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CRITICAL ISSUES IN ADULT PROBATION

TECHNICAL ISSUE PAPER ON LEGAL ISSUES IN ADULT PROBATION

REPORT NO.7

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CRITICAL ISSUES IN ADULT PROBATION

TECHNICAL ISSUE PAPER

ON

LEGAL ISSUES IN PROBATION

REPORT #7

By

Institute for Advanced Studies in Justice

The American University

Washington College of Law

Washington, D.C.

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For

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Preface

This Technical Issue Paper, prepared by the Institute for Advanced Studies in Justice, addresses the legal issues involved in adult probation. The material in this paper is divided into four sections:

Section 1 focuses on the development of the laws of probation. Attention is directed to the common law origins of probation, and the statutory evolution of probation in the states of Massachusetts, California, Ohio, and Illinois, and the federal system.

Section 2 is a synoptical compilation of probation laws which summarizes in a general way the statutes pertaining to the fifty states, the District of Columbia, and the United States, and the model probation statutes.

Section 3 presents an analysis of statutory and case law relating to various issues in adult probation. The purpose of this analysis is to provide probation administrators with a legal analytical framework within which to assess the relative attributes of the laws governing probation administration within any given state or jurisdiction, in comparison with other jurisdictions and the model codes and standards.

Section 4 provides bibliographies of legal articles relating to various aspects of adult probation, annotated leading cases on issues in adult probation, and model standards and legislation regarding adult probation.

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SECTION 1

DEVELOPMENT OF THE LAW OF PROBATION

DEVELOPMENT OF THE LAW OF PROBATION

> "The indictment against Jerusha Chase was found at the January term of this court, 1830. She pleaded guilty to the same, and sentence would have been pronounced at that time, but upon the application of her friends, and with the consent of the attorney of the commonwealth, she was permitted, upon her recognizance for her appearance in this court, whenever she should be called for, to go at large. It has been sometimes been practised in this court, in cases of peculiar interest, and in the hope that the party would avoid the commission of any offense afterwards, to discharge him on a recognizance of this description. The effect is, that no sentence will ever be announced against him, if he shall behave himself well afterwards, and avoid any further violation of the law".
> Commonwealth v Chase (Boston Mun. Ct. 1831)[1]

I. Introduction

A. Focus of Study

This opinion by Judge Peter Oxenbridge Thatcher, judge of the Municipal Court in Boston, is one of the earliest cases recorded that demonstrates the judicial desire for leniency in certain criminal cases which led to the development of probation as we know it today. The Massachusetts Legislature recognized the legitimacy of this judicial alternative to incarceration by passing the first probation law in the U.S. during its 1878 session.[2] The Act provided for the appointment of a salaried probation officer for the courts of Suffolk County and prescribed his duties.

Vermont followed Massachusetts by passing a probation law in 1898.[3] Rhode Island was the third state to enact a probation statute. By 1910, nineteen states had passed laws creating adult and juvenile probation. By 1921, 28 states had such laws for adults and 46 had juvenile probation laws.[4] Today, all of the states and the federal system have an adult probation law.[5]

Why was this new method of correctional treatment accepted so rapidly by the states and the federal system? This analysis will focus on the influences that led to the enactment of probation laws in four states - Massachusetts, Ohio, California, and Illinois - and the federal system. Reasons for the passage of their different laws will be explored.

The evolution of the probation statutes in each of these jurisdictions will also be traced. The influence of the judiciary and other groups, such as probation officer associations, will be highlighted. Particular attention will be focused on statutory innovations in the field of probation - for example, shock probation in Ohio and probation subsidy in California.

This case study approach to the development of the law of probation illuminates some of the most important issues that have developed in probation law. Who should control the administration of probation - the judiciary or the executive branch? Should probation be administered locally or on a state-wide basis? Who should be the innovators in probation - the courts or the legislature? These issues and others will be examined.

Before proceeding to an analysis of the individual states and the federal system, the common law origins of probation will be outlined. Judicial decisions on the power of the courts to suspend sentence indefinitely were the forerunners of modern probation law.

B. The Common Law Origins of Probation

1. "Benefit of Clergy"

When English law punished felonies by death, the doctrine of "benefit of clergy" was fashioned to afford escape. In the early Middle Ages, ordained clergy accused of a crime could avoid trial in the King's Court by claiming the privilege.[6] Trial by a church court meant escaping the death penalty and being sentenced to a mild form of punishment.

The "benefit of clergy" was extended by English statutes to peers and to commoners who could establish themselves as "clerks" by proving that they could read.[7] It eventually became a fiction; the clerk of court reported _legit_ ("he reads") although the accused could not read, and, unless the judge considered the circumstances to be aggravated, the punishment was avoided.[8] The American colonies adopted the practice of "benefit of clergy". The British soldiers convicted after the Boston Massacre escaped the death penalty through claiming the privilege.[9]

The uneven application of "benefit of clergy" led to its abolition in several states after the adoption of the Constitution.[10] Massachusetts abolished it by statute in 1784 and the U.S. Congress made it inapplicable to crimes punishable by death in 1790.[11] Its importance for the development of the law of probation was twofold. "Benefit of clergy" recognized that a delay of sentence with opportunity to argue for a lesser punishment was valid under the law. The intercession of a bishop's clerk advising the court as to the right of the accused to claim the privilege foreshadowed the intervention of the probation officer in the sentencing process.[12]

2. Judicial Reprieve

Since appeals or new trials were not permitted under the common law, a judicial practice known as reprieve was developed to avoid the execution of sentence.[13] The reprieve was a suspension of judgment or its execution to allow the defendant a chance to apply to the crown for a conditional or absolute pardon. Blackstone, in his Commentaries, made it clear that the reprieve was only of a temporary power.[14] However, its value to the development of probation law is important in that it provided the common law basis for the judicial right to grant suspended sentences.

3. Recognizance

This practice evolved in England in the fourteenth century. It began as a measure of preventive justice, involving a pledge by a person not yet convicted, but thought likely to commit a crime, that he would "keep the peace."[15] Sureties or bail were usually required, and the person who stood surety had the power to return the offender to court if he committed an offense. This method of assuring good behavior was extended to persons charged with or convicted of misdemeanors.[16] Instances of its practice can be found in the records of the American colonies.[17]

II. Massachusetts: The Evolution of the First Statutory System of Probation

A. Judicial Recognizance: The First Step Towards a Probation System

After the abandonment of "benefit of clergy", judges in Massachusetts developed doctrines from the law of recognizance to alleviate the lot of convicted offenders during the "bloody period of criminal administration."[18] Judge Thatcher, whose opinion was quoted in the introduction to this study, was a leader in this field. Influenced by the ideas of penal reformers such as Beccaria, the English Lord Romilly, and Bentham, he applied the law of recognizance repeatedly to avoid imprisonment for minor offenders.[19] His famous decision in the _Chase_ case, approving of the practice of recognizance, was upheld by the Massachusetts Supreme Judicial Court, although the Chief Justice's opinion has been lost to history.[20]

Judge Thatcher's opinion in the _Chase_ case was significant in that it also explained the unique Massachusetts procedure for suspending sentence under recognizance after a finding of guilt. This procedure applied in Massachusetts courts when by reason of extenuating circumstances or sufficient reason, justice did not require an immediate sentence. Instead, with the consent of the defendant and the prosecutor and under conditions which the court imposed, the indictment could be laid "on file."[21] This is the first formulation of the theory that courts have an inherent power to suspend sentence.

When the commissions entrusted with the task of recommending the first general revision of Massachusetts statutes were formed, they extended the power to suspend sentence by recognizance to the lower courts in Massachusetts - the magistrates' courts. They explained their reasoning:

> "When such sureties can be obtained, it can hardly fail to operate as a powerful check upon the conduct of the party, who is thus put upon his good behavior. And if his character and habits are such that no one will consent to be sponsor for him, it must forcibly impress on his mind the value of a good character ... "[22]

This evidences a recognition on the part of the commissioners that more than mercy was involved in recognizance. Years of practice had proved that it could bear fruit in the permanent reclamation of offenders. This law expanding recognizance was passed in 1836.[23]

Additional statutes regulating the use of recognizance were passed in 1865 and 1869. None of these laws appear to have been considered as creating a power of release for the judiciary, but simply regulating its exercise. The Massachusetts Supreme Court confirmed this in their case of Commonwealth v Dowdican's Bail.[24] The court held that the practice of "filing" a case was legitimate, and that a defendant who violated the conditions of his release could be summoned into court for imposition of his sentence. The justice found the basis for this ruling in "common practice in this Commonwealth" recognized in the 1865 and 1869 statutes.

The enlightened legal thought of the Boston judges received further support from the help of a Boston shoemaker - John Augustus. Beginning in 1841, he asked the judges of the Boston police court to allow him to stand "bail" under the recognizance practice for offenders which he believed he could rehabilitate. Through his efforts, more than two thousand adult and juvenile offenders were released on recognizance.[25] Through his efforts and those of other volunteers, the utility of recognizance in rehabilitating offenders was proved.

B. The First Statute in 1878

In addition to the judicial practice of recognizance and volunteer efforts in implementing it, the legislature had begun to recognize the validities of alternatives to incarceration. In 1869 an act was passed that provided for notice to be sent to the State Board of Charities whenever a child was to be committed to an institution. The State Board noted in its report of 1878 that it had received notice in 17,000 complaints against juveniles and had recorded that some 4,400 juveniles had been successfully placed on "probation."[26]

The term "probation" had been used by John Augustus to describe the court release and supervision of an offender. It was derived from theological use in the Massachusetts area. The word was used to connote a trial period when the offender had been enjoined to commit no evil.[27]

The public in Massachusetts was ready to accept probation. John Augustus and the State Board of Charities had shown the value of supervised efforts at offender rehabilitation. The power of the courts to release offenders under "filing" and recognizance was established. It remained for the legislature to establish a system.

The first probation law was passed by the legislature and enacted by the governor in 1878.[28] The bill was passed largely through the efforts of an Irish immigrant from Boston, Senator Michael J. Flatley. Elected in 1877, he was assigned to the committee on prisons. He opposed the cruelties and hardships of prisons and introduced bills to better the treatment of inmates. In arguing for the probation bill which he introduced in the senate, he said that he knew many who personally would respond favorably to the supervision provided in the measure.[29] It was passed

by both houses with one small amendment in the senate to clarify the consequences of probation failure. Nothing in the record discloses opposition or even much discussion of the law.[30]

The Act required the mayor of Boston to appoint from the police force or the citizens at large a suitable person to investigate persons tried in the city's courts and to recommend probation for persons amenable to reform.[31] This person was charged with visiting offenders placed on probation and rendering them assistance. He was under the general control of the chief of police and had the power to revoke probation and bring the offender before the court for imposition of sentence.

This probation law was the first passed in the United States. It is notable for its exclusions as well as its inclusions. First, it did not define probation. Secondly, it created no new power in the courts to place offenders on probation nor did it limit any existing power. It did not prohibit the use of probation by limitations such as age, past offenses, or other factors.

C. Statutory Evolution of Probation in Massachusetts: The Development of a Statewide System Administered at the Local Level

The experiment with probation was extended further by the legislature in 1880 when it enacted a law permitting all cities and towns in the state to appoint probation officers.[32] The act gave the power of appointment to mayors and selectmen of cities and towns. The same duties were required of these officers as those delegated to the Boston officer. The passage of the act resulted from a favorable evaluation of the probation experiment in Boston by the Massachusetts State Board of Commissioners of Prisons. Their report, recommending a statewide system of probation officers, was presented to the legislature with the bill that resulted in the 1880 Act.[33]

Few towns or cities exercised this power. A lobbying effort by the Prison Association resulted in a further act which was passed in 1891.[34] The new act, which was drafted by the Secretary of the Board of Commissioners of Prisons, transferred the power to appoint officers from municipal authorities to the judge in each municipal, district, and police court. It also made the appointment of one probation officer for each court mandatory.[35] The new act also retained the provision of the 1880 Act requiring probation officers to report monthly to the Commissioners of Prisons. The beginnings of a statewide system of probation were completed in 1898 when the legislature authorized the superior courts (trial courts of general jurisdiction) to appoint probation officers.[36]

These statutory enactments again failed to give the court any extension in their power to grant probation. But they did result in the transfer of the power to appoint officers from the executive branch of local government to the judiciary. The first legislative development which affected the power of the courts to grant probation occurred in 1900.

A new legislative act provided that the lower courts might first impose sentence and then suspend its execution for a term of probation.[37] However, the legislature did not interfere with the time-honored practice of suspending the imposition of sentence by "filing."

The next major legislative development occurred in 1908 with the establishment of a coordinating agency to establish standards and bring about cooperation among the scores of courts and their probation officers. The 1908 Act called for a Commission on Probation to be appointed by the Chief Justice of the Superior Court.[38] The Commission was to prescribe the form of all reports from probation officers; to make rules for the registration of reports and for exchange of information between the courts; to provide for such organization, coordination, and cooperation of the probation officers as might seem advisable; and to promote coordination in probation work. Shortly after it was established, the Commission published a probation manual with statutes related to probation practice.[39] It later established a central records file on all criminal prosecutions in the state for the use of the various courts.[40]

The next great legislative milestone was the act of 1956 which provided for a degree of central regulation over what is essentially a locally administered service within the judicial branch of government. Following a 1955 riot in the old Charlestown State Prison, the governor appointed a committee of nationally known penologists to study and make recommendations covering all phases of correction in the commonwealth. As a result of the committee's recommendations, the legislature enacted Chapter 731, Massachusetts Acts of 1956, with regard to the probation service.

The successor to the Probation Commission, the Board of Probation, was abolished. In its place was established a Commission on Probation made

up of the Chief Justice of the Superior Court, the Chief Justice of the Boston Municipal Court, the Chief Justice of the District Courts, and two members appointed by the Chief Justice of the Supreme Judicial Court. The Committee appoints a Commissioner of Probation for a six year term. The Committee, in consultation with the Commissioner establishes standards for the appointment of probation officers, hears appeals in the qualification of probation officers, fixes salary schedules for probation officers, and may,upon the recommendation of the Commissioner, recommend disciplinary action against officers. No probation officer may be removed, demoted, or discharged by a court without a hearing before the Committee.

The Commissioner of Probation has executive control and supervision of the probation service under the 1956 Act. He approves all appointments of probation officers as meeting the Committee's standards, supervises the probation work in all courts, establishes standards for probation work, and provides consultation services to the various probation departments. The Commissioner is also authorized to conduct training for probation personnel and to conduct research studies related to probation.

The new Committee on Probation established minimum standards for probation officer qualifications in 1956 and a salary scale in 1957.[41] These have been updated since then.

D. Summary

Legislative enactment of probation law in Massachusetts followed judicial innovations. The legislature never seriously limited the claimed power of the courts to grant probation. After a decade of executive control of the appointment and administrative power in probation, this function was given to the courts who had started probation.

The only limitations which the legislature has placed on the courts are restrictions regarding the type of offender who can be placed on probation. In 1926, the legislature excluded offenders who were convicted of a previous felony from consideration for probation.[42] Subsequently, in 1934 and 1939, the legislature prohibited a sentence of probation for persons sentenced to death or life imprisonment, commission of a felony while armed, or a second conviction while driving under the influence.[43] Persons convicted of illegal voting or a second narcotic offense were later excluded by the legislature from probation.[44]

The current proposed criminal code for Massachusetts would make several significant changes in probation. Proposed Section One would expressly provide statutory authority for suspending the imposition of sentence.[45] This would be the first statutory grant of this power to the courts, although these courts have long exercised it; the statute also limits the use of probation to the provisions contained in the chapter.

In accordance with provisions outlined in the American Law Institute's Model Penal Code, several other changes are contemplated by the proposed criminal code. These include a provision for split

sentences of imprisonment and probation, standards to guide judge's discretion in sentencing, guidelines on conditions imposed during the probation term, and limits on the length of probation.[46] These proposed additions would significantly change the content of the law by legislative fiat.

III. THE FEDERAL PROBATION SYSTEM: THE DEVELOPMENT OF A NATIONAL PROBATION SYSTEM

The Massachusetts legislature was followed by a number of other states in the establishment of a probation system. But not until 1925, when 30 states had already passed probation laws for adults, was a Federal probation law enacted. Prior to that, federal judges had developed methods similar to that of state judges to alleviate the rigid harshness of the criminal law. Federal judges are known to have suspended sentences in Massachusetts, Michigan, New Jersey, Pennsylvania, the Southern District of New York, Virginia, and West Virginia.[47] In at least sixty districts in 39 states, this practice was followed until 1916.

A. Ex Parte U.S.: The Killits Decision

The power of the federal courts to suspend sentence encountered increasing disapproval from the Department of Justice. Attorney General George Wickersham was the exception. In 1909 he recommended enactment of a suspension of sentence law and in 1912 supported in principle a probation law before a Senate committee.[48]

The first bills for a federal probation law were introduced in 1909. In that year the New York Probation Commission prepared a bill for introduction by Senator Robert L. Owen of Oklahoma. It provided for suspension of sentence and probation for any federal offense except treason, murder, rape or kidnaping and for probation officers to be appointed by each judge, with compensation not to exceed $5 per diem.[49] The bill had little success; although it was introduced in the Senate and the House during succeeding sessions, no action was taken.

Part of the problem in passing a federal probation law lay in opposition from the Department of Justice. The power to suspend sentence, established in Massachusetts and other state courts, was criticized as an infringement of the executive pardoning power by various Attorneys General.[50] In 1915, Attorney General T.W. Gregory initiated a campaign against the purported power of federal judges to suspend sentence. The United States Attorneys were instructed to oppose suspension of sentences in their various districts.

The issue was resolved by the Supreme Court in Ex Parte United States - the Killits decision.[51] Judge John M. Killits of the Northern District of Ohio had suspended, "during the good behavior of the defendant," the execution of a sentence of five years. The defendant, a young clerk who had embezzled funds from Toledo bank, had made full restitution for his offense and the bank did not desire to prosecute. The U.S. Attorney sought a writ of mandamus with the Supreme Court, asking that the judgement be vacated as "beyond the powers of the court."

Judge Killits, as respondent, filed his answer on October 14, 1915. He argued that the power to suspend sentence had been exercised "from time out of mind" by federal judges. This power, he suggested, had been accepted by the Department of Justice for years. In the absence of a federal probation law, this provided the only amelioration to an arbitary system of criminal justice. His arguments, suggesting that a power to suspend sentence arose from practice, strongly resembles those of Judge Thatcher in the Boston Municipal Court.

The Supreme Court resolved the issue on December 4, 1916. The court ruled that the courts had no inherent power to suspend sentence indefinitely and "that the right ... to continue a practice which is

inconsistent with the Constitution since its exercise in the very nature of things amounts to a refusal by the judicial power to perform a duty resting upon it and, as a consequence thereof, to an interference with both the legislative and executive authority as fixed by the Constitution."[52]

The reasoning of the Massachusetts courts and other state courts finding a basis for the power to suspend sentence and grant probation was found unsound. The Supreme Court rejected the finding in Commonwealth v. Dowdican by the Massachusetts Supreme Court. "Laying a case on file," it was reasoned, had no basis in the common law; only the legislative recognition of the practice sanctioned its use.[53] The ruling was limited to the federal court system. However, the right of state courts to suspend sentence remains a major issue. In 1971, the Supreme Court of Idaho found not only that the courts have an inherent power to suspend sentence; the legislative may not deprive the courts of that power.[54]

The Killits decision had immediate reprecussions upon the federal system. Nearly 2,000 persons were at large on judicial suspended sentences in 1916.[55] President Wilson signed two proclamations granting amnesty and pardon to most of these offenders in 1917. The struggle for federal probation legislation was renewed.

