persons previously committed to Patuxent; correcting certain obsolete references to Executive units; and relating generally to aggressive and violent offenders.”

The three-time-loser status was added to the four-time-loser (life imprisonment) section as follows:

#### Article 27 – Crimes and Punishments

##### Paragraph 643B. Mandatory Sentences for Crimes of Violence.

(a) As used in this section, the term “crime of violence” means abduction; arson; kidnapping; manslaughter, except involuntary manslaughter; mayhem; murder; rape; robbery; sexual offense in the first degree; (and) sexual offense in the second degree; use of a handgun in the commission of a felony or other crime of violence; or an attempt to commit any of these (offences) offenses; and the term “correctional institution” includes Patuxent Institution and a local or regional jail or detention center.

(b) Any person who has served three separate terms of confinement in a correctional institution as a result of three separate convictions of any crime of violence shall be sentenced, on being convicted a fourth time of a crime of violence, to life imprisonment without the possibility of parole. Regardless of any other law to the contrary, the provisions of this section are mandatory.

(c) Any person who (1) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and (2) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years. Neither the sentence nor any part of it may be suspended, and the person shall not be eligible for parole except in accordance with the provisions of Article 31B, Section 11.

(d) If the state intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland rules for the indictment and trial of a subsequent offender.

There were further housekeeping changes in other sections of the Annotated Code, mostly involving the eliminations of the terms "defective delinquent" or "the Patuxent Institution" where they no longer applied.

The entire Patuxent law, Article 31B, was rewritten. The major changes were as follows.

1. The designation of an inmate (patient) committed to Patuxent was changed from a "defective delinquent" to "an eligible person."

2. Included among eligible persons were those who had received the mandatory twenty-five-year non-parolable three-time-loser sentence. (Their only hope for parole would be *via* the Board of Review of Patuxent Institution.)

3. Others eligible would include any individual believed to be an "eligible person" who had at least three years remaining on his current sentence. (Included in this concept was the stipulation that any inmate who was evaluated by Patuxent and felt to be an eligible person but who was unwilling to participate in the treatment program and who was, therefore, not included, would not be eligible for a reevaluation at his request for three years.)

4. Criteria for selection of patients were changed from those of "safety to the public and treatment where possible" to those stated in the new Article 31B 1. (g): the patient should be one who "(3) . . . is likely to respond favorably to the program and services provided at Patuxent Institution, and (4) can be better rehabilitated through those programs and services than by any other incarceration."

5. The purpose of Patuxent is now, as stated in the new Article 31B 2. (b): ". . . to provide efficient and adequate programs and services for the treatment and rehabilitation of eligible persons. This shall include a range of program alternatives indicated by the current state of knowledge to be appropriate and effective for the population being served. As an integral part of the program an effective research and development effort should be established and maintained to evaluate and recommend improvements on an on-going basis."

6. The Board of Patuxent, which under the original legislation had involved a five-member policy-making Board and a separate Advisory Board, had already been changed in 1975 to a combination of the two Boards functioning as an advisory Board. This arrangement was continued with the Board increased to 17 members.

7. Individual treatment plans are required with regular review. Article 31B 9 (c): "An individualized written treatment plan including treatment goals shall be prepared, filed with the Director, and implemented for each eligible person. The treatment plan and the inmate's progress under it shall be reviewed by the Director or an Associate Director for treatment at appropriate intervals but at least every six months."

8. Since the indeterminate sentence was totally deleted, a method needed to be established for the release of individuals at the expiration of their sentences. Such release is now automatic.

9. It was also necessary to establish a means of paroling individuals

by the Patuxent Board of Review (which in essence serves as a parole board).

10. As a final reward to successfully rehabilitated patients, a procedure has been established to suspend or vacate any remaining sentence for those who have successfully completed three years on parole from Patuxent.

11. There is also a procedure established for the orderly disposition of those individuals who are currently at Patuxent under the old law: those whose terminate sentences have expired will be discharged; those who have remaining sentences will be dealt with as described in Section 16 (Transition Provisions).

I have omitted some of the housekeeping details included in HB 907; however, I have below presented the full revision of Article 31B. My personal feelings are that this revision offers a good alternative to the previous Patuxent Institution law. It eliminates many of the issues that had caused problems both in administration and in the area of human rights. I am sure that new problems will be created; but given these new goals and procedures, we hope to see the development of new alternative treatment programs with increasing success for the rehabilitation of the dangerous violent offender.