B. The First Federal Probation Law: The Conflict Between Justice and the National Probation Association

When the Killits case was decided, several bills on probation were pending before the House Judiciary Committee. At the request of the Committee, Congressman Carl Hayden of Arizona introduced a compromise bill. It provided for suspended sentences and probation, but had no provisions regarding probation officers. It was passed by both the House and Senate on February 28, 1917. President Wilson, on

the advice of Attorney General Gregory, allowed the bill to die by "pocket veto."[56]

This defeat of the probation bill was followed by the American entry into World War I. Congress was preoccupied with wartime measures, including prohibition. When this amendment was passed and became effective in 1920, great numbers of new offenders were brought into the district courts. Congressman Andrew J. Volstead of Minnesota, chairman of the Judiciary Committee, was opposed to any bill which would interfere with the Prohibition Law which he had authored.

In 1920, Congressman Augustine Lonergan of Connecticut introduced a new bill on probation.[57] It provided for the suspension of sentences and probation and also authorized the appointment of probation officers through competitive Civil Service examinations. Senator Calder of New York introduced a similar bill in the same year. A small committee was organized by the National Probation Association to support these bills.[58]

On March 8, 1920, a group of representatives from the National Probation Association met with one of the major opponents of the bill - Attorney General Palmer. Edwin J. Cooley, chief probation officer of the municipal courts of New York City, Charles Chute, President of the National Probation Association, probation officers from Washington, D.C., and others argued for a federal probation law. Their persuasiveness proved effective; on the next day, the Attorney General announced that he would use all of his influence to pass a federal probation law.[59]

However, strong opposition was met in the House Judiciary Committee. Congressman Longeran argued strongly for his bill, presenting letters of support from federal judges. Congressman Volstead and his supporters remained adamnant, and the bill was defeated. Three other

bills introduced in the House and two in the Senate on federal probation met the same fate with this Congress; all died in committee.[60]

After the expiration of Congressman Volstead's long term in 1923, there was renewed activity for the passage of a federal probation act. Charles Chute, the president of the National Probation Association, convinced Congressman George S. Graham of Pennsylvania, the new chairman of the House Judiciary Committee, to sponsor a bill providing for one salaried probation officer for each judge (H.R. 5195). Senator Royal S. Copeland of New York sponsored a similar bill in the Senate. The National Probation Association argued forcefully in hearings before both Judiciary committees in favor of the bill. Supporting letters from judges and U.S. attorneys were introduced before the committees.[61]

The Department of Justice succeeded Congressman Volstead as the main opponent of a federal probation law. Attorney General Harry Daugherty was advised by his staff assistants to strongly oppose probation. One of them wrote a memorandum in 1924 characterizing probation as "part of a wave of maudlin rot of misplaced sympathy for criminals that is going over the country."[62] On March 5, 1924, Attorney General Daugherty replied to Congressman Graham who had asked for comments on his bill. He opposed the bill on the grounds that it would protect the criminal class and encourage lawlessness. Daugherty also argued that since each federal judge would insist upon a salaried probation officer, the bill would be too costly for the federal government to bear.[63]

Despite opposition from the Justice Department, the bill was received favorably. Many states had passed probation laws by this date, and there was an understanding of the value of probation as a form of individualized treatment. The federal prison system was unable to handle the high number

of commitments.[64] The economic advantages of probation, in its avoidance of imprisonment, were becoming apparent to the Congress.

The bills introduced by Representative Graham and Senator Copeland were reported favorably, unamended. On May 24, 1924, Senator Copeland's bill was passed unanimously on its third reading. In the House, opposition to the Graham bill was bitter. It was attacked by Congressman L. Blanton of Texas. He led the southern "drys" in claiming that "all the wets were behind the bill."[65] He and other prohibition supporters argued that the bill would allow judges to place bootleggers on probation.

The National Probation Association put forth a major effort to aid the passage of the bill. The House leaders, prohibition lobbyists, and even President Coolidge were visited by Charles Chute and other members supporting the National Probation Association in its stand on the bill.[66] A national telegram and letter campaign in support of the bill was organized by the Association.

Despite continued opposition from the "drys", the bill was passed on its sixth introduction to the House. Congressman Blanton, who led the fight against the bill, was deserted by several of the other "dry" congressmen who had been convinced of the need for probation. The bill was then sent to President Coolidge. As a former governor of Massachusetts, he was familiar with the functioning of probation. Upon the advice of his Acting Attorney General, he signed the first federal probation law on March 4, 1925.[67] Approximately 34 bills were introduced between 1909 and 1925 to establish a federal probation system.

The Act (Chapter 521, 43 Statutes at Large 1260, 1261) gave federal judges the power to suspend the imposition or execution of sentence and to

place the offender on probation under specified conditions for any period up to five years. Fines, restitution, or reparation could be made a condition of probation. Each judge was allowed to appoint one salaried probation officer and other officers to serve without compensation. A civil service examination was required of probation officers. The Attorney General was put in charge of administering the federal probation system.

C. From Civil Service to Judicial Appointment - Judicial Reaction to the Act

After passage of the Act, the Civil Service Commission developed standards for an open competitive examination for probation officers. In 1927, two years after enactment of the Federal Probation Act, the first salaried probation officer was appointed. Eight probation officers were appointed by 1929.[68]

Dissatisfaction among the federal judges resulted in a major change in the Federal Probation Act. In 1928, an attempt was made to amend the Act by doing away with the civil service provisions and giving judges the power to appoint more than one probation officer. This first met defeat, but on June 6, 1930, President Hoover signed an act amending the Federal Probation Law, 46 U.S. Statutes at Large 503-4. The amended act removed the appointment of federal probation officers from the civil service and allowed the court to hire probation officers.[69] More than one salaried probation officer per judge was allowed under the revised Act. General administrative control of the probation service, however, was left under the supervision of the Attorney General. He was allowed to investigate the work of probation officers, to make recommendations to the court with regard to their work, to collect statistical information on their work, and to formulate standards regarding federal probation. The Bureau of Prisons

was designated by the Attorney General as the agency to fulfill these functions.

The extent of judicial opposition to the civil service concept for appointing probation officers was revealed in a 1933 survey. 133 judges were polled regarding salaried probation officers. Of the 90 responding, seventy-five percent were opposed to civil service appointment.[70]

As in Massachusetts, the judiciary instituted practices to temper the severity of the criminal law that led to probation. After the Killits decision, the National Probation Association led the fight to return the power to suspend sentence and place offenders on probation to the federal judges. After the return of this power, the federal judges fought to control the administration of the probation system. As had occurred in Massachusetts, the power to appoint officers for the system was divested from the executive branch and given to the judges.

The next important legislative development occurred in 1939. On August 7, President Roosevelt signed a bill creating the Administrative Office of the U.S. Courts. Probation officers, United States Attorneys, and marshalls were excluded from the Act and remained under the administrative control of the Attorney General. The first Director of the Administrative Office, Henry Chandler, brought the exclusion of probation officers to the attention of Chief Justice Hughes. He supported the Director in his view that probation officers, being appointed by the courts and subject to their direction, were a part of the judicial establishment and should come under the direction of the Administrative Office.[71] The Judicial Conference of the U.S. adopted this position.

When legislative steps were taken to transfer the appropriation for the probation service to the Administrative Office, objections were raised

by the House Appropriations Committee. It was believed that the transfer would lead to a slackening in appointment qualifications for probation officers and neglect of the supervision of parolees. The Committee agreed to the transfer reluctantly warning, in the words of Congressman Louis C. Rabant:

> "If proper attention is not given by probation officers to the matter of paroled convicts ... you may expect a move by me and other members of this committee to place this probation service back under the Department of Justice." [72]

On July 1, 1940, general supervision of the probation service came under the Administrative Office. A chief and assistant chief of probation were appointed by the Director of the Administrative Office. The last vestige of executive control over the probation service was gone.

The Department of Justice acquiesced to this transfer of power for nearly 25 years. But in 1965, Justice had a bill introduced to transfer the Federal Probation system back to the control of the executive branch.[73] The Federal Probation Officers' Association and the Judicial Conference of the U.S. opposed the bill, and it and similar bills introduced in subsequent sessions died in committee.[74]

D. Development of the Federal Probation Service

In 1932, 63 federal probation officers had 25,213 offenders under supervision.[75] Today, 1663 officers supervise 64,135 offenders.[76] The growth in number of officers and persons under supervision resulted from various legislative enactments expanding the authority of probation officers and the sentencing alternatives of federal judges.

As a result of the 1930 Act, the probation officers had at the request of the Attorney General taken over the task of supervising parolees.[77] In 1932, through an amendment to the Parole Act, the probation officers were

charged with supervising prisoners released prior to the expiration of their maximum term by earned "good time" - mandatory releases. Military parolees were added to the supervision caseload at the request of the Army and Air Force in 1946. The Federal Juvenile Delinquency Act added juvenile offenders to the caseload in 1938.

In the early 1950's, the Youth Corrections Act (18 USC 5005-5026) required special supervision progress reports on youthful and young adult offenders sentenced under its provision. In 1958, an indeterminate sentencing law for adults was passed (18 USC 5208-5209); it provided for the study and observation of adult offenders by the Bureau of Prisons. Courts turned to probation officers for assistance in evaluation and selection of offenders for such study.

The Criminal Justice Act (1964) and the Prisoner Rehabilitation Act (1965) involved probation officers in verifying home furlough plans, evaluating work release proposals and cooperating with the Bureau of Prisons in these community programs.[78] The Narcotic Addict Rehabilitation Act of 1966 gave probation officers the responsibility for aftercare of released addicts. The Speedy Trial Act of 1974 (18 USC 3152 et seq.) created ten pretrial service agencies operated by the federal probation service. The general functions of these agencies are to make bail recommendations, supervise persons on bail and assist them with employment, medical and other services designed to reduce crime on bail.[79] An act currently being debated by the Congress would establish a nationwide pretrial diversion program for federal offenders supervised by the probation service.[80]

Administratively, the Judicial Conference Committee on the Administration of the Probation System has promulgated standards for the

probation system - in the areas of probation officer appointment qualifications, the format of presentence investigations, and others. The Probation Division of the Administrative Office has worked for greater coordination throughout the system, the development of standardized practices, uniform policies and procedures, and the need for a system wide conciousness.[81] However, it is the individual federal judges who administer the federal probation system in all important aspects.

The Government Accounting Office, in a recent survey of supervision, critized the Administrative Office for not establishing goals and standards for supervision and rehabilitation. Part of the reason for this failure was attributed to the fact that, "operationally the federal probation system is a federation of 91 different offices serving at the pleasure of the courts and independent individual interpretation of how best things should be done is the common solution."[82]

E. Summary

The federal courts, following the lead of state courts, developed and adminstered the sentencing alternative of the suspended sentence. Opposition from the Department of Justice resulted in the famous and still controversial Killits decision denying the federal judges their claimed common law power. This required the Congress to take the initiative for the establishment of a federal probation service.

The long legislative battle to pass a federal probation act culminated in the start of a small service under the authority of the executive branch. As in Massachusetts, the judges opposed executive interference in the system which they had developed. As a result, absolute administrative authority over the probation system was given to the federal

judges. No act of Congress since 1940 has been passed to diminish this authority and establish a nationwide system for administering the probation service.

IV. California: Developments in a Locally Administered System

A. From Judicial Practice to Statute: 1897 - 1923

In 1897, the California Supreme Court in the case of People v. Patrick[83] referred approvingly to the practice of state judges in suspending sentence for selected offenders. The state Supreme Court stated that a court could impose sentence when its imposition had been deferred for various reasons. A state appellate court ruled more directly on this issue in 1908, when it held that the state judges had an inherent power to stay execution of a sentence, unless otherwise provided by law.[84] Following the lead of Massachusetts and other state courts, the California judges were developing a common law form of probation.

In 1872, the California legislature passed a law authorizing criminal courts summarily to hear "circumstances which may be properly taken into view either in aggravation or mitigation of the punishment," in their discretion, upon oral suggestion of either party.[85] The precedent for a probation law was established through the use of this statute. In 1903, following the model of the New York State Law passed in 1901, the state legislature authorized the courts to suspend the imposition of sentence in the case of any person over 16, if there were mitigating circumstances or if the interests of justice would be served.[86] The judges could appoint an officer of a charity organization or any citizen as an unpaid probation officer.

The law was amended in 1905 to allow release on probation only after investigation and written report by a probation officer. The amendment also provided that judges of the superior court of a county were to appoint "seven discreet citizens of good moral character" to act as a probation committee. They in turn would appoint probation officers subject to the approval of the judges.[87] This was the beginning of a county system for the administration of probation that continues to today.

In 1909, the restriction of probation to cases investigated by probation officers was modified to allow release on probation if circumstances in mitigation were produced.[88] A 1911 amendment to the law allowed the grant of probation not only upon the oral suggestion of either party but also on the court's own motion. The court was allowed to suspend either suspension or execution of sentences in all cases.[89] Minor amendments were made between 1913 and 1917.

In 1917, the office of adult probation officer was created in a selected group of counties. The officers were nominated by the probation board and appointed by a majority of the judges of the county.[90] All counties received authorizations for adult probation officers in 1921.[91] Juvenile court probation officers already appointed under the juvenile court act were designated _ex officio_ adult probation officers except in the larger counties. Full-time adult probation officers were appointed in these larger counties.

The higher courts in California recognized this exercise of legislative power, pre-empting judicial innovation in the field of probation. In _Ex Parte Slattery_,[92] the California Supreme Court indicated that although courts had a power to suspend sentence, the legislature had

prescribed the form and method of exercising that power through the probation statute. Subsequent decisions by the California Courts of Appeal referred to the statute "superseding" the inherent power of the courts to suspend sentence[93] and stated that the authority of the courts to grant probation is "wholly statutory."[94] These decisions fell in line with the legal theory advanced in Killits - that the right to suspend sentence and grant probation must be given to the courts by the legislature.

B. The Narrowing of Judicial Discretion in the Exercise of Probation: 1923 - 1935

Major amendments occured in 1923. Probation was excepted as a disposition for those convicted of murder, robbery, burglary, or rape by force and violence, where a deadly weapon was used or great bodily harm inflicted.[95] Repeat offenders who had previously been convicted of any of these offenses or public officials guilty of extortion or embezzlement were excluded from probation.

Amendments in 1927 and 1929 made further changes regarding eligibility for probation. The statute was changed in 1931 to return to the form of law passed in 1923. Conviction for any offense enumerated in the 1923 Act or receiving stolen goods, theft, kidnapping, mayhem, escape from prision while armed, excluded probation.[96] Persons armed with a deadly weapon at the time of any offense or at arrest were excluded from probation. Persons previously convicted of any felony were ineligible for probation.[97] The legislature removed from the courts the large amount of discretion for using probation as a sentencing alternative that had been given in the 1903 Act.

The legislature added to the list of excluded offenses by prohibiting probation for any offenders convicted of selling or possessing

with the intent to sell heroin in 1975.[98] The strict, exclusionary criteria enacted in the 1920's and 1930's remain in force today, with some modifications (eg. probation may not be granted to an offender with two prior felony convictions within 10 years, or one prior felony plus an instant conviction of a specified serious nature.)

Administratively, California remained a county system of probation. Judges appointed probation officers upon the advice of the county probation committee. A major legislative innovation affecting these county departments was enacted in 1965 - probation subsidy.

C. California's Probation Subsidy Program - Background and Enactment

A resolution was adopted by the 1963 session of the legislature, proposing that a statewide study of probation be undertaken.[99] The California Board of Corrections was asked to conduct this study to evaluate county probation services and make recommendations. After completion of the study in 1964, fifteen recommendations were made to improve probation services in California. The development of special supervision programs for probationers was one of these.

The 1964 probation study urged that the state adopt a cost sharing plan to improve probation supervision services. The high cost of institutionalizing offenders was cited as a major impetus for passing a law that would increase the utilization of probation. State Aid for Probation Services legislation (Senate Bill 822) was passed unanimously by the legislature in 1965, and it became operative on July 1, 1966.[100]

The Act allocated state funds to the various participating counties for the development of special supervision probation services. As specified in the legislative intent section of the Act, the intent of the subsidy

is "to increase the protection offered the citizens of the state to permit the more even administration of justice, to rehabilitate offenders, and to reduce the necessity for commitment of persons to state correctional institutions."[101]

Participation by the counties was to be entirely voluntary. The subsidy program used a statutory formula to determine a participating county's earnings. Earnings were to be based upon the county's reduction of adult and juvenile commitments to the State Department of Corrections and the Department of Youth Authority. The yardstick by which a county's earnings were to be computed was its own past commitment performance over a five year period beginning in 1959 and continuing through 1963, or the two years 1962-1963, whichever was higher. This five year or two year average commitment rate was to remain a constant baseline commitment rate for the county.[102]

The county's earnings were to be computed annually and paid by the state. The responsibility for the administration of the subsidy program was given to the California Youth Authority. The Prevention and Community Corrections Branch of the Youth Authority was charged with establishing and enforcing standards for the program approved by the Board of Correction.[103]

D. Subsequent Amendments to the Probation Subsidy Act and the Impact of the Program

The number of counties participating in the probation subsidy program increased from 31 in its first year of operation in 1966-1967 to 47 in 1975-1976. Program earnings climbed from $5,675,815 in the first year to $22,068,210 in 1972-1973. These earnings decreased to $16,447,937 in 1975-1976.[104] Probation subsidy units experimented with a wide variety of treatment approaches: individual casework, conjoint family counseling,

transactional analysis, small group treatment behavior modification, milieu therapy, reality therapy, job placement and training referral, therapeutic community substance abuse, and residential treatment.[105] In Spring, 1976, 1,139 probation personnel were involved in special supervision programs.[106]

In accordance with the reporting section of the Act, the Youth Authority prepared a report to the legislature on the program's first two years. In addition to describing how probation subsidy worked, the report contained a number of recommendations for modifying the subsidy law. The proposed legislative changes had been developed in cooperation with a study committee composed of representatives from probation departments, State Assembly Office of Research, Department of Finance, Joint Legislative Budget Committee, police departments, and other interested groups.[107]

Several of these legislative changes suggested in the report were enacted during the 1969 session of the legislature. The Act was broadened to include special supervision programs for adult misdemeanants and juvenile status offenders (children brought before the court for conduct which would not be a crime if performed by an adult - running away from home). There was an adjustment made to clarify which cases are chargeable to the county in computing the probation subsidy. The section governing provisions for reimbursement under unusual circumstances was changed to make it possible for a county to be considered for hardship if it earned any sum less than the sum paid the previous year. The legislature extended the life of the probation subsidy program, and required the Youth Authority to make periodic reports to the legislature on the results of the program.[108]

During the 1971 legislative session, further changes were made in the probation subsidy law. Senate Bill 354 was introduced and passed. It

made it possible for counties to use excess earnings for two succeeding fiscal years. Previously, counties were permitted to use excess earnings for one year only, which sometimes caused radical fluctuations in program size. The legislative change made it possible for counties to operate more consistent programs. Senate Bill 353 was also passed during this session.[109]

This amendment provided an adjustment in the payment table. This change was made to build into the payment table a method of compensating counties that had low commitment rates prior to passage of the subsidy act. Experience indicated that the original legislation did not adequately compensate those counties which had low commitment rates and it rewarded counties with very high commitment rates. Under the change, counties with a relatively low initial baseline commitment rate needed only to reduce commitments by 5% to reach the $4,000 statutory maximum per case, while counties with high initial rates needed to reduce commitments by as much as 25% to achieve the $4,000 figure.[110]

Further amendments were made during the 1972 legislative session. Assembly Bill 368 was passed. It broadened the concept of the program to make it possible for local law enforcement agencies to use the $2 million appropriation included in the bill for diagnosis, control or treatment of offenders. The sum of $150,000 was appropriated to carry out program evaluation studies of the probation subsidy program. Senate Bill 160 made changes to prevent a double subsidy for the same court ward committed to juvenile ranches, homes and camps outside the county where he was adjudicated. Another change was made allowing the Youth Authority to adjust the dollar amounts in the subsidy payment by the Consumer Price Index rather than changes in the cost to the state for imprisonment.[111]

Has probation subsidy fulfilled the intent of the 1965 legislation? The latest evaluation conducted by the California Youth Authority indicates that several of the goals of the legislators have been achieved. It has resulted in a significant increase in the use of probation by state judges. By 1972-1973, the counties were earning over $20 million in subsidy payments, and commitments to state institutions had been reduced by almost 45 percent.[112]

Beginning in fiscal year 1973-1974, earnings began to decrease and commitments increase, a trend that has continued. Nevertheless, the goal of decreased use of state institutions continues to be achieved. Compared with the pre-subsidy baseline rate of 67.3 commitments per 100,000 population, the latest figures (fiscal year 1975-1976) indicate a commitment rate of 43.0 per 100,000.[113] The goal of decreased commitments has been met.

The goal of rehabilitation of offenders has been met in part; recidivism among clients on probation subsidy caseloads has proved no higher than that of incarcerated clients, and this was achieved at a lower cost. The legislative goal of a more even administration of justice has not been met. There is still a wide variation in commitment rates in the California counties.[114] The probation subsidy experiment is still being conducted by the California legislature.

The partial success of probation subsidy as discussed above reflects the findings of California Youth Authority research. However, in a provocative study by Paul Lerman (Community Treatment and Social Control, Chicago, Illinois: The University of Chicago Press, 1975), the author examines the California experiment and provides evidence that probation subsidy actually produced lengthier institutional stays at the state level

and more frequent use of detention at the local level. Lerman also reports that subsidy resulted in an increase in fiscal costs for California corrections "...by an appreciable amount on an annual basis after the initial year."

Indiana, Michigan, Minnesota, New York, Pennsylvania, and Washington followed California in enacting probation subsidy laws affecting adult offenders.[115] Subsidies have been enacted in other states regarding other correctional services. Twenty-three states had 41 programs subsidizing corrections in 1977.[116] The California legislature's example has been increasingly followed by other states.

E. Summary

Probation in California, as in Massachusetts and the federal systems, had its origin in the practices of a judiciary seeking alternatives to imprisonment. There was another parallel to the federal probation system; the California courts recognized legislative pre-eminence in the power to grant probation. Although this recognition followed the enactment of the probation statute, rather than preceding it as in the federal system, the results were similar.

The legislature did give the California judiciary the power to appoint probation officers. As in Massachusetts and the federal system, this grant of administrative authority to the judges has given them powerful control over the system. This influence in the county system of administering probation continues today.

However, it was the legislature with the urging of the state Board of Corrections that developed the great innovation of the 1960's - probation subsidy. The passage of the Probation Subsidy Act was spurred both by

the legislative desire to save funds by avoiding incarceration and by the hope that it would aid rehabilitation. This experiment has inspired other state legislatures to take similar steps in probation and in other areas of corrections.

V. Ohio: Legislative and Judicial Developments Leading to "Shock Probation"

A. The Ohio Common Law Precedents for Probation and the First Years of the Statutory System

Before the adoption of the probation statutes, the Ohio Supreme Court ruled in Weber v. State[117] that "the power to stay the execution of a sentence, in whole or in part, is inherent in every court having final jurisdiction in such cases, unless otherwise provided by statute." This decision in 1898 resembled similar decisions in other jurisdictions authorizing courts to suspend sentence and avoid imprisonment for certain offenders. But the Ohio courts followed a pattern similar to that of California; they recognized legislative pre-eminence in the development of a law of probation.

The power to place criminals on probation was first given to the Ohio courts by the legislature in 1908. The law provided that the court could place a defendant in the custody of the board of managers of the penitentiary or reformatory to which he would have been sent but for the imposition of sentence.[118] These boards of managers were given the power to delegate supervision tasks to field officers. In cases involving sentence to other than reformatories or penitentiaries, a court could "name probation officers in the order of probation"; municipal police courts could appoint permanent officers.[119]

The board of managers of the penitentiaries and reformatories did not satisfy the judges with their performance. Courts often found themselves doing their own investigations. The Cuyahoga County Court of Common Pleas was forced by overwork to establish in 1922 a probation office in its criminal branch. Authority for this was found in a statute allowing the appointment of court constables and in the power to establish rules

of court.[120] These probation officers conducted presentence investigations and supervised probationers.

The necessity for this procedure was obviated by the passage of a new law in 1925. Under the new statute judges of the courts of common pleas were given the power to set up county probation departments with the consent of the county commissioners. When no county probation department was established, the court was given the power to appoint its own probation officers.[121] To integrate the work of probation officers on a state basis, the Department of Public Welfare was given a general power of supervision over all probation officers in the state by the 1925 Act.[122]

The courts acknowledged the primacy of these legislative acts. In 1933, the Ohio Supreme Court ruled in Municipal Court v. State ex rel Platter that trial courts do not have the inherent power to suspend execution of a sentence in a criminal case and may order such suspension only as authorized by statute.[123] The court held that legislative enactment controlled in this area - the probation statute.[124] The earlier ruling in Weber was thus reversed. The Ohio Supreme Court subsequently held that trial judges did not have inherent or statutory power to suspend the execution of sentence for granting probation.[125] As in California, the courts in Ohio completely deferred to the legislature on the matter of the power to grant probation.

Unlike California, the Ohio courts did not develop a lengthy set of exclusionary criteria to bar offenders from probation. The 1908 law barred probation for offenders convicted of any crime. The 1925 Act barred only certain enumerated felonies.[126] Today, only murder, aggravated murder, statutory classification as a repeat or dangerous offender, or committing an offense with a weapon exclude an offender from consideration for probation.[127]

Administratively, the state Adult Parole Authority has succeeded the Department of Public Welfare in the function of exercising general supervision over the works of probation officers. The Adult Parole Authority has been charged with setting minimum qualifications for all probation officers in the state.[128] Additionally, the Adult Parole Authority may provide probation services to those counties lacking a probation department.[129] The power of establishing minimum qualifications for probation officers had been given to the Department of Public Welfare in the 1925 Act.[130]

B. The Development of "Shock Probation"

After the 1933 Platter case decided by the Ohio Supreme Court, trial courts had no jurisdiction to suspend execution of a sentence once it was pronounced. This loss of jurisdiction by the trial courts after sentence was passed created problems for the judges. A number of judges wanted a statutory device by which they could review the appropriateness of a sentence after its pronouncement. Judges in other jurisdictions have such review powers; for example, federal judges may entertain a motion to reduce sentence up to 120 days after pronouncement of sentence under Rule 35 of the Federal Rules of Criminal Procedure. The association of Common Pleas Court judges proposed such a statute to the legislature in the early 1960's.[131] It was passed and became effective on October 30, 1965.[132]

The new statute, Section 2947.061 of the Ohio Revised Code, allowed the trial court to retain jurisdiction to entertain a motion from the defendant not earlier than 30 days and not later than 60 days after incarceration to be placed on probation. Postincarceration probation, rather than reduction of sentence as in the federal system, was established as a device to correct an inappropriate, but not an illegal, sentence.

In one of the first cases decided under the statute, one of Ohio's courts of common pleas found the statute to also have a rehabilitative intent. In State v. Head,[133] this court noted that:

> "Modern penology encompasses and encourages mutual effort towards correction by both the local and state officials. Section 2947.061, Revised Code, is a giant step in this direction and when considered with the several other enactments of this immediate past legislature, shows enlightenment on the part of the Legislature in securing the rights of individuals as well as a desire to give the courts more authority over the problems that are the court's ....."[134]

The court concluded in this case that the therapy of a short stay in prison is sometimes enough to achieve rehabilitation.

Not all courts accepted this interpretation of the statute's legislative intent. In State v. Veigel,[135] another court of common pleas ruled that the only time that a trial court could use the statute was when it had acted under a misapprehension of the facts by reason of mistake, fraud, or material ommission at the time of passing sentence. This would have destroyed any rehabilitative use of the statute.

The Court of Appeals of Wood County resolved these contradictory positions on the statute in State v. Allison.[136] The Court of Appeals ruled that there was no language in the statute to support a narrow construction limiting its effect to correcting misapprehension of facts. It could be used for rehabilitative purposes. Ohio does not maintain legislative histories for its statutes; it is thus difficult to determine if rehabilitation was the primary purpose of the statute. What is certain is that the Ohio courts used the statute increasingly in appropriate cases to release offenders on probation after they had received the "shock" of incarceration in a penal institution.[137] A newspaperman in Ohio coined the term "shcok probation" to describe this new rehabilitative practice.[138]

C. Legislative Changes in the "Shock Probation" Statute

The initial statute placed no time limits for the court to make a decision upon a motion for shock probation. As a result, some courts took no action upon a motion for months.[139] To rectify this situation, the statute was amended, effective November 14, 1969. The amendment required the court to hear any such motion within 60 days after filing and required a ruling within 10 days after the hearing.[140]

The legislature also added a new section to the statute. It provided for the presence of the prisoner at the hearing if the court ordered so and for his transportation from the penal institution to the hearing.[141]

Both these amendments did not interfere with the considerable discretion exercised by the trial courts in granting a shock probation hearing and the terms of that probation if granted. In State v. Orvis, an appeals court ruled that the statute as amended did not require an oral hearing and that failure to conduct such a hearing was not a denial of due process.[142]

After these legislative amendments, several court decisions dealt with the time limits imposed by the statute. It has been uniformly held that the thirty day period for making the motion for shock probation is mandatory.[143] Controversy arose in the courts over the other two time limits - the sixty day period for a hearing on the motion and the ten day period for entering a ruling on the motion. The Court of Appeals of Hardin County held that both of these time limits were mandatory and that failure to observe them divested a court of jurisdiction.[144] Exception to this was taken by the Court of Appeals of Franklin County in State ex rel Smith v. Court of Common Pleas.[145] It held that the time limits were mandatory, but not jurisdictional, reasoning that the legislature would

not foreclose an inmate from the benefit of shock probation because of tardiness by a judge. The legislature has not acted to clarify the statutory language.

D. Experience Under the Shock Probation Statute and Its Implications

During the first seven years of the statute's operation, a total of 3,873 persons were placed on shock probation by the Ohio judges. During the first year, 1966, 85 offenders received this disposition. In 1972, 1,292 persons were given shock probation. Only 94 percent of persons receiving shock probation during the seven year period were recommitted to prison.[146]

The experience of the shock probation statute had legislative results in Ohio. In the Revised Criminal Code enacted in 1973, provision was made for "shock parole."[147] It allows release on parole after a six month period of incarceration, except in certain enumerated situations (e.g. conviction for murder or previous felony resulting in incarceration.) The concept of shock parole was an outgrowth of the shock probation statute.

Several other states adopted shock probation statutes similar to Ohio's in 1972. An Indiana statute was adopted in 1972. It differed from the Ohio section in that release from incarceration can be achieved only on the court's own motion and in that it can be granted anytime within six months after incarceration.[148] Kentucky adopted a statute almost identical to the Ohio law.[149]

E. Summary

In Ohio, judicial suspension of the execution of sentences preceded the passage of a probation law. The concern of the Ohio judges for achieving an alternative to incarceration paralled that of the Massachusetts, federal, and California judiciary. But as occured in the California

system. The Ohio judges recognized legislative primacy in probation once a statute was passed.

By giving the judges of the courts of common pleas the power to appoint probation officers, the legislature assured the judiciary strong administrative control over the system. This is somewhat tempered by the grant of general supervisory authority over the system to the Adult Parole Authority. This grant of power is not as strong or specific as that given to the Massachusetts Commissioner on Probation, with the result that the system is more fragmented.

The "shock probation" statute in Ohio was passed by the legislature at the urging of the judges. Their desire to have a sentencing review mechanism evolved into a new rehabilitative tool that has been adopted by other states. This innovation in probation law can be credited to the judiciary.

VI. Illinois: Local Versus State Administration of the Probation System

A. Abolition of the Common Law Power to Suspend Sentence and the First Statute

In 1895, the Illinois Supreme Court ruled on the practice of suspending sentences that the lower courts were using as an alternative to incarceration. The court ruled that no court has the authority to indefinitely suspend sentence; any common law power to suspend sentence interferes with the executive pardoning power.[150]

The Illinois Supreme Court expanded on its reasoning for this holding in People ex rel Boenert v. Barrett[151] decided in 1903. No power to indefinitely suspend sentence could be justified despite decisions in other states including Massachusetts. The legislature had acted in providing statutory parole as a means of shortening imprisonment and achieving rehabilitation. This precluded judicial action in the field.[152] Thus, the Illinois Supreme Court abolished the power to suspend sentence as the U. S. Supreme Court did in the Killits decision.

The legislature, following the lead of other states, passed a probation law in 1911. It authorized the circuit any city courts to place adult offenders on probation and to appoint probation officers.[153] The use of probation was limited to first offenders convicted of enumerated minor offenses. In 1915 this was changed to permit probation in all cases except enumerated major offenses.[154] The requirement of a presentence investigation to establish eligibility for probation was added with this amendment.

Under the 1911 law the court could not grant probation upon any conditions other than those made mandatory or discretionary in the statute. The Illinois courts were quick in recognizing the legitimacy of the legislature's

probation statute. In People v. Heise,[155] the Illinois Supreme Court ruled that the legislature may give courts the statutory power to suspend sentence in certain classes of cases. The statute had removed any conflict with the executive pardoning power.

Probation under the 1911 and 1915 acts was placed under the control of the courts. The appointment of officers was permissive.[156] The judges were also given the power to designate a chief probation officer for each county department.

To add central direction to the administration of probation, a state probation office was created in 1923. The office was provided for by appropriation rather than direct statutory authority.[157] It did not begin to function until 1929. It acted as a general clearinghouse for information on probation and in an advisory capacity. This first attempt at providing a statewide direction to the probation system ended with the abolition of the office in 1933.[158]

The lack of a central authority, such as the Administrative Office of the U. S. Courts or the Massachusetts Commissioner of Probation, resulted in a fragmented probation service. The quality of probation investigation work and supervision varied from county to county. In 1932, there were 19 counties in which no probation work of any kind was being done.[159]

A 1972 study of probation in Illinois conducted by the John Howard Association found little change in this situation over forty years later. Probation was described as a "politically entrenched, overburdened, non-system."[60] Not a single probation department in 102 counties was under a formally established merit civil service system. Untrained political appointees very often staffed the county probation departments.[161]

Under the existing system, probation was being used as a disposition only about half as much as in states such as California, Wisconsin, New Jersey, Massachusetts, and Washington.[162] Prisons were thus becoming overcrowded because of underutilization of probation services. The development of a statewide system under the Administrative Office of the Illinois Courts was recommended as the solution.[163]

B. Attempts to Establish a Statewide Probation System: 1965-1973

A first step towards developing a statewide probation system was taken in 1965. In that year, the legislature passed a law providing a state salary subsidy for juvenile probation officers.[164] The new statute not only provided state monies to hire probation officers for the juvenile court; it allowed the Conference of Chief Circuit Judges to establish permissive statewide qualifications for probation officers. In accordance with the statute, the Conference promulgated standards on June 17, 1966. The Conference required a college education and social work experience as basic prerequisites for all juvenile probation officers entering after promulgation of the standards.[165] This was a first step towards developing a professional juvenile probation service.

In 1972, Illinois adopted a Unified Code of Corrections to strengthen the whole correctional system, including probation services. The Illinois Probation and Court Services Association, a professional group formed in 1969, was the advocate for a draft section in this act to establish a centralized probation service in Illinois. The draft supported by the Association called for a Division of Probation Services within the Administrative Office of the Illinois Courts.[166] This draft section would have given the Administrative Office the authority to establish

minimum standards for probation work, probation officer appointments, and other areas affecting the probation service.

This draft act was amended out of the Uniform Code at the urging of judges and probation officers from the Cook County Juvenile Court who feared that the act would erode their agency. They were supported by the Cook County Democratic organization who did not want to lose control over hiring probation officers at the local level.[167] The Illinois Probation and Court Services Association withdrew support from the draft at the last minute after it had been rewritten. The Association claimed that the new draft was too vague to be acceptable. The rewritten draft was not included in the Uniform Code of Corrections.

In 1973, House Bill 1060 was introduced in the legislature to establish a statewide probation system. It was drafted by the Council on the Diagnosis and Evaluation of Criminal Defendants. This was the same group which had produced the Uniform Code of Corrections. Its provisions provided for the establishment of Division of Probation Services in the Administrative Office of the Illinois Courts. The Division was to establish qualifications for the appointment of probation officers, establish a statistical record-keeping system for probation offices in the entire state, and give overall guidance to the probation service. Merit selection of probation officers was to be phased in two years after the passage of the bill. The judges would retain their power to hire and fire officers under the bill, although they would operate under the guidance of the Division of Probation Services.[168]

The principal sponsor of the bill, Representative Brian Duff, was able to generate a broad base of support, including the press, League of Women Voters, John Howard Association, and the Illinois Probation and Court

Services Association (IPCSA). The bill passed the House but was defeated by one vote in the Senate Judiciary Committee. It had been opposed by the Probation Officers Association of the Cook County Juvenile Court.[169]

C. Renewed Efforts to Establish a Statewide Probation System: 1974-1977

In 1974, Representative Duff reintroduced his bill with no success. IPCSA received a grant from the LEAA state planning agency to research what other states were doing in the probation field and to develop its own recommendations. The report produced by IPCSA called for a Commission on Probation which would set minimum standards for the probation service, including officer appointments. The report also called for state subsidies to local probation services. The state was to reimburse the counties for fifty percent of expenditures incurred for probation programs.[170]

In 1975, several probation bills were introduced. House Bill 900, introduced by Representative Duff, was almost identical to his rejected HB1060. Representative Michael Getty introduced HB2123. It was written by the staff of the Illinois Law Enforcement Commission, the state planning agency, and was a modified version of HB900. It was amended to include a provision for fifty percent state funding of probation. Representative John Lauer proposed House Bill 1596. It contained the recommendations from the 1974 IPCSA report.[171]

Only HB2123, Getty's bill, passed the House. At this point, it received the support of IPCSA and the Probation Officers Association of the Cook County Juvenile Court. Governor Walker was thought to support it. However, it was not called for a vote in the Senate.

In 1976, IPCSA continued to work for a subsidy bill. In 1977, four bills were proposed in the legislature: HB583, a reintroduction of Duff's

HB900; HB875, which incorporated the major features of HB 2123 (Division of Probation Services and state probation subsidy); and HB 2126 and HB 2173, which provided for Administrative Office control over the probation system and incorporated the IPSCA drafted subsidy bill. These last two were combined on the House floor prior to a final vote.

All four bills cleared committee in the House. Only HB875 and 2173 were passed by the House. In the Senate, HB875 died in committee. HB2173 passed the Senate Committee.[172]

On the Senate floor, a major amendment was made to HB2163. The amendment was made on the motion of Cook County Senator Phillip Rock and adopted on a voice vote with bipartisan support. In essence, the amendment removed the authority of the Administrative Office of the Illinois Courts to: 1) set hiring standards, 2) train probation officers, 3) gather statistics, 4) set up uniform recordkeeping procedures. It retained the provisions providing for probation subsidy.

Governor James Thompson vetoed the bill. He wrote a letter to the legislature explaining his reasons for the veto. Probation subsidy without uniform hiring, training, and recordkeeping, he agreed would not achieve reform of the probation system.[173]

The bill's sponsor, Representative Lauer, had urged the governor to use the power provided in the 1970 Illinois Constitution to restore all or part of the original version of the bill. Since the governor did not choose that option, he filed a motion to override the veto. He has been supported by IPCSA in his efforts to pass the probation subsidy bill.[174] The legislative battle to override the veto is still ongoing.

D. Summary

The Illinois Supreme Court, like the U. S. Supreme Court in the Killits decision, ended judicial efforts aimed at achieving a probation system. The legislature filled this vacuum by passing a probation law. The system which was established, however, was weak administratively and at the mercy of local politics.

The recent legislative effort to establish a statewide probation system shows close similarities to developments in the systems previously examined. The Illinois Probation and Court Services Association, like the National Probation Association in the 1920's, has spearheaded the movement for legislative reform in probation. As in Massachusetts, efforts have been made to establish a uniform state system of probation that is administered locally. Probation subsidy, developed in California, has been offered as a means to accomplish this goal.

Illinois is at the threshold of reform in its probation system. The courts in Illinois have not been in the forefront of reform, as they were in Ohio with the development of shock probation. The legislature's primacy in developing probation, recognized in 1897 by the Illinois Supreme Court, remains unquestioned.

VI. Conclusion

The development of probation law in Massachusetts, the federal system, California, Ohio, and Illinois has been shaped by a variety of forces. In all of these systems, there has been conflict between the judiciary and the legislature over primacy in the development of probation law. With the exception of Massachusetts, this has been resolved in favor of the legislature.

In all five systems, the judiciary has been entrusted with a strong role in the administration of probation. Efforts have been made, however, in all five systems to provide an agency with executive powers to provide uniformity and direction to the system - e.g. the Commissioner of Probation in Massachusetts, the Administrative Office of the U. S. Courts. These efforts have met with various degrees of success. The Massachusetts Commissioner of Probation has a greater input on his system than his counterpart in Ohio , the Adult Parole Authority.

The courts were ahead of the legislatures in developing probation. Judicial practices providing alternatives to imprisonment preceded action by the legislature in each of the five systems examined. The courts have continued to innovate in this field, as the development of shock probation in Ohio demonstrates.

It is difficult to generalize about the development of the law of probation and emerging trends from five case studies. However, it is clear that both probation subsidy in California and shock probation in Ohio have more than local implications. Similar laws have been adopted by other legislatures and are being considered by others. The trend towards uniformity and central control in the administration of probation is also clear. Many battles in this area, however, still have to be fought by the actors who shape probation law - the legislatures, the courts, executive agencies, probation officer associations, and public interest groups.

FOOTNOTES

1 Woodman, Reports of Criminal Cases, Tried in the Municipal Court of the City of Boston before Peter Oxenbridge Thatcher, Judge of that Court from 1823 to 1843 267 (1845).

2 Massachusetts Acts, 1878, Chap. 198.

3 Chute and Bell, Crime, Courts, and Probation 67 (1956).

4 Idat 84.

5 See the statutory synopsis contained in this report.

6 See Grinnell, "The Common Law History of Probation: An Illustration of the 'Equitable' Growth of the Criminal Law," 32 J. Crim. L.C. & P.S. 15, 17 (1941).

7 Id at 17.

8 Id at 18.

9 Id at 18.

10 See Rubin, 2 Law of Criminal Correction 180 (1973).

11 See Grinnell, supra note 6, at 19.

12 See Grinnell, "Probation as An Orthodox Common Law Practice in Massachusetts Prior to the Statutory System," 2 Mass. L. Q. 591 (1917).

13 See Rubin, supra note 10, at 181.

14 See U.S. Dept. of Justice, Attorney Generals Survey of Release Procedures: Vol. II - Probation 5 (1939).

15 Chute and Bell, supra note 3, at 16.

16 Id

17 Department of Social Affairs, United Nations Probation and Related Measures 15 (1951).

18 Grinnel, supra note 12, at 595.

19 Grinnel, supra note 6, at 27.

20 Id at 23.

21 Id at 27.

22 Grinnell, _supra_ note 12, at 610.

23 Mass. Rev. Stat. 1836, Chap. 143, Sec. 9.

24 115 Mass. 133 (1874).

25 See National Probation Office, _John Augustus, First Probation Officer_ (1939).

26 Carter, "Some Aspects of Massachusetts Probation Law and Practice," 42 B.U.L. Rev. 32, 34 (1962).

27 See U.S. Dept. of Justice, _supra_ note 14, at 23.

28 Massachusetts Acts, 1878, Chap. 198.

29 Chute and Bell, _supra_ note 3, at 59.

30 _Id_ at 60.

31 Massachusetts Acts, 1878, Chap. 198, Sec.1.

32 Massachusetts Acts, 1880, Chap. 129, Sec.1.

33 Chute and Bell, _supra_ note 3, at 63.

34 See U.S. Dept. of Justice, _supra_ note 14, at 24.

35 Massachusetts Acts, 1891, Chap. 356.

36 Massachusetts Acts, 1898, Chap. 511.

37 Massachusetts Acts, 1900, Chap. 449.

38 Massachusetts Acts, 1908, Chap. 465.

39 Carter, _supra_ note 26, at 37.

40 _Id_

41 Carter, _supra_ note 26, at 44.

42 Massachusetts Acts, 1926, Chap. 271.

43 Carter, _supra_ note 26, at 38.

44 _Id_

45 Massachusetts Proposed Criminal Code, Sec. 1

46 _Id_ at Sec. 1, 20, 21, 22.

47 See Chute and Bell, _supra_ note 3, at 90.

48 See Evjen, "The Federal Probation System: The Struggle to Achieve It and Its First 25 Years", 39 Fed. Prob. 3 (1975).

49 See Chute and Bell, _supra_ note 3, at 91.

50 _Id_ at 94.

51 _Ex Parte United States_, 242 U.S. 27 (1916).

52 _Id_ at 51, 52.

53 _Id_ at 49.

54 _State v. McCoy_, 94 Idaho 236, 486 P.2d 247 (1971).

55 Evjens, _supra_ note 48, at 3.

56 Chute and Bell, _supra_ note 3, at 98, 99.

57 Evjens, _supra_ note 48, at 4.

58 Chute and Bell, _supra_ note 3, at 103.

59 Evjens, _supra_ note 48, at 4.

60 Chute and Bell, _supra_ note 3, at 104, 105.

61 _Id_ at 106.

62 _Id_ at 107.

63 _Id_ at 108.

64. Evjens, _supra_ note 48, at 6.

65 Chute and Bell, _supra_ note 3, at 109.

66. _Id_ at 110.

67 _Id_

68 Evjens, _supra_ note 48, at 7.

69 _Id_ at 8.

70 _Id_ at 7.

71 _Id_ at 9.

72 _Id_ at 10.

73 Meeker, "The Federal Probation System: The Second 25 Years", 39 Fed. Prob. 16, 19 (1975).

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75 Evjens, supra note 48, at 14.

76 Administrative Office of the U.S. Courts, "Memorandum to All Probation Officers: Workload for July 1, 1976 - June 30, 1977".

77 Evjens, supra note 48, at 13.

78 Meeker, supra note 73, at 20.

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80 "Pretrial Diversion Act Receives Strong Support", 9 Third Branch 4 (October 1977).

81 Smith, "The Federal Probation System: An Organizational Perspective", 39 Fed. Prob. 26, 27 (1975).

82 Government Accounting Office, Statement of Facts Concerning GAO's Review of the Federal Probation System 18 (Draft 1977).

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84 Ex Parte Collins, 8 Cal. App. 367, 97 P. 188 (2d. Dist. Ct. App. 1908).

85 Cal. Pen. Code §1203 (Haymond and Burch 1874).

86 Cal. Laws, 1903, Chaps. 34, 35, 43.

87 Cal. Laws, 1905, Chaps. 579, 910.

88 See U.S. Department of Justice, Attorney General's Survey of Release Procedures: Vol. I - Digest 106 (1939).

89 Cal. Stat., 1911, p.689.

90 Cal. Stat., 1919, p. 1244.

91 Cal. Stat., 1921, p. 1296.

92 163 Cal. 176, 124 P. 856 (1912).

93 In re Howard, 72 Cal. App. 374, 237 P. 406 (Dist. Ct. App. 1925).

94 People ex rel Lindover v. O'Donnell, 37 Cal. App. 192, 174 P. 102 (3d Dist. Ct. App. 1918).

95 Cal. Stat., 1923, p. 291.

96 Cal. Stat., 1931, p. 1633.

97 See U.S. Department of Justice, supra note 88, at 108.

98 Cal. Stat., 1975, Chap. 1087, §6.

99 California Youth Authority, _California's Probation Subsidy Program - A Progress Report to the Legislature: 1966 - 1973_ 3 (1974).

100 _Id_

101 Cal. Stat., 1965, Chap. 1029.

102 California Youth Authority, _California's Probation Subsidy Program - A Progress Report to the Legislature: Report No. 4_ 1, 2 (1977).

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104 _Id_ at 4.

105 _Id_ at 9, 11.

106 _Id_ at 8.

107 California Youth Authority, _supra_ note 99, at 4.

108 Cal. Stat., 1969, Chap. 1415.

109 Cal. Stat., 1971, Chaps. 829, 830.

110 California Youth Authority, _supra_ note 102, at 2.

111 Cal. Stat., 1972, Chap. 886, 1004.

112 California Youth Authority, _supra_ note 102, at 19.

113 _Id_

114 Id at 13, 18.

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120 See U.S. Department of Justice, _supra_ note 88, at 884.

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122 Ohio Laws, 1925, No. 111, p. 426.

123 126 Ohio St. 103, 184 N.E. 1 (1933).

124 Id at 184 N.E. 3.

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135 5 Ohio Misc. 45, 213 N.E.2d 751 (C.P. 1965).

136 14 Ohio App.2d 55, 237 N.E.2d 145 (1966).

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166 Letter from Douglas D. Bowie, Illinois Probation and Court Services Association, October 26, 1977.

167 Id

168 House Bill 1060, Illinois General Assembly, 1973.

169 Letter from Douglas D. Bowie, supra note 166, October 26, 1977.

170 Illinois Probation and Court Services Association, "Recommendations on Probation in Illinois", (1974).

171 Letter from Douglas D. Bowie, supra note 166, October 26, 1977.

172 Id

173 Letter from James R. Thompson, Governor, to the Honorable Members of the House of Representatives, 80th General Assembly, September 3, 1977.

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SECTION 2

SYNOPSES OF STATUTES

SYNOPSIS OF STATUTES OF ALABAMA

Relevant Code Provisions:

Alabama General Statutes Annotated

Title	Sections
11	90
15	41
34	92 to 102
42	19 to 28

Constitution of Alabama, Article 38

(a) Definition of Probation - Circuit and district courts having criminal jurisdiction may suspend sentence and grant probation where punishment is not the death penalty or more than ten years confinement.

(b) Probation Administration - Probation is administered at the state level with policy formulation vested in a state board and in the Department of Corrections and Institutions.

(c) Probation Officers' Appointment Source - Officers are appointed by judges of the court, including domestic relations and probate courts, and serve at the pleasure of the court.

(d) Financing Probation - Costs of administering are paid out of funds of the state Department of Corrections and Institutions. The probationer may be required to pay the costs incurred by the court for providing probation services.

(e) Criteria for Probation - Courts of record may suspend execution of a sentence and place defendant on probation, except when punishment is fixed as the death penalty or as imprisonment for more than ten years.

(f) Range of Probation Period - The period of probation is discretionary with the court subject to the following maximums: two years for misdemeanors; five years for felonies. Probation may be extended or terminated at any time.

(g) Mixed Sentences - Probationer may be required to pay fine or make reparation or restitution as condition of probation. Court may release a jailed defendant in advance of completion of his term and order probation.

(h) Probation Officers' Qualifications - No provision

(i) Probation Officers' Duties - Probation officers are required to investigate matters referred by the court or the board; furnish probationers with written statements of probation conditions; supervise and maintain files on probationers in their charge. Officers have powers of process and arrest.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - While conditions of probation are designated by the court, the statute sets out guidelines which may be used to encourage probationer cooperation and discourage undesirable conduct.

A bond may be required as a condition of probation.

(l) Revocation Procedures - Probation violator may be arrested and detained pursuant to either a court warrant or with or without an arrest warrant by a probation officer. Probationer must be brought before the court and notified in writing of the alleged violations.

If court revokes probation, defendant may have his sentence suspended; be committed to jail; or be sentenced when no original sentence was pronounced. When defendant is jailed in non-support case, probation bond is forfeited.

(m) Probation Termination and Discharge - Probation may be terminated early by the court on recommendation of the probation officer and upon a showing of continued satisfactory compliance over a sufficient portion of the probation period.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - A presentence report is required before probation can be granted. The report shall include a social history of the defendant and may include a mental and physical examination. The defendant or counsel has the right to inspect the presentence report and controvert the facts therein.

SYNOPSIS OF STATUTES OF ALASKA

Relevant Code Provisions:

Alaska Statutes of 1962 As Amended

Title	Sections
12	55-070 to 55-110
17	10-200
18	85-100; 110
33	05-010 to 10-020

(a) Definition of Probation - "Probation is a procedure under which a defendant, found guilty of a crime...is released by the Superior Court subject to conditions...and subject to the supervision of the probation service."

(b) Probation Administration - The probation system is administered at the State level through the Commissioner of the Department of Health and Social Services. Probation officers are subject to the court's supervision.

(c) Probation Officers' Appointment Source - Probation officers and assistants are appointed by the Commissioner.

(d) Financing Probation - Salaries and necessary expenses for probation officers are set and administered by the Commissioner.

(e) Criteria for Probation - Probation is discretionary with the court and may be ordered within 60 days of judgment. Criteria for probation are: justice is served, probation is in the public's interest; probation is in the defendant's interest.

(f) Range of Probation Period - Period of probation may not exceed the maximum term of a sentence which may be imposed when court suspends imposition of a sentence. Moreover, the probation period, including any extension thereof may not exceed 5 years.

(g) Mixed Sentences - A fine and probation are not inconsistent when part of the same sentence order. The court may order restitution.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Probation officers have the following duties: furnish probationer a written statement of conditions; keep informed concerning conduct and condition of probationer and report to the court; aid probationer's adjustment and condition; keep records of work and collected fines; perform duties requested

by the court and the Commissioner; report prior convictions of probationers to the District Attorney; and perform parole duties when assigned by the Commissioner.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has discretion to set or modify conditions of probation.

(l) Revocation Procedures - In the event of suspected violations of conditions of probation, the probation officer may re-arrest probationer without a warrant. Also, the court may issue a warrant and may revoke and terminate probation if the interest of justice requires, and if the court has reason to believe that the probationer is violating the conditions of his probation, or is engaging in criminal practices, or has become abandoned to improper associates or a vicious life. Probationer has the right to notice and to be represented by counsel.

If probation is revoked, court may sentence defendant up to the maximum allowed for the offense commited.

(m) Probation Termination and Discharge - Court can terminate and discharge probation at any time when the ends of justice are served and good conduct and reform of the probationer warrants. If sentence has not been imposed, the court can set aside the conviction. Probation may be extended if warranted based on probation officer's report.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - No provision.

SYNOPSIS OF STATUTES OF ARIZONA

Relevant Code Provisions:

Arizona Revised Statutes

Title	Sections
11	584
12	251 to 253
13	1657
31	461 to 465

(a) Definition of Probation - "If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved," the court may order probation.

(b) Probation Administration - Probation is managed at the county court level with policy formulation vested in the Supreme Court.

(c) Probation Officers' Appointment Source - The chief adult probation officer is appointed by the court. Other probation officers are appointed either by the court alone or by the chief probation officer with the court's approval. Probation officers hold office at the pleasure of the court.

(d) Financing Probation - Probation officers' salaries are fixed by the court with the approval of the Board of Supervisors. Expenses and allowances incurred in the performance of their duties are paid to probation officers when approved by the court.

(e) Criteria for Probation - The statute does not specify criteria or eligibility for probation, but rather, leaves such authority to the court.

(f) Range of Probation Period - The probation period is discretionary, but may be no longer than the maximum sentence authorized for the offense.

(g) Mixed Sentences - A fine (not to exceed authorized maximum) may be imposed by the court in addition to probation confinement in jail for a period not to exceed one year at the court's discretion.

(h) Probation Officers' Qualifications - An adult probation officer of a county shall qualify under minimum standards of experience and education established by the State Supreme Court. Such standards may vary according to the population in the county in question. A bond shall be required conditioned upon faithful performance of official duties.

(i) Probation Officers' Duties - Probation officer's are responsible for maintenance of records on probationers in their charge; investigation of matters referred by the court; and supervision of probationers. Officers have process and arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are at the court's discretion, may be modified at any time, and may include: incarceration not to exceed one year; fine, not to exceed fine authorized for the offense, or repayment to county for costs of a public defender.

(l) Revocation Procedures - Revocation of probation procedures may be initiated by the re-arrest of probationer by probation officer with or without a warrant. Court may issue a warrant for re-arrest and may thereupon revoke and terminate the probation if the interest of justice so requires, and if the court, in its judgment, has reason to believe the probationer is violating the conditions of his probation or engaging in criminal practices, or has become abandoned to improper associates, or to a vicious life.

Upon revocation, if the (imposition of the) defendant's sentence has been previously suspended, the court may impose the longest period for which defendant might have been sentenced. If sentence has been pronounced and execution suspended, court may revoke the suspension, whereupon the sentence shall be in full force and effect.

(m) Probation Termination and Discharge - Court may terminate probation at any time when the ends of justice are served and good conduct and reform of probationer so warrants.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - No provision.

SYNOPSIS OF STATUTES OF ARKANSAS

Relevant Code Provisions:

Arkansas Statutes of 1947, as revised

Title	Sections
41	801 to 804
	1201 to 1211
43	2324 to 2335
	2801 to 2816

(a) Definition of Probation - Probation is a "procedure whereby a defendant, who pleads or is found guilty of an offense, is released by the court without pronouncement of sentence but subject to the supervision of the probation officer".

(b) Probation Administration - Administation of probation is a dual state and county function under the authority of a State Board of Pardons and Parole and the county courts.

(c) Probation Officers' Appointment Source - County courts hold appointment and salary scheduling powers for chief probation officers and their assistant officers.

(d) Financing Probation - Probation officers are paid as agreed by the county judges but not to exceed $13,500. Presentence officers are paid from county funds approved by the Quorum Courts, but not to exceed $13,500.

(e) Criteria for Probation - Except in cases of offenses punishable by death or life in prison or where defendant has two prior felony convictions, the Court may suspend imposition of sentence and place defendant on probation. A sentence of imprisonment is inconsistent with placing defendant on probation.

(f) Range of Probation Period - Probation period can not exceed five years for a felony, or one year for a misdemeanor. The court is authorized to extend or shorten a sentence of probation.

Periods of probation must run concurrent with any outstanding federal or state term of imprisonment, parole or probation.

(g) Mixed Sentences - Court may suspend imposition of sentence of imprisonment, require defendant to pay a fine and place defendant on probation. It also may require as a condition of probation

that defendant first serve a period of confinement, not to exceed ninety days for a felony or thirty days for a misdemeanor; restitution, or payment of a fine may be conditions of probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Chief probation officers are responsible for supervision of probation officers and the County Probation Advisory Boards (citizen representatives) as well as maintenance of records and duties assigned by the court.

Probation officers are responsible for supervision of probationers.

Presentence officers have charge over all presentence report activities.

(j) Volunteer Probation Officers - Volunteer probation officers are appointed by the County Probation Advisory Board and are answerable to the Board and the Chief Probation Officer. Duties of volunteers are not specified.

(k) Conditions of Probation - Court has great latitude in setting conditions which may include fine, restitution and support of legal dependant. A mandatory condition is that defendant not commit an offense punishable by imprisonment. There are thirteen optional conditions listed in the statutes to assist the court in its selection. Court may order period of confinement as a condition of probation and 30 days for a misdemeanor. Conditions may be modified or added at any time. It is implied that if court does not pronounce final sentence in favor of probation, conditioning of restitution and payment of court costs should be imposed.

The County Probation Advisory Board is authorized to promulgate rules of probation.

(l) Revocation Procedures - Probation violator may be rearrested with or without a warrant.

Probation process is in two steps: Probationer is entitled to a preliminary hearing as soon as practicable on probable cause for revocation. He shall be given notice of time and place of preliminary hearing, the purpose of the hearing, and the conditions allegedly violated. Probationer has right to hear and controvert evidence and offer evidence. The preliminary hearing is not required if: 1) probationer waives; 2) revocation is based on a subsequent conviction; 3) the revocation hearing is held promptly.

A revocation hearing is required within sixty days of probationer's arrest. Written notice is given and probationer has right to hear and controvert evidence. Probationer has a right to confront witnesses unless court specifically finds good cause for not so allowing, and evidence presented need not follow usual rules for admissibility. To revoke probation Court must find, by a preponderance of the evidence, that probationer violated a condition.

Upon revocation, any sentence up to the maximum authorized may be imposed, and any period spent in confinement pursuant to the order of probation shall be credited.

(m) Probation Termination and Discharge - Court may terminate probation and discharge defendant at any time. If probationer has fully complied with the conditions of probation and a judgment of conviction has not previously been entered, court must drop all charges.

(n) Civil Rights, Disabilities - No provisions.

(o) Presentence Activities - Court is authorized to order presentence report which includes information on the defendant's social history which may be useful to the court in determining disposition.

A psychiatric examination, not to exceed thirty days, is within the Court's discretion.

Presentence report is restricted to court, parole board and other parties court may permit. Defendant or his counsel shall be advised of the content and conclusions of the presentence report although sources of confidential information need not be disclosed.

SYNOPSIS OF STATUTES OF CALIFORNIA

Relevant Code Provisions:

West's California Code Annotated - Penal

Sections

17
594 and 595
647
830 to 835
1191
1203 to 1203-5

West's California Code Annotated - Civil

Sections

131-3 to 131-6

West's California Code Annotated - Civil Procedure

Sections

1746
1764

West's California Code Annotated - Government

Sections

22013-6
24001
25252-5
71100

West's California Code Annotated - Penal

Sections

1203-6 to 1243
1449
1466
4852-04 to 4852-1
11105 to 11177-6
12311

West's California Code Annotated - Public Utilities

Sections

21407-6

West's California Code Annotated - Vehicle

Sections

13203
23102

West's California Code Annotated - Welfare Institutions

Sections

3008
6779
23102

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation system is administered at three levels of state, local, and court jurisdictions. At the state level an executive agency of the Department of Corrections with a Board of Corrections is responsible for the policy formulation of the system. County Boards of Supervisors and county courts are responsible for appointment and personnel needs of the chief juvenile and chief adult probation officers. The chiefs serve at the pleasure of the court.

(c) Probation Officers' Appointment Source - Assistant adult probation officers and deputy adult probation officers are appointed and supervised by the chief adult probation officer in accordance with county merit and civil service provisions. In counties with no merit or civil service, board of supervisors is responsible for appointment, removal and compensation.

(d) Financing Probation - Generally salaries of assistants, deputies and other probation personnel established according to civil service merit system provisions of county. (1) Expenses of probation officers are paid by counties as authorized by court. (2) However, in counties where probation officer appointed by Board of Supervisors, said expenses authorized by probation officer, subject to audit, as per other county claims. (3) Board of Supervisors may establish a revolving fund, not to exceed $10,000, from which the county probation officer may make loans to probationer.

(e) Criteria for Probation - Generally, granting probation is discretionary with court. (1) In misdemeanor cases, court may either refer to probation officer for presentence investigation, or summarily grant or deny probation after considering any information which could have been included in a presentence report. Defendant is permitted to answer or controvert information given the court and, for this purpose, a continuance may be granted. (2) Probation may not be granted to persons unlawfully possessing a deadly weapon at time of arrest or during commission of specified serious crimes; probation likewise may not be granted to a person who has had two

prior felony convictions within 10 years, or one prior felony conviction plus an instant conviction of a specified serious nature. Probation may not be granted for persons convicted of violating specified narcotic laws. (3) The court may grant probation without imposition of sentence, and at time of granting probation or on application of defendant or probation officer, court may declare offense, whatever it may have been, to be a misdemeanor.

(f) Range of Probation Period - Minimum period of probation for misdemeanor is 3 years but where the maximum sentence exceeds 3 years, probation may not exceed the maximum period of the sentence.

(g) Mixed Sentences - In case where fine is imposed as condition of probation, if probationer defaults in payment, court shall immediately arrest defendant and order him to show cause why he should not be imprisoned until the fine is paid. Imprisonment or fine may be condition of probation.

(h) Probation Officers' Qualifications - Probation officer must be 18 years old, a citizen of the state, and an elector of the county or district of his duties; these requirements may be waived by the Board of Supervisors.

(i) Probation Officers' Duties - Probation officer must keep records of probation and case histories which are only open to inspection of court, all magistrates and the chiefs of police unless otherwise ordered by court. Probation officer may destroy records 5 years after termination of probation. Probation officer shall furnish to each probationer a written statement of terms and conditions of probation, and shall report to court any violations thereof. The probation officer, at the court's direction, shall perform a presentence investigation either at time of arrest or at time of plea or verdict of guilty. A deputy probation officer shall perform all duties of the probation officer who shall supervise the deputy. Probation officers and deputies have powers of police officers as to probationers. Probation officer must notify court within 30 days of learning of probationer's conviction and committment on another offense. Probation officer may establish or assist in the establishment of any public counsel or committee having its object to prevent crime. Activities may include giving direct and indirect services to persons in the community. Probation department not limited to providing services only to persons on probation. Probation officer has following additional duties; represent defendant in petition for certificate of rehabilitation when no attorney retained and public defender not available; report injuries and abuse to children to appropriate agencies; deputize any person regularly employed by another state to act as an officer and agent of state in effecting return of probationer who is in violation of conditions of probation in this state. Probation officer may authorize release from incarceration 30 days early in cases where incarceration was a condition of probation, when purpose is to help probationer adjust to community.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are within court's discretion, and may include: restitution; incarceration for period not exceeding maximum prison time possible for particular offense; fine; support of dependents. Court has authority to modify any condition and to re-imprison probationer. In case where fine imposed as condition of probation, if probationer defaults, court must arrest defendant and order him to show cause why he should not be imprisoned until the fine is paid.

(l) Revocation Procedures - Any probation officer may, without a warrant, re-arrest probationer and bring him before court. (1) Upon re-arrest, court may revoke and terminate probation if interests of justice require and court has reason to believe the report of probation officer or otherwise that probationer has violated any conditions of his probation, or has subsequently committed other offenses (regardless of prosecution). Upon revocation, court may modify, revoke, terminate or continue probation. (2) In revocation proceeding, probationer has right to notice and hearing on revocation. Upon revocation, court may, if sentence has been suspended, pronounce judgment within longest period for which person might have been sentenced. However, if judgment has been pronounced and execution has been suspended, court may revoke suspension and order judgment to be in full force and effect.

(m) Probation Termination and Discharge - Court may terminate probation and discharge probationer at any time when ends of justice and good conduct of probationer warrant. After termination of probation at full term or early, probationer can petition court to withdraw plea of guilty or plea of nolo contendere and enter a plea of not guilty, or if he has been convicted after a plea of not guilty, court shall set aside verdict of guilty and dismiss case and defendant shall be released from all penalties and disabilities resulting from offense.

(n) Civil Rights, Disabilities - Probationer shall have the right to petition for a certificate of rehabilitation and pardon. Dismissal of accusation or information pursuant to petition does not restore person's right to own or possess concealable fire arms.

(o) Presentence Activities - Probation report is required before sentencing and copy of report must be made available to court, prosecuting attorney and defendant and his counsel at least 2 days prior to sentencing. If defendant not represented, court shall order probation officer to discuss contents of report with defendant. Report shall cover information useful to the court in disposing of the matter. The report shall contain the probation officer's recommendation for or against release on probation.

SYNOPSIS OF STATUTES OF COLORADO

Relevant Code Provisions:

Colorado Revised Statutes (1973)

Titles	Sections
16	7-401 to 13-210
17	1-301 to 1-304
24	60-207 to 60-309

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation system is administered at the district court level. Subject to the approval of the hief ustice of the Supreme Court, any two or more contiguous judicial districts may combine to form an interdistrict probation department. Each department has a probation officer appointed by the majority of the judges of the districts, withdrawal of a district from a interdistrict department can only be accomplished through written notice to the presiding judges of all judicial districts which are affected.

(c) Probation Officers' Appointment Source - The chief probation officer of the interdistrict probation department is appointed by judges of those affected districts. The probation officers are also appointed by the courts. Supreme Court sets out personnel classification and compensation plan.

(d) Financing Probation - Probationer's employment income is deposited in registry of court for use in restitution, support of probationer's dependents, probation supervision costs and expenses of the probationer. Compensation plan outlined by Supreme Court.

(e) Criteria for Probation - When defendant enters plea of guilty, the court continues the case for a maximum of two years without judgment and sentencing and the defendant is placed under supervision of probation department. Convictions of class 1 felony or class 2 petty offense, and second convictions of a felony result in ineligibility for probation. Probation may be granted in accordance with an extensive list (set out by statute) of criteria considering the defendant's history and character, and the nature and circumstances of the crime. Denial of probation may be based on reports of psychiatrists and probation officers presented during an evidentiary hearing.

(f) Range of Probation Period - The court determines the period of probation. The period of work release during probation can not exceed two years or the maximum term to which defendant could have been sentenced.

(g) Mixed Sentences - The court may require intermittent confinement (during probation) which may not exceed ninety days for a felony, sixty days for a misdemeanor, or ten days for a petty offense. Imposition of fines, reparation or restitution may also be considered by the court.

(h) Probation Officers' Qualifications - The Supreme Court sets out the qualifications for all court personnel regarding education.

(i) Probation Officers' Qualifications - Probation officers are responsible for preparation of presentence reports; furnishing probationers with written statement of probation conditions; and maintenance of records on probationers in their charge. Officers have arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions for deferred sentencing similar in all respects to probation conditions. Terms and conditions of probation are at court's discretion and must assume a law abiding life. A mandatory condition is no commission of an offense while on probation. An extensive list of conditions which may be required is provided by statute. Restoration, payment of court or probation costs, submission to periodic confinement, treatment for mental condition, or participation in work release or educational release programs may be conditions.

(l) Revocation Procedures - Breach of deferred sentence results in hearing with all safeguards of probation hearing.

Probation officer may arrest when he has warrant or probable cause. Court may issue a summons for probationer to appear in court. The officer must provide a report on the violation within five days of arrest and either file complaint or order release and relief of duty to appear in court. The court will issue warrant at request of probation officer or verify complaint. Revocation hearing must be held within fifteen days of filing complaint. After five days from hearing date, court must either revoke or continue probation or pronounce sentence. At the revocation hearing, the probationer: has no right to jury trial; is advised of charges and penalties, and is directed to enter a plea.

(m) Probation Termination and Discharge - Successful termination of deferred sentence results in withdrawal of guilty plea and the action against the defendant is dismissed with prejudice.

(n) Civil Rights, Disabilities - No provisions.

(o) Presentence Activities - Following a guilty verdict, plea of guilty or nolo contendere (other than Class 1) or for a misdemeanor, the court must order presentence report before sentence may be imposed. Contents of the report are available to prosecution and defense, and both parties are afforded an opportunity to present any information in mitigation of punishment. Upon either a court motion or on petition of the probation officer, mental and physical examination may be done.

SYNOPSIS OF STATUTES OF CONNECTICUT

Relevant Code Provisions:

Connecticut General Statutes Annotated

Titles	Sections
5	142
17	343
19	485 to 500
53a	28 to 33
54	76 to 192

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is managed at the state level by a gubernatorally appointed six (6) member Commission on Adult Probation. The Director of Probation is appointed by the Commission and acts as Executive Director with duties to assign and supervise probation officers, maintain records on probationers and other responsibilities as directed by the Commission. The Commission does not provide probation services for juveniles under sixteen(16) years of age.

(c) Probation Officer's Appointment Source - Probation officers are appointed, removed,and compensated by the Commission.

(d) Financing Probation - The state legislature provides funds for the probation program subject to approval of the Commission.

(e) Criteria for Probation - Person convicted of other than a class A felony may be sentenced to probation provided: no danger to public; defendant is in need of guidance and training available through probation supervision; and justice is served.

(f) Range of Probation Period - Maximum periods of probation for various categories of offenses are enumerated in statute.

(g) Mixed Sentences - Sentences may combine fine and imprisonment with probation.

(h) Probation Officers' Qualifications - Qualifying examinations prepared by the Commission on Adult Probation are requisite for appointment as probation officer. Removal of officers may occur only after notice and hearing.

(i) Probation Officers' Duties - Probation officers are required to investigate matters referred by the court; maintain supervision and records on probationers in their charge.

The Commission on Adult Probation (and therefore probation officers) has responsibility for supervising convicted persons released from inpatient drug treatment programs or participating in community treatment programs; and supervision of accused persons whose prosecutions have been suspended to permit drug treatment. In those

cases, the Commission must report to the court periodically about probationer's behavior, and a final report must be submitted before termination of the suspension period which includes a recommendation on dismissal of the charges.

The Commission may, without prior warning, test probationers for drug use and where found, it may apply to court for committment of probationer for inpatient treatment.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are left to court's discretion; however, the statute does enumerated guidelines which may be followed, such as receipt of medical treatment or residence in community facility.

(l) Revocation Procedures - Revocation proceedings for violations of probation conditions may be initiated by court issuing a warrant for probationer's arrest, by probation officer arresting probationer without a warrant, or by the court issuing and serving a notice for probationer to appear before it for a hearing.

Probationer has a right to a hearing on revocation, right to representation by counsel, a right to cross-examine witnesses and a right to present evidence in his own behalf.

Court may continue or revoke probation or modify or enlarge conditions. If revoked, defendant must serve the original sentence, or part thereof.

In cases where prosecution has been suspended to allow for drug treatment and defendant does not comply with the requirements of the Commission on Adult Probation and the Commissioner of Mental Health or shows no likelihood of ceasing criminal behavior, the suspension may be terminated and the accused brought to trial.

(m) Probation Termination and Discharge - Court may terminate probation at any time for good cause.

(n) Civil Rights, Disabilities - No provision

(o) Presentence Activities - Presentence investigation and report is mandatory for non-capitol felony convictions and discretionary for misdemeanor convictions. There is no provision for waiver of mandatory report. Report must include: a social history on the defendant and information to aid the court in determining disposition. Contents of the report are available to the defense and an opportunity is afforded to controvert the facts.

SYNOPSIS OF DELAWARE STATUTES

Relevant Code Provisions:

Delaware Code Annotated:

Titles	Sections
11	832 1447 to 4359
13	522

(a) Definition of Probation - "'Probation' means the sentencing without imprisonment of an offender by judgment of the court following establishment of guilt, subject to the conditions imposed by the court, including the supervision and guidance of the Department's field services. A person placed upon probation or under suspended sentence under supervision shall be known as a probationer."

(b) Probation Administration - Probation is administered at the state level through the Department of Corrections and the affiliated Parole Board and the Department of Health and Social Services. Special presentence officers are supervised by the court.

(c) Probation Officers' Appointment Source - Probation Counselors are appointed by the Department of Corrections.

(d) Financing Probation - Counselors salaries are paid by the state. Compensation for presentence officers is paid by the Superior Court.

Probationer may be charged for costs of probation.

(e) Criteria for Probation - The Department of Correction may adopt standards for probation which the court may use in its discretion. Statute prohibits grant of probation for conviction of Class A or Class B felonies.

(f) Range of Probation Period - The court sets the period of probation which in total cannot exceed the maximum term of commitment provided by law for the offense or one year, whichever is greater.

(g) Mixed Sentences - Where the court finds it desirable in "light of public safety" and the offenders "welfare", it may impose a fine with or without probation or impose imprisonment followed by probation upon release.

(h) Probation Officers' Qualifications - Officers' qualifications are determined by the Department of Corrections.

(i) Probation Officers' Duties - Probation officers are directed by statute to collect fines from defendants, investigate presentence reports and other matters (except reports ordered by Superior Court or Court of Common Pleas) and perform other duties as assigned by the Department of Corrections.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Payment of a fine or costs may be a condition of probation. The court can direct that probationer be released upon his entering into a recognizance, with or without surety and that he appear and receive sentence when called, keep the peace, and be of good behavior.

(l) Revocation Procedures - After hearing under oath, information on the alleged violation(s) the court may issue a warrant for rearrest or a notice to appear to answer the charge. The Commissioner of the Department of Corrections or any probation counselor can arrest with or without a warrant, or deputize any officer with the power of arrest and provide him with a statement of the violation. When the court is informed of the arrest, a hearing, either informal or summary, must follow. The court may continue or revoke the probation requiring the violator to serve the original sentence imposed or a lesser sentence or serve a newly imposed sentence.

(m) Probation Termination and Discharge - The court may enter the order for termination at any time or upon expiration of the term.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - The court may request a presentence report to include information which will assist in determining disposition of defendant's case. When ordered by the court, a report may include mental and physical examination. Defendant may be detained while investigation being made if offense is murder, rape, or narcotics offense.

Presentence officers are appointed for Superior Court and Courts of Common Pleas.

Contents of all presentence reports are privileged and disclosure is prohibited except the court may, in its discretion permit inspection by defendant or attorney or other persons "whenever the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful."

SYNOPSIS OF STATUTES OF FLORIDA

Relevant Code Provisions:

Florida Statutes Annotated

Title	Section
775	775-13
945	945-091 and 945-10
947	947-01 to 947-14
948	948-01 to 948-06
949	949-05 to 040-11

Florida Constitution, Article 4, Section 8

Florida Statutes Annotated - Rules of Court.

Rules
3-670
3-710
3-711
3-790

(a) Definition of Probation - "Pronouncement and imposition of sentence of imprisonment shall not be made upon a defendant who is to be placed on probation regardless of whether such defendant has or has not been adjudicated guilty."

(b) Administration of Probation - The Florida Parole and Probation Commission performs the probation function throughout the state, regarding cases referred to it by the circuit courts; the Commission has jurisdiction over the probation officers and personnel of all the counties, and the "supervision and control of (all probationers) for the duration of such probation." Commission also has authority to perform services relating to the evaluation and rehabilitation of probationers by entering into agreements with local governmental or private foundation agencies that may be in need of such services.

(c) Probation Officers' Appointment Source - The members of the Florida Parole and Probation Commission are appointed by a special Parole and Probation Commission Qualifications Committee, "which shall consist of five persons having special knowledge of penology...(and) the administration of criminal justice..."
The statutes do not specifically provide the procedure for appointment of individual probation officers.

(d) Financing Probation - All expenses of the commission paid from the general revenue fund, within appropriations made by state legislature.

(e) Criteria for Probation - (1) Only precondition to consideration for probation is that it must appear to court that defendant is unlikely to repeat criminal activities, "and that the ends of justice and the welfare of society" do not require his confinement. (2) Court has broad discretion to withhold ajudication of guilt, and has further discretion to place defendant on probation. (3) Probation for misdemeanants is automatically without supervision, unless court affirmatively orders supervision by the Commission.

(f) Range of Probation Period - (1) Felony - "not to exceed two years unless otherwise specified by the court." (2) Misdemeanors - "not to exceed six months unless otherwise specified by the court." (3) Preceeding only applies to probation with supervision; does not limit duration of unsupervised probation.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - Commission sets the standards for qualifications.

(i) Probation Officers' Duties - Commission must investigate all cases referred to it by circuit court and make recommendations in writing to court; it must also keep informed and make records of activities of probationers, and must cooperate with the courts by supervising defendants placed on probation.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has discretion to require any conditions "it considers proper," several statutory guidelines are stated. The performance of public service outside of the probationer's regular hours of employment is specifically mentioned as a possible condition.

(l) Revocation Procedures - (1) Probation supervisor may arrest probationer without warrant upon reasonable ground of probation. violation, to secure presence before court granting probation. (2) Revocation hearing must be held within ten days from date of arrest by the commission or the court. (If greater than ten days passes without hearing, probationer must be immediately released from custody). (3) Probationer must be given "opportunity to be heard in person, by counsel, or both." (4) The arrest of felony probationer on a felony charge subsequent to being placed on probation constitutes strong evidence of violation of conditions of probation.

(m) Probation Termination and Discharge - Either the commission or court may discharge probationer before term expires; termination results in release of probationer from probation and the end of defendant's liability for the sentence for which probation is allowed.

(n) Civil Rights, Disabilities - Executive clemency may be exercised concurrently by governor and three members of state cabinet to restore civil rights of probationers and other convicted persons. No specific mention of judicial power to restore rights.

(o) Presentence Activities - (1) A presentence report is mandatory in cases involving imprisonment; optional in misdemeanor cases. The reports are made by the Commission in writing, and contain its findings and recommendations. (2) No disclosure of report to defendant or defense counsel, unless written permission by the commission; commission adopts regulations regarding such disclosure.

SYNOPSIS OF STATUTES OF GEORGIA

Relevant Code Provisions:

Georgia Statutes Annotated

Titles	Sections
27	2527 to 2529
	2702 to 2732
40	35162.2 to 35162.5
77	501 to 529

(a) Definition of Probation - No provision.

(b) Probation Administration - The probation system is administered at the State level by the Board of Offender Rehabilitation composed of members of the State Board of Pardons and Paroles. The boards are separate but there is a joint chairman appointed by the governor.

The Director of probation is appointed by the Board of Offender Rehabilitation and is subject to their supervision. He is responsible for supervising the probation system and the officers, keeping files and records of cases, making rules and regulations and employing circuit probation supervisors.

The State Board of Pardons and Paroles is appointed by the governor and is responsible for investigating probationers, aiding in securing employment and sending annual reports to the governor and attorney general. It has the power to adopt rules and regulations, to remove disabilities and to remit parts of a sentence, however it does not take any power from the courts or agencies in conjunction with the courts to place offenders on probation or to supervise probation. The court retains power to supervise probation.

(c) Probation Officers' Appointment Source - The director employs and assigns circuit probation supervisors to judicial circuits and the circuit judge may reassign them. The assistant director and district administrators are appointed by the Director of the Board of Offender Rehabilitation and the State Merit System of Personnel Administration.

(d) Financing Probation - Members of the Board of Offender Rehabilitation receive a salary of $10,000 annually. The director's compensation is fixed by the board between $12,000 and $25,000. Salaries of the assistant director and district administrator are set by the director of the Board of Offender Rehabilitation and the State Merit System of Personnel Administration. The Board has no financial obligations to the court.

(e) Criteria for Probation - Those convicted of a misdemeanor, a felony reduced to a misdemeanor or a first felony (except when offense punishable by death or life imprisonment) may be considered for probation if the court feels the circumstances of the case and the public good do not require imprisonment.

(f) Range of Probation Period - The period of probation may not exceed the maximum sentence of confinement which could be imposed.

(g) Mixed Sentences - Fines, restitution, or reparation may be considered by the court in addition to probation.

(h) Probation Officers' Qualifications - In order to qualify for the position of Director of Probation, applicant must be at least thirty years of age, hold a college degree in human behavorial sciences, and have 3 years of field experience.

Qualifications for a circuit probation officer position include age, education, and other requirements as ordered by the Director.

(i) Probation Officers' Duties - Circuit probation supervisor's duties include supervision and control of probationers, investigations of matters referred by the court, submission of reports on probationer's progress.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - In its discretion, the court determines the terms and conditions of probation. Restitution or payment of fine or costs may be conditions of probation. (The fine for a felony conviction may not exceed $2,000.)

(l) Revocation Procedures - Violations of terms, conviction of another crime, failure to report to probation officer as directed, or inability to be found in his county of residence are grounds for suspension of probation. The court may revoke probation without notice and a probation officer may arrest without a warrant. Any officer with an affidavit alleging a violation may issue a warrant. The court may dismiss the charges or schedule a hearing with counsel. Upon revocation, the court may order the execution of the original sentence or a portion of the sentence.

(m) Probation Termination and Discharge - When probation terms are fulfilled, the probationer is discharged without court adjudication of guilt and is exonerated from criminal conviction. After two years of probation service, annual progress reports and recommendations for discharge are filed with the court.

(n) Civil Rights, Disabilities - Civil rights and liberties are not affected after discharge.

(o) Presentence Activities - Prior to a hearing granting probation, the court may request the circuit probation supervisor to investigate and provide recommendations concerning the circumstances of the offense, criminal record, history and the condition of the defendant. All reports and records are confidential and available only to probation officials and judges.

SYNOPSIS OF STATUTES OF HAWAII

Relevant Code Provisions:

Hawaii Revised Statutes

Titles	Sections
32	608-1
37	706-600 to 706-605
	706-620 to 706-630
	712-1255
	806-72
	806-73

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation services are directed by the administrative judge of the state judicial court.

(c) Probation Officers' Appointment Source - Probation officers are appointed by the judges of the judicial circuit.

(d) Financing Probation - The salaries of probation officers and employees of the circuit court are paid by the state.

(e) Criteria for Probation - Sentence of imprisonment must be withheld unless the court determines that the defendant should be incarcerated in order to protect the public from the commission of another crime in order to provide the correctional treatment that the defendant needs; or in order to recognize the seriousness of the defendant's crime. The court may consider a statutory statement of grounds to be accorded weight in determining, including the following grounds: the mental element of the defendant in committing the crime; the mitigating circumstances surrounding the defendant's conduct; the criminal history of the defendant and the likelihood that the defendant would commit another crime; the degree of hardship that would be caused by the imprisonment of the defendant.

The statute further states that a defendant not sentenced to imprisonment should be placed on probation "if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide."

(f) Range of Probation Period - Upon conviction, the period of probation must be limited to 5 years for a felony; 1 year for a misdemeanor; and 6 months for a petty misdemeanor.

(g) Mixed Sentences - Court may require defendant to serve up to 6 months of imprisonment, continuously or intermittently, as an additional condition of its order.

(h) Probation Officers' Qualifications - Probation officers and employees of the court are selected according to the state civil service system.

(i) Probation Officer's Duties - Probation officers can be assigned to any correctional facility. They have the duty to: investigate and report on any case referred by the court; instruct probationer on conditions of his probation; keep informed and report on the probationer; keep records and perform duties assigned by the court; probation officer may exercise arrest powers of a police officer.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court may impose "such reasonable conditions, authorized by (the statutory) section, as it deems necessary to insure that he will lead a law-abiding life or likely to assist him to do so." These conditions include requirement that probationer reside in a facility established for persons on probation; to make restitution; or "to satisfy any other conditions reasonably related to (his) rehabilitation... and not unduly restrictive of his liberty or incompatible with his freedom or conscience."

(l) Revocation Procedures - Probation officer may arrest probationer without warrant upon probable cause for violation of conditions. The court must provide probationer with prevocation hearing and written notice of the grounds for revocation; defendant has further rights to present or contest evidence regarding revocation, and to be represented by counsel at the hearing.

(m) Probation Termination and Discharge - Court may discharge probationer prior to end of probation period. Upon expiration of the period, probationer is relieved of all conditions of and liability for sentence.

(n) Civil Rights, Disabilities - A person convicted of a felony and placed on probation may vote, but may not hold office, and must forfeit any public office held at the time of sentencing.

(o) Presentence Activities - Presentence correctional diagnosis and report required in felony cases and in case where defendant is less than 20 years old. Court may order such report in any other case.

The presentence diagnosis report is made by personnel designated by the court, and may include a psychiatric or other medical examination period not exceeding 60 days, "or such longer period, not to exceed the length of permissable imprisonment."

Defendant and counsel are entitled to copy of presentence report and a "fair opportunity, if the defendant (or prosecuting attorney) so requests, to controvert or supplement them."

SYNOPSIS OF STATUTES OF IDAHO

Relevant Code Provisions:

Idaho General Statutes Annotated

Titles	Sections
18	310
19	2601 to 3921
20	210 to 301

Constitution of Idaho, Article 10, Section 5

(a) Definition of Probation - No provision.

(b) Probation Administration - The State Board of Corrections has control, direction and management of adult probation, penitentiaries and parole matters. The Board supervises probationers and employs and assigns duties of personnel. The State Commission of Pardons and Parole advises this Board on probation matters and provides reports, records and statistics on probationers.

(c) Probation Officers' Appointment Source - The state Board of Corrections is appointed by governor for six years. The Board appoints the commission and is responsible for employing all personnel required by the probation system.

(d) Financing Probation - The Board is salaried according to law and may accept funds from the federal government, local municipalities or counties. The State Commission of Pardons and Parole receives $50. per day.

(3) Criteria for Probation - Probation available at discretion of court for all offenses except treason or murder. The court may withhold judgment or suspend the execution of the sentence when it is a "proper case."

(f) Range of Probation Period - Maximum probation period for a misdemeanor is two years, and for a felony, the maximum possible length of imprisonment for the crime. The probation period may be indeterminate or fixed according to the court's discretion. The probation period with any extensions may not exceed five years except where charge is non-support of dependents.

(g) Mixed Sentences - The court may suspend sentence during the first one hundred and twenty (120) days of confinement and place defendant on probation. The court's jurisdiction may be extended sixty (60) days beyond the stated one hundred and twenty (120).

(h) Probation Officers' Qualifications - No provision for officers. Commission members are chosen on basis of experience, knowledge, and interest in pertinent disciplines.

(i) Probation Officers' Duties - The Board is responsible for supervision and compensation of probation personnel; supervision of probationers and parolees; and general investigative and record keeping matters relative to probationers.

Probation officers prepare presentence reports and hold arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The terms and conditions are drawn at the court's discretion and may be modified at any time. The probationer must make regular appearances in court or file reports to the court offering proof of adherence to the conditions.

(l) Revocation Procedures - Court issues warrant when it is not satisfied with probationer's report or when terms and conditions of probation are violated, or for any other satisfactory cause. A summary hearing precedes the revocation. The Probation Officer may arrest with or without a warrant, or deputize another officer to do so. The execution of the original sentence proceeds or the suspended sentence will be set and executed following revocation of probation. Probation time is not credited to the pronounced sentence.

(m) Probation Termination and Discharge - The court may extend or terminate probation. In the case of a suspended or withheld sentence, the probationer may apply for discharge which may be granted if the court finds (1) the conditions have been met; (2) there is no longer cause to continue; (3) it is compatible with public interest. If probation which has followed incomplete prison term for a felony has been terminated, the court amends the conviction to the number of days already served and deems it a misdemeanor.

(n) Civil Rights, Disabilities - Dismissal of case after termination of probation is followed by restoration of civil rights.

(o) Presentence Activities - Felony conviction requires an investigation by probation officer before probation is granted. A report is required for other cases only when probation officer is available to court. The report includes record, history and when possible, mental examination report on defendant.

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SYNOPSIS OF STATUTES OF ILLINOIS

Relevant Code Provisions:

Smith-Hurd Illinois Annotated Statutes Changes

Titles		
38	102-18	to 1005-6-4
56-1/2	710	to 1509
68	25.1	to 27
91-1/2	120.8	to 120.10
110A	604	to 609

(a) Definition of Probation - Probation "means a sentence or adjudication of conditional and revocable release under the supervision of a prob[illegible] officer."

(b) Probation Administrat[illegible] inistration of probation system primarily carried out [illegible] robation Officer in each county, subject to rules, regula[illegible] orders of county courts. (1) Circuit court of each [illegible] appoint Chief Probation Officer and other officers, o[illegible] rcuit court may appoint Probation Officers to act through[illegible] dicial circuit, or (3) circuit court may establish prob[illegible] district of two or more counties within the circuit.

(c) Probation Officers' Appointment Source - The circuit court of each county appoints probation officers or joins with other courts in the appointment.

(d) Financing Probation - (1) Compensation of personnel is determined by the Board of Commissioners (or Supervisors) of the counties in which officers are appointed; paid by county treasurer. (2) Administrative support is duty of Board of County Commissioners or (Supervisors) to provide.

(e) Criteria for Probation - (1) Eligibility - Court may defer imposition of sentence and enter order for supervision of defendant if not charged with felony, and if defendant meets certain statutory criteria; other statutory criteria are listed regarding courts consideration of sentence of imprisonment. (2) First offenders - the court may, without entering judgement of guilt, place defendant on probation; applies only to listed drug offenses. (3) Conditional discharge is additional sentencing alternative open to court. (4) Drug addicts - may be eligible under statutory criteria to elect treatment while on probation, and must be informed of this by the court. If treatment option taken, addict may be placed on probation by court, in its discretion.

(f) Range of Probation Period - (1) Felony - not to exceed 5 years; (2) Misdemeanor - not to exceed 2 years; (3) Petty offense - not to exceed 1 year.

(g) Mixed Sentences - (1) Court may combine sentence of periodic imprisonment with sentence of probation. (2) Court not empowered to require as condition to probation imprisonment for period in excess of 6 months.

(h) Probation Officers' Qualifications - Officers must be of good character, reputable, and must meet qualifications set by court rules. Officers required to take oath.

(i) Probation Officers' Duties - (1) Duties include the investigation of probationers, compilation of presentence reports thereof, maintenance of records of cases investigated; (2) Supervise and take charge of persons placed on probation; (3) Chief probation officer has general supervisory duty, subject to court orders and rules; (4) Power to arrest probationer without warrant.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - (1) Court must require probationer to criminal statute, and report to agency as directed by court; (2) General statutory guidelines for probation conditions are listed; periodic chemical tests for drug use may be required of person if court finds such person to be a drug addict.

(l) Revocation Procedures - (1) Procedure - hearing is mandatory; the defendant has right of confrontation, cross-examination, and to representation by counsel; the state has the burden of proof. Defendant has right to obtain report of proceedings. (2) Right to appeal - defendant must be informed of, and has right to appeal, probation revocation, with asistance of appointed counsel (if indigent).

(m) Probation Termination and Discharge - (1) Mandatory discharge if court determines that defendant has successfully met conditions and has completed period of probation. (2) Discretionary - court "may at any time terminate probation...if warranted by the conduct of the offender, and the ends of justice."

(n) Civil Rights, Disabilities - Upon successful completion of conditions of probation- the court that initially deferred the imposition of sentencing shall order the discharge of probationer and enter judgement dismissing the charges; this dismissal shall not be termed a conviction for purposes of disqualifications or civil disabilities imposed upon convicted persons. Three years after such dismissal, the person may have criminal record expunged.

(o) Presentence Activities - A presentence report is mandatory prior to sentencing for a felony conviction; defendant may waive such investigation and report.

SYNOPSIS OF STATUTES OF INDIANA

Relevant Code Provisions:

Indiana Statutes Annotated

Titles	Sections
9	9-4-1-127; 9-4-13-10
11	11-1-1-20; 11-1-1.1-18 to 11-1-1.1-23
16	16-13-6.1-18
33	33-5-35.1-8 to 33-5-44.1-18; 33-6-1-20
35	35-5-6-2;35-7-1-1 to 35-7- 5.1-12; 35-8-1a-2 to 35-8-3-2; 35-50-2-2; 35-50-3-1

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation system is administered at the State level through the Commissioner of the Department of Correction and the Department's Division of Probation. The Division has the authority to promulgate rules and regulations for probation staffs and regulate methods of probation. Appointments and compensations are regulated by the individual courts.

(c) Probation Officers' Appointment Source - Personnel for the Division of Probation are recommended by the Commissioner. The Director of the Division of probation is appointed by the Commissioner with the approval of the Board of Correction. From time to time, the Division of Probation conducts competitive examinations to establish lists of persons eligible for appointment as probation officers. Probation officers are appointed by the court from these lists of eligibles.

(d) Financing Probation - Court probation services for counties are paid from State funds. Compensation schedules for probation personnel are set by the Division of Probation and the Probation Standards and Practices Committee.

(e) Criteria for Probation - While criteria for probation are left to the court's discretion, the statutes set out factors which may be considered for aggravation or mitigation of sentence.

Court is prohibited from suspending sentence for a felony where defendant has a prior felony conviction and the felony committed was among a list of serious felony offenses set out in the Statute.

With or without election for treatment, drug offender may be placed on probation and treated for drug rehabitation.

(f) Range of Probation Period - In felony cases, probation period may not exceed the expiration date of the suspended sentence. For drug offenders admitted to treatment, probation period may be the maximum for the offense or three (3) years, whichever is less. For habitual traffic offenders, probation period may not be less than three (3) years nor exceed ten (10) years.

(g) Mixed Sentences - Fine or restitution are penalties available to the court. In addition to probation, court may order "intermittent" service of confinement.

(h) Probation Officers' Qualifications - Division of probation shall adopt, in the name of the department and subject to the approval of the Commissioner, minimum qualifications for personnel entering probation work. Such standards are promulgated in competitive examinations.

The director of the division of probation shall have the following qualifications: a bachelor's degree and preferably a graduate degree; eight years full-time paid experience in a correctional system; three years in a responsible supervisory or administrative capacity (2 years of graduate education may be substituted for 2 years of general experience).

(i) Probation Officers' Duties - Probation officers are responsible for investigation of matters referred by the court; furnishing the probationer with written statement of conditions; maintenance of records and supervision of probationers in their charge. Officers have process and arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - While court may designate or modify conditions of probation, statute enumerates guidelines for consideration. These include medical and psychiatric treatment, restitution, or payment of fine.

(l) Revocation Procedures - When petition is filed charging probation violation, court may issue summons or arrest warrant. (Summons or warrant tolls period of probation until final determination). A revocation is prohibited where imposition of financial obligations are involved and defendant did not recklessly, knowingly, or intentionally refuse to pay.

(m) Probation Termination and Discharge -Probation may be terminated by the court at any time.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Presentence report required in felony cases. Report should contain information on the defendant useful to the court's disposition of the case.

Court may order a physical or a mental examination for a period not exceeding 90 days and the report therefrom should be included in the presentence report.

Presentence report available to defendant, counsel and prosecuting attorney. Sources of confidential information may not be released without order by court.

Defendant may file with court a written memorandum to be considered at time of sentencing, and may also attach written statements by others in support of facts alleged in memorandum.

SYNOPSIS OF STATUTES OF IOWA

Relevant Code Provisions:

Iowa Code Annotated

Titles	Sections
3	101 to 104
204	409
217	24; 28
218	B1, B2
247	20 to 40
252A	6
356	47
685	9

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is administered by State and local authorities. (1) At the state level, a Board of Parole exercises administrative authority over the probation system, and the Chief Parole Officer is responsible for supervision of persons released on probation after conviction. The Department of Social Services, Division of Corrections budgets for some of the administrative costs of probation. (2) At the local level, "community-based correctional programs and services" are operated for the "rehabititation" of probationers.

(c) Probation Officers' Appointment Source - No provision.

(d) Financing Probation - Any necessary expenses contracted by the Board of Parole for care of probationers is paid from general fund appropriations of the Board. Where costs are incurred for transport of probationer to institution following revocation of probation, payment is made by the Division of Corrections of the Department of Social Services.

(e) Criteria for Probation - Except for offenses of treason, murder or violation of a narcotics law, court may in its discretion suspend the sentence and grant probation to defendant during good behavior.

Where there is no prior narcotics or controlled substance conviction the court may, without entering a judgment of guilt, and with the consent of the accused, defer futher proceedings and place defendant on probation.

(f) Range of Probation Period - The length of probation shall be for such term as the court may fix, unless the defendant is ordered placed under the supervision of the chief parole officer, in which case the term of probation shall be determined by the board of parole, and the probation shall be supervised by the chief parole officer.

(g) Mixed Sentences - The court may suspend sentence of confinement and place defendant on probation provided defendant has served the portion of the sentence which was not suspended.

Deferred prosecution with probation is available to the court as a disposition.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Presentence investigations are conducted by the probation and parole service, the Department of Social Services or other agencies as determined by the court.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Probation conditions are left to the discretion of the trial court.

(l) Revocation Procedures - No provision.

(m) Probation Termination and Discharge - Upon fulfillment of terms and conditions of probation, the court shall discharge the defendant and dismiss the proceedings against him without adjudication of guilt. This may occur only once with respect to any person.

(n) Civil Rights, Disabilities - Upon final discharge at the end of the probation period, the court shall forward to the governor a recommendation for or against restoration of citizenship rights.

(o) Presentence Activities - The Department of Social Services is responsible for presentence investigations. The investigations shall be made by a probation officer, by the agency in charge of parole agents, or by another agency as determined by the court.

For felony offenses, presentence investigations are required. For misdemeanors, the court may order in its discretion a presentence investigation when the maximum period of confinement is over 30 days.

SYNOPSIS OF STATUTES OF KANSAS

Relevant Code Provisions:

Kansas Statutes Annotated

Titles	Sections
21	4601 to 4618
22	3429 to 3716
75	5212 to 5285

(a) Definition of Probation - "'Probation' is a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court after imposition of sentence, without imprisonment subject to conditions imposed by the court and subject to the supervision of the probation service of the state, county or court."

(b) Probation Administration - Probation is administered at the state level through a Director of Probation and Parole and a Secretary of Corrections. Policy is formulated by the Kansas Adult Authority and is subject to the approval of a Board of Probation and Parole.

(c) Probation Officers' Appointment Source - Probation Officers are appointed by the Secretary of Corrections in accordance with state Civil Service procedures. They must receive eighty hours of in-service training per annum.

(d) Financing Probation - In addition to their regular compensation, probation officers receive their reimbursement from the state for travel and other expenses incurred in the performance of their official duties.

(e) Criteria for Probation - Granting of probation is discretionary with the court; however, probation is prohibited where defendant is convicted of a crime involving firearms.

(f) Range of Probation Period - Initial probation period may not exceed five (5) years in felony case or two (2) years in misdemeanor. Court may extend probation for a fixed five year period for felonies and two year period for misdemeanor. However, the total probation period may not exceed the maximum sentence for the offense (exception non-support cases).

(g) Mixed Sentences - Fine restitution, or payment to the indigent defendant's counsel fund may be considered in addition to probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Probation officers must investigate all matters referred by the Secretary or the Court; furnish probationer with written statement of conditions; and supervise

and maintain records on probationers in their charge. Officers have powers of process and arrest.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The Kansas Adult Authority adopts general rules and regulations for probation conditions. These conditions apply in the absence of any conditions imposed by the court, and the court reserve the right to modify or amend conditions at any time. Reparation, restitution, payment of costs or a fine may be conditions of probation. Statute enumerate other conditions which may be considered by the court.

(l) Revocation Procedures - At any time during probation or suspension of sentence the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Any probation officer may arrest such defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his release.

The court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and he shall be informed by the judge that if he is financially unable to obtain counsel, an attorney will be appointed to represent him. The defendant shall have the right to present the testimony of witnesses and other evidence on his behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing.

If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the defendant to serve the sentence imposed, or any lesser sentence, and where imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

The court may modify sentence within 120 days of probation revocation.

(m) Probation Termination and Discharge - Probation may be terminated by the court at any time during the period.

The court may allow withdrawal of a plea of guilty and dismiss the complaint,information,or indictment when the defendant meets certain statutory requirements.

(n) Civil Rights, Disabilities - Defendant (under 21 at the time of commission of offense) whose probation is dismissed by the court has all civil rights restored.

(o) Presentence Activities - Presentence report may be ordered by the court upon finding of guilt, where no imposition of death penalty is involved. Reports are prepared by the Kansas Reception and Diagnostic Center which may detain defendant for up to one hundred and twenty (120) days. Mental and physical examinations are to be included in the report as well as information about the defendants which aids the court in determining disposition. All reports and diagnostic tests are confidential, but upon request, may be disclosed to prosecution and defense.

SYNOPSIS OF STATUTES OF KENTUCKY

Relevant Code Provisions:

Kentucky Revised Statutes

Titles	Sections
17	150
196	075
439	265 to 570
440	130
	455
532	040 to 080
533	010 to 060
534	030

Kentucky Revised Statutes - Rules of Court

Rule
12-76

(a) Definition of Probation - No provision.

(b) Probation Administration - Dual administration of services at the state and local level characterizes the probation system. At the state level, there is a Secretary of Justice who has oversight of all executive agencies dealing with criminal justice. The Secretary has authority over the Bureau of Corrections, which in turn, is under the direction of Commissioner. The Commissioner is assisted by a bipartisan Commission on Correction and Community Service.

On the local side, the fiscal courts of each county provide office facilities for probation officers.

(c) Probation Officers' Appointment Source - Probation officers are appointed by the Commissioner's appointee for deputy probation and parole. Appointments are subject to the approval of the Secretary of Justice and the Governor.

(d) Financing Probation - Expenses of probation program are paid from state funds; Commission members are reimbursed for their travel and per diem expenses by the State; and county fiscal courts are responsible for providing office space. In addition, offenders on probation or conditional release receive a sum not to exceed $10. ($25. in the Commissioner's discretion) for clothing and transportation.

(e) Criteria for Probation - Grant of probation is within court's discretion except where offender is convicted of a capital offense and is classified as a "persistent felony offender"; where offender is convicted of a Class A, B, or C felony involving use of a firearms; where sentence of imprisonment is required; or where probationer convicted of felony.

(f) Range of Probation Period - Period of probation is fixed by the court and may be extended or shortened. Period with extensions may not exceed five years for a felony, nor two years for a misdemeanor. Sentence of probation runs concurrently with any Federal or State jail or prison term unless sentence is revoked.

(g) Mixed Sentences - Person convicted of a felony and granted probation may also have a fine imposed (not greater than $10,000 or double the amount of defendant's gain from commission of the offense, whichever is greater).

Offender may be placed on "conditional discharge" (without probationary supervision) or "shock probation" at the court's discretion. "Shock probation" may be requested on defense motion between 30 and 60 days after period of incarceration is begun.

(h) Probation Officers' Qualifications - Probation officers are required to hold bachelor's degrees; have training and experience in probation or related social work.

(i) Probation Officers' Duties - Officers are required to investigate matters referred by the court; furnish probationer with written statement of conditions; prepare presentence reports; and generally supervise and maintain records on probationers in their charge. All information received by probation officers in discharge of their duties remains confidential. Statute enumerates prohibited activities of officers such as political campaigning. Officers hold power of arrest.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - While statute enumerates guidelines which may be followed by the court and the Commissioner has some rule making powers over probationers, conditions of probation are set in the court's discretion.

Imprisonment (not to exceed 6 months or maximum of term of the offense) may be a condition of probation.

(l) Revocation Procedures - Court may revoke probation upon a finding of violation of condition or commission of another offense.

Probationers may be rearrested without a warrant by probation officer. Probationer is entitled to revocation hearing with certain specified rights.

(m) Probation Termination and Discharge - Upon fulfillment of probation terms, probationer may be discharged by the court.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - A presentence report is required in all felony convictions except capital offenses. The report is prepared by probation officer and must include information on the defendant useful to the court in achieving a disposition. Psychiatric tests may be included in the report.

Defense counsel and defendant are afforded opportunity to review contents of report and examinations and controvert facts. Sources of confidential information need not be disclosed.

SYNOPSIS OF STATUTES OF LOUISIANA

Relevant Code Provisions:

West's Louisiana Revised Statutes Annotated

Titles	Sections
13	13:1408
13	13:2519
14	14:30.1
14	14:95
15	15:305
15	15:529.1
15	15:581.5
15	15:581.19
15	15:826
15	15:1112
29	29:172
33	33:730
33	33:731
42	42:651
46	46:55.1
46	46:61
46	46:1651 to 46:1654

West's Louisiana Statutes Annotated - Criminal Procedure

Title	Articles
18a	263
	552
	648 to 658
	875 to 877
	893 to 902

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is administered by State Division of Probation and Parole in the Department of Corrections, and supervision is carried out by state probation officers.

(c) Probation Officers' Appointment Source - Officers generally are appointed by state Department of Corrections to serve in local courts. A court may appoint, with approval of Department of Corrections, the parish or district director of public welfare to perform the functions of probation officer in any welfare matters which come before the court. Certain family courts may appoint probation officers to serve such courts.

(d) Financing Probation - Financed through state legislative appropriations.

(e) Criteria for Probation - Court has general discretion to place defendant on probation "when it appears that the best interest of the public and of the defendant will be served," except: defendants convicted of second felony within a five year period, capital crime, armed robbery, or on third conviction for crime of illegal carrying of weapons. Defendant convicted of second-degree murder not eligible for probation for a period of 40 years.

The superintendent of a state mental institution may recommend to the court that a defendant committed for incompetency arising out of a criminal case be released on probation.

(f) Range of Probation Period - Felony cases - period of probation specified shall not be less than one year nor more than five years. Misdemeanor cases - period of unsupervised probation not to exceed one year; supervised probation not to exceed two years.

(g) Mixed Sentences - In felony cases, additional conditions of probation may be term of imprisonment, not to exceed one year. Probation may be accompanied by requirement of payment of fine.

(h) Probation Officers' Qualifications - Specific qualifications are set by State merit system rules. Department of Corrections may provide educational leave, with pay, to probation personnel in order to improve qualifications for probation.

(i) Probation Officers' Duties - Officers shall make investigations and perform other duties assigned to them by the court; officers have power of arrest without warrant. Statute requires probation officer to provide for study and research into causes of crime and other social problems relative to the probation function.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court shall require probationer to refrain from criminal conduct, and may impose specific conditions, including: meet specified family responsibilities; make restitution; serve term of imprisonment not to exceed one year; refrain from narcotics; participation in program for rehabilitation of drug dependent persons (only if probationer has been accepted by such a program).

(l) Revocation Procedures - Court at any time may issue arrest warrant, or summons, for violation of any probation condition. If probation officer has reasonable cause to believe violation of probation condition has occurred, he may arrest defendant without a warrant.

Upon arrest, a hearing which may be informal or summary shall be held without delay.

If court determines that there has been a violation of probation or that probationer was about to violate conditions, it may give warning or intensify supervision or modify conditions or revoke probation and recommit probationer. Commission of subsequent crime is grounds for revocation.

(m) Probation Termination and Discharge - When imposition of sentence suspended and probation served satisfactorily, court may set aside conviction and dismiss. In felony cases, court may terminate probation after 1 year; in misdemeanor cases, it may do so at any time.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Court shall order Division of Probations and Parole of the Department of Corrections to make presentence investigations. The probation officer shall inquire into: circumstances of offense or defendant's criminal record, or other relevant matters, including a physical and mental examination, if ordered by court. In felony cases where no presentence report is ordered prior to sentencing, the Division of Probation and parole shall make a post-sentence investigation and report which shall be made available to the sentencing judge.

Presentence or post-sentence reports are privileged, but the court may advise defendant or his counsel of the contents and conclusions of reports.

SYNOPSIS OF STATUTES OF MAINE

Relevant Code Provisions:

Maine Revised Statutes Annotated

Titles	Sections
14	5502
15	203
	223
	2142
17a	255
	552
	1152
	1201 to 1206
	1252
34	1501 to 1503
	1552
	1591 to 1593
	1771 to 1774

(a) Definition of Probation - "A procedure under which a person found guilty of an offense is released by the court without being committed to a state penal or correctional institution, or with or without committment to jail or fine, subject to conditions imposed by the court."

(b) Administration of Probation - Probation is administered at the state level through the Department of Mental Health and Corrections' Bureau of Corrections, Division of Probation and Parole. The State is divided into administrative probation districts with officers assigned to each district. Oversight of the Division is handled by the Probation and Parole Board which is answerable to the Governor.

(c) Probation Officers' Appointment Source - Subject to state civil service, Director of Probation and Parole appoints probation officers.

(d) Financing Probation - No provision.

(e) Criteria for Probation - (1) Court may sentence defendant to probation, except where conviction is for criminal homicide or for crime which statute expressly exempts from probation; or where "court finds...undue risk" that probationer "would commit another crime" or finds sentence of probation "would diminish the gravity of the crime for which he was convicted." (2)Defendant not disqualified by above criteria "shall be sentenced to probation if he is in need of the supervision,

guidance, assistance or direction that probation can provide." Otherwise, the court must unconditionally discharge defendant.

(f) Range of Probation Period - Felony offenses and the relevant probation periods for these offenses are specified by statute.

(g) Mixed Sentences - Court may order imprisonment for up to 90 days as a condition of probation. Unconditional discharge or suspended fine with probation are remedies available to the court.

(h) Probation Officers' Qualifications - Probation officers are appointed subject to qualifications required by state Personnel Law.

(i) Probation Officers' Duties - At the direction of the court or the Director of Probation and Parole, officers must prepare presentence reports, investigate all matters referred to them; supervise and maintain records on all probationers in their charge. Officers have arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court may impose conditions "reasonably related to the rehabilitation of the convicted person or the public safety or security," including any of the specific conditions listed in statute such as fine, restitution, or reparation.

(l) Revocation Procedures - Revocation is a bifurcated process of preliminary hearing and revocation hearing. (1) Preliminary hearing. Upon arrest by probation officer for alleged violation, probationer is entitled to preliminary hearing by district probation supervisor to determine "probable cause to believe that a condition of probation has been violated." (2) Upon determination of probable cause, the court may, in its discretion, order hearing on probation revocation; probationer at hearing must be given "opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf, and to be represented by counsel," who shall be appointed if probationer is indigent.

(m) Probation Termination and Discharge - Court may order early termination upon request of probationer, probation officer, or on its own motion. No criteria are set out for early termination but effect is to relieve (probationer) of any obligations imposed by the sentence of probation.

(n) Civil Rights, Disabilities - No provision.

(o) <u>Presentence Activities</u> - Statute does not specify when court orders presentence report but does designate responsibility for preparation of the report to the Division of Probation and Parole.

SYNOPSIS OF STATUTES OF MARYLAND

Relevant Code Provisions:

Maryland Code Annotated

Article	Sections
27	102
	292
	293
	639A to 645M
	701
41	107 to 131A
	204D
	204E
64A	9I
	9J
	19

(a) Definition of Probation - "Probation is the conditional exemption from imprisonment allowed by prisoner by suspension of sentence (by the court). The condition of any order of probation shall be determined solely by the judge granting same."

(b) Probation Administration - The Division of Parole and Probation is part of the Department of Public Safety and Correctional Services, and provides probation services to all courts when requested. The Advisory Board for Correction, Parole and Probation established as part of Department of Public Safety and Correctional Service, studies of the development and progress of the corrections, makes parole and probation systems of the State. It makes suggestions and gives advice with respect to State's correction, parole and probation systems. Regular members appointed by Secretary of Public Safety and Correctional Services, with approval of Governor for terms of four years each.

Reviewing panel shall have right to require Department of Parole and Probation to investigate, report and make recommendations with regard to any application for review of sentence. The panel has the power to suspend a sentence with or without probation and set terms.

(c) Probation Officers' Appointment Source - Probation officers are appointed by the State according to the merit civil service system.

(d) Financing Probation -

(e) Criteria for Probation - Probation may be granted by circuit or district court after staying the entering of judgment if the court is satisfied that the best interests of the defendant and welfare of the people of state would be served, and with written consent of defendant. Alternatively, the court may, in its discretion, suspend imposition or execution of sentence and place defendant on probation. Defendant with prior drug related conviction is ineligible to be considered for probation for present drug related conviction.

(f) Range of Probation Period - Probation may not be longer than five years when imposed by judge of circuit court, and not more than three years when imposed by the court.

(g) Mixed Sentences - Court may first impose sentence of confinement for a specified period, then provide that a lesser period be served in confinement with suspension of remainder of the sentence, and grant probation for a period longer than the sentence, but not in excess of five years. Both fine and probation may be ordered.

(h) Probation Officers' Qualifications - The state merit civil service system sets standards for probation officers' qualifications.

(i) Probation Officers' Duties - Probation officers are responsible for preparation and investigation of presentence reports and supervision of probationers in their charge.

(j) Volunteer Probation Officers - Division of Parole and Probation authorized to establish a citizen's support unit that is comprised of volunteers who aid in education and counseling of parolees and probationers.

(k) Conditions of Probation - Conditions of probation are within discretion of court and may include restitution payment or attendance at rehabilitation program.

(l) Revocation Procedures - Upon the violation of a condition of probation, court may enter a judgment of conviction and proceed with disposition as if person had not been on probation. If revocation of probation is ordered by a district court judge in a case where defendant has never been convicted, the court shall proceed to try the case.

(m) Probation Termination and Discharge - Upon expiration of the term and fulfillment of the conditions of probation, the court shall discharge probationer and dismiss proceedings against him, and there shall be no judgment of conviction. In the case of a first conviction in a drug-related case, any public criminal record shall be expunged as a matter of right.

(n) Civil Rights, Disabilities - Discharge from probation after termination shall not be a conviction for purposes of any disqualification or disability imposed by law for conviction of crime.

(o) Presentence Activities - Presentence reports and investigations are conducted by agents of the Division of Parole and Probation. Reports are available to the defendant's attorney and State's attorney's office. Reports shall be confidential and not available to public. Division of Parole and Probation mandated to promote full and complete interchange of records and information pertaining to probation.

SYNOPSIS OF STATUTES OF MASSACHUSETTS

Relevant Code Provisions:

Massachusetts General Statutes Annotated

Titles	Sections
18A	9
27	3
32	76
	76A
90	24D
	24E
94C	34
	35
123	40
	49
123A	4
	5
127	17
	36
	135 to 151K
147	4C
209	32
218	3D
265	37
266	14
268	33
271	41
273	3
	5
	6
276	12
	30J
	20K
	83 to 103
276A	9
279	1A
	3
	4A
280	6

(a) Definition of Probation - No provision.

(b) Probation Administration - State Commissioner of Probation supervises and establishes standards for the probation work in all courts in the State. Commissioner is appointed for six year term by State Advisory Committee on Probation which also consults with the Commissioner when setting standards of probation work. Committee sets standards for appointment of all probation officers in the State.

(c) Probation Officers' Appointment Source - (1) Courts appoint probation officers and may designate a certain appointee to

be chief probation officer or supervisor of probation; (2) Commissioner of Probation may appoint five deputy commissioners and three supervisors of court probation services and may recommend to court the appointment of additional probation and clerical personnel. Personnel classifications are set out in statute.

(d) Financing Probation - Compensation of probation officers provided by State. "Reasonable expenses" of probation officers assigned to court are approved by court and paid by county where court is located.

(e) Criteria for Probation - Court may suspend sentence of imprisonment and place convicted person on probation, except for crime punishable by death or life imprisonment.

(f) Range of Probation Period - Court may place person on probation "for such time and upon such conditions as it deems proper...".

(g) Mixed Sentences - In District or Municipal courts, fine, imprisonment, or both are sentences available to the court.

(h) Probation Officers' Qualifications - State Committee on Probation prescribes standards for qualifications of all probation officers, and such standards are implemented by Commissioners of probation. Applicant may not be automatically disqualified because of absence of college degree, if committee "considers he has the practical equivalent."

(i) Probation Officers' Duties - State Commissioner of Probation prescribes duties of officers which include preparation of presentence reports.

(j) Volunteer Probation Officers - Court may appoint unpaid deputy probation officers to supervise children under seventeen years of age on probation. Probation officers direct volunteers.

(k) Conditions of Probation - Court has general power to impose "such conditions as it deems proper". Participation in "driver alcohol education programs" is a condition of probation for charge of drunken driving. Court may require drug dependent person to receive treatment as condition of probation and submit to periodic program of chemical testing for drug use.

(l) Revocation Procedures - Probation violator may be arrested without a warrant by probation officer. Probationer must appear before the court at which time, probation may be continued or revoked,or sentence imposed and executed.

(m) Probation Termination and Discharge - Court has discretion to terminate and discharge probationer.

(n) Civil Rights, Disabilities - Person may request that his record of probation be sealed by Commissioner of Probation. Any sealed records do not deny a person his civil rights or opportunity for State employment.

(o) Presentence Activities - Presentence report is mandatory for offense punishable by imprisonment greater than one year. Court may order report in other types of cases. Reports may not contain information on prior criminal prosecutions resulting in finding of not guilty.

SYNOPSIS OF STATUTES OF MICHIGAN

Relevant Code Provisions:

Michigan General Statutes Annotated

Titles	Sections
4	4.463
14	14.58 (16)
18	18.1070 (47)
25	25.161
	25.163
27A	27A.8314
28	28.364 (2) to 28.2322

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is administered at the state level through the Department of Corrections' Bureau of Probation in accordance with policy set by the Board. The state is divided into districts (parallel to court districts). Officials of the Bureau supervise county probation officers and serve counties with no probation officers.

(c) Probation Officers' Appointment Source - Officers are recommended by circuit courts and appointed by Michigan Corrections Commission. Removal for cause may be handled by Court or Commission.

(d) Financing Probation - County Boards of Supervisors determine salaries of probation officers and assistants and are drawn from county funds.

(e) Criteria for Probation - Probation grant is within discretion of the court. No probation may be granted for persons convicted of murder, treason or robbery involving use of firearms.

First time (non-drug) offender may be eligible for deferred prosecution and probation.

(f) Range of Probation Period - Probation period shall not exceed 2 years for misdemeanor and 5 years for felony. Extensions of probation may not exceed maximums. Person under age 22 who is convicted of a crime for which incarceration in the State prison may be imposed may be placed on probation, but required to spend part of the period (not over 1 year) in a probation camp.

(g) Mixed Sentences - Probation may accompany payment of fine or costs and/or imprisonment for not more than 6 months.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Probation officers are responsible for presentence investigations; supervision of probationers; maintenance of records; and other duties assigned by the Assistant Director of Corrections.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are at court's discretion. However, statute enumerates conditions which may be considered by the court such as fine, restitution, payment of costs, drug rehabilitation or imprisonment for not more than 6 months.

(l) Revocation Procedures - Since no offender has a right to probation (by statute) court may order revocation as it deems appropriate. Revocation hearings are summary and informal. By court order, probationer may be arrested, detained and confined.

When probation is revoked, the court may proceed to sentence.

(m) Probation Termination and Discharge - Upon fulfillment of conditions of probation, court shall discharge probationer and dismiss proceedings without ajudication of guilt.

(n) Civil Rights, Disabilities - Where probationer is dismissed without adjudication of guilt, no disabilities or disqualifications may attach.

(o) Presentence Activities - A presentence report is mandatory in felony case and optional in misdemeanor case.

Probation officers are required to prepare reports which include information on the defendant useful to the court in deciding sentence. A psychiatric examination is attached to the report.

SYNOPSIS OF STATUTES OF MINNESOTA

Relevant Code Provisions:

Minnesota Statutes Annotated

Chapters	Sections
242	242.21
	242.22
243	243.05 to 243.16
246	246.43
299	299.C06
488A	488A.04
609	609.13 to 609.14
643	643.07

Code of Criminal Procedure

27.02
27.03

(a) Definition of Probation - No provision.

(b) Probation Administration - Commissioner of corrections shall exercise probation supervision, and appoint required agents and personnel. The Chief Probation Officer shall supervise other probation officers.

(c) Probation Officers' Appointment Source - Chief Probation Officer is appointed by court. With court's approval, chief probation officer shall appoint a chief deputy probation officer, a casework supervisor, and such number of deputy probation officers and other employees as may be required.

(d) Financing Probation - Board of County Commissioners shall provide the probation officers, the casework supervisors, and others, with furnished offices and supplies. The court shall fix the annual salaries of probation personnel subject to maximums.

(e) Criteria for Probation - Except when a sentence of life imprisonment is required by law, any court, including a justice of the peace, in its discretion may stay imposition or execution of sentence and place defendant on probation. Upon recommendation of commissioner of public welfare court may impose probation for sex offender, on condition that defendant receive out-patient treatment.

(f) Range of Probation Period - For felony conviction, the stay of sentence (including probation) may be no more than the maximum period for which imprisonment might have been imposed. For misdemeanor, the maximum stay is 1 year.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Probation officers must be present in court as required, must supervise probation reports to the court, and have powers of police officers. The Chief Probation Officer supervises other probation officers and delegates duties to them.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - No provision.

(l) Revocation Procedures - State Corrections Authority may deputize any person regularly employed by another state to act as officer and agent of state in returning probation violator.

When it appears that probationer has violated any condition of his probation the court may, without notice, revoke probation and direct that defendant be taken into custody. Then the defendant must be notified in writing of the grounds of revocation, if contested, court must cause a summary hearing to convene, at which defendant is entitled to counsel. If grounds for revocation are found to exist, the court may impose sentence previously imposed or new sentence.

(m) Probation Termination and Discharge - If imposition of sentence is stayed, defendant is placed on probation and afterwards is discharged without sentence. Although conviction is for a felony, such conviction is deemed to be a misdemeanor if the imposition of the sentence is stayed and defendant is placed on probation, and is thereafter discharged without sentence.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Person convicted of a sex offense shall be committed to commissioner of public welfare of department of public welfare to conduct a presentence (social, physical and mental) examination within sixty days after conviction.

Except where a sentence of life imprisonment is required by law, court may order a presentence investigation and report, and shall do so when required by law. In misdemeanor cases, report may be oral. Copy of written report provided to counsel for all parties before sentencing. Otherwise, disclosure may be made only as provided by law: if report is oral, counsel or defendant permitted to hear report. A mental or physical examination may be required by the court.

SNYOPSIS OF STATUTES OF MISSISSIPPI

Relevant Code Provisions:

Mississippi Code Annotated (1972)

Titles	Sections
1	1-1-11
25	25-3-33
	25-31-29
41	41-29-150
	41-31-13
47	47-7-1 to 47-7-45
93	93-9-39
	99-19-81
	99-19-83

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is a state level management function of the Department of Corrections and the State Probation and Parole Board and the Division of Community Services.

(c) Probation Officers' Appointment Source - 'Field Supervisors' (probation officers) are appointed by the Division of Community Services and assigned to judicial districts and circuits. Courts, in the respective localities, may request transfer or removal of supervisors. Presentence investigators serve each court.

(d) Financing Probation - Expenses incurred for probation services are paid from funds appropriated to the Board.

Compensation levels of probation personnel are set by the Board.

When arrest warrant for violation is issued, arresting officer is allowed a fee which is levied against probationer.

(e) Criteria for Probation - Probation is within the discretion of the court except where offense carries death or life imprisonment penalties or where offender has minor felony conviction or is classified as "habitual criminal." First offender (non-drug) may be placed on probation.

(f) Range of Probation Period - Period of probation, including extension, may not exceed 5 years except in nonsupport cases where period may be longer.

(g) Mixed Sentences - Fine may be imposed by court. Court may not grant probation after sentence of confinement.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Field Supervisors conduct investigations, furnish probationer with statement of conditions, and supervise probationers in their charge. Separate presentence investigators are provided to the courts.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are left to the court's discretion, however, statute sets out guidelines for court's consideration which include participation in drug rehabilitation programs or payment of fine.

(l) Revocation Procedures - Court may issue warrant of arrest for violating probation at any time. Any probation officer may effect arrest or may deputize another officer with power of arrest by giving him a written statement setting forth alleged violation.

Upon violation of a condition of probation, court may adjudicate guilt and proceed with sentencing.

(m) Probation Termination and Discharge - Court may, in its discretion, terminate probation at any time and dismiss proceedings without adjudication of guilt. Discharge is not deemed a conviction for purposes of disqualifications and disabilities. Discharge may occur once with respect to any person.

(n) Civil Rights, Disabilities - In certain cases, if a defendant was under 26 years old when he committed an offense and was subsequently placed on probation which was terminated honorably, he may apply to court for an order to expunge from all official public records, all recordings relating to his arrest and prosecution. Defendant will suffer no disabilities and is authorized to deny his arrest, indictment and trial.

(o) Presentence Activities - Presentence reports may be ordered by the court and contain information on the defendant's social history and present circumstances. Reports may include psychiatric examinations. All reports are privileged and may not be disclosed to parties except the Board, Court, or others designated by the Court.

SYNOPSIS OF STATUTES OF MISSOURI

Relevant Code Provisions:

Vernon's Annotated Missouri Statutes

Chapters	Sections
202	740
216	010
549	058 to 285

(a) Definition of Probation - "'Probation' means a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of a probation service."

(b) Probation Administration - The State Board of Probation and Parole, a division of the Department of Corrections, is responsible generally for providing and managing probation services in circuit courts throughout the state. The Board is comprised of three members appointed by the Governor with the advice and consent of the Senate. At the request of the judge of any circuit or criminal court, or of certain magistrate courts, the Board assigns probation officers or makes presentence investigations and reports, in order to carry out the probation function for the courts.

(c) Probation Officers' Appointment Source - The State Board of Probation and Parole appoints probation officers and administration officers to work in courts throughout the state.

(d) Financing Probation - The State Board is funded through appropriations by the State General Assembly.

(e) Criteria for Probation - When any person of previous good character is convicted of any crime punishable by fine or commitment, the court before whom the conviction was had, if satisfied that the defendant if allowed to go at large, may in its discretion place the defendant on probation. Probation may not be awarded to certain multiple offenders convicted of violating controlled substance laws. Probation of 3 years minimum may be awarded a person determined to be a criminal sexual psychopath who has improved to the extent that his release will not be incompatible with the welfare of society.

A second probation may be granted after revocation, but no more than two probations shall be granted the same person under the same judgment of conviction.

Significantly, the action of court in granting, denying, altering, revoking, extending or terminating any order of probation is not subject to review by any appellate court.

(f) Range of Probation Period - In felony cases, probation must be granted for a term of not less than one year nor more than five years. For misdemeanors, probation shall not exceed two years. The court may extend the term of probation only once. Defendant determined to be a sexual psychopath released on probation must serve on probation for a minimum of three years.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - Probation officer positions are generally within the state merit system professional classifications.

(i) Probation Officers' Duties - Probation officers shall investigate all persons referred to them for investigation by the Board or the court, and shall furnish to each person released under their supervision a written statement of the conditions of probation. They shall keep informed of his conduct and use all suitable methods to bring about improvement in his conduct. Probation officers must keep detailed records of their work; they must make such reports in writing and must perform such other duties incidental to those enumerated in the statute, as the court or the Board may require.

In addition to all other duties provided by law, members of the State Board of Probation and Parole shall provide statewide recognizance and diversionary programs where needed, as determined by the law enforcement officials and the circuit judges in each local area.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are in the discretion of the court as it "sees fit to impose," and it may require that the probationer submit proof of compliance with all conditions of probation, and to pay court costs upon revocation of probation.

The Board of Probation and Parole has the power to adopt general rules concerning the conditions of probation applicable to cases for which it provides services; however, the authority of the court is not limited by this.

(l) Revocation Procedures - Court may at any time, without notice, order probationer's apprehension by issuance of arrest warrant. Any probation officer may arrest probationer without a warrant.

The court may, with or without hearing, order probation revoked and direct that the sentence previously imposed be commenced, or where imposition of sentence has been suspended, the court may pronounce any

lawful sentence. Recommendation of Department of Public Welfare may be required in the cases where magistrate presides.

(m) Probation Termination and Discharge - Court shall discharge probationer when it "is satisfied that the reformation of probationer is complete and that he will not again violate the law" prior to the end of the term imposed by the court.

When probationer has completed term of probation successfully, probation shall automatically terminate and probationer shall be absolutely discharged from probation.

(n) Civil Rights, Disabilities - Any probationer who receives a final discharge from probation must be restored to all the rights and privileges of citizenship.

(o) Presentence Activities - Upon court's request, the Board of Probation and Parole shall make a presentence investigation of any person convicted of a crime or offense and make a report of findings to the court.

The presentence report is privileged, but the Board or the court may, at their discretion, permit inspection of report or parts of the report by the defendant or his attorney.

SYNOPSIS OF STATUTES OF MONTANA

Relevant Code Provisions:

Revised Codes of Montana (1947)

Titles	Sections
94	9829 to 9837
95	2406 to 3308

(a) Definition of Probation - "Probation means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court (department means Department of Institutions)."

(b) Probation Administration - Probation is administered at state level through Department of Institutions and the Board. State is divided into probation districts.

(c) Probation Officers' Appointment Source - Department appoints officers who remain answerable to Department and to courts.

(d) Financing Probation - No provision.

(e) Criteria for Probation - No eligibility criteria cited in statute but are left to court discretion.

(f) Range of Probation Period - Duration of probation is within court's discretion and may be modified at any time with notice to probationer.

(g) Mixed Sentences - Court may grant fine or restitution.

(h) Probation Officers' Qualifications - Probation officers must have at least a college degree and have some formal training in behavioral sciences. Exceptions to requirements must be approved, and related work experience may substitute for educational requirement with department approval.

(i) Probation Officers' Duties - Probation officers are charged with furnishing probationers written statements of conditions, investigating matters by Department or court and supervision and maintenance of records for persons in their charge.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are discretionary with the court. The board may adopt general rules concerning conditions of probation or suspension of sentence. These "shall apply in the absence of any specific or inconsistent conditions imposed by a court." Court may modify conditions at any time.

(l) Revocation Procedures - At any time during probation or suspension of sentence, a court may issue a warrant for arrest of defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Any probation officer and parole officer may arrest defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth the alleged violation.

Court shall hold hearing on violation without delay. Hearing may be informal or summary.

If violation established, court may revoke probation and may require defendant to serve the sentence previously imposed, or any lesser sentence, and if imposition of sentence was suspended may impose any sentence within law.

(m) Probation Termination and Discharge - No provision.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - There are no statutory guidelines for presentence report usage, however, statute does prohibit disclosure of report.

SYNOPSIS OF STATUTES OF NEBRASKA

Relevant Code Provisions:

Revised Statutes of Nebraska

Title	Sections
23	1114
25	1625
28	4125
29	2209 to 2637
39	669.07 to 669.32
48	126.01
60	427.01
83	1104 and 1125

(a) Definition of Probation - Probation means a sentence under which a person found guilty of a crime upon verdict or plea, or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision.

(b) Probation Administration - The Nebraska Court Judges Association administers the Office of Probation Administration. This office consists of the probation administrator, the Field Probation Service, and other employees. The office supervises and administers the service, but county courts may appoint probation officers in addition to those provided by the service.

(c) Probation Officers' Appointment Source - The Nebraska District Court Judges Association shall appoint a probation administrator who shall, with concurrence of court, appoint district probation officers, deputy probation officers and other employees required for adequate probation service. Under certain circumstances, probation officers are appointed by the court itself.

(d) Financing Probation - Salaries and expenses of office of Probation Administrator are paid by state.

(e) Criteria for Probation - The Court may withhold sentence of imprisonment unless court finds imprisonment necessary because of substantial risk of further criminal conduct; or because the offender is in need of correctional treatment in institution; or a lesser sentence will deprecate the seriousness of the crime committed. Advisory grounds in favor of withholding sentence of imprisonment are that: the crime posed no serious harm; the offender did not contemplate serious harm; the offender acted under strong provocation; other grounds.

(f) Range of Probation Period - Probation period must not exceed two years for misdemeanor or five years for felony.

(g) Mixed Sentences - no provision

(h) Probation Officers' Qualifications - Probation Administrator, who must have experience in probation or training in relevant disciplines, establishes minimum qualifications for position of probation officer in state. (An ex-offender may be appointed as a deputy probation officer).

(i) Probation Officers' Duties - Probation officers conduct presentence investigations and write reports when requested; keep informed of probationer conduct; encourage probationer by advice; report and keep records; perform other functions for court; have power to arrest and detain probationers. The Office of Probation administration supervises and administers the Field Probation Service; adopts, with the concurrence of the Nebraska Judge's Association, sets probation policies and standards. Authority of probation officer is limited to his district (unless probation administrator temporarily authorizes work in another district). Field Probation Service is responsible for presentence investigations and also for direct supervision of probationers. The service shall be large enough so that no probation officer carries a caseload larger than is "practicable".

(j) Volunteer Probation Officers - No statutory prohibition against using volunteers for probation supervision, provided that the volunteer program is supervised by a full-time probation officer.

(k) Conditions of Probation - In a drug abuse case, mandatory condition of probation is attendance and treatment for drug abuse at community mental health, or other licensed, facility. Conditions of probation may include: permit home visits by probation officer; abstain from alcohol; pay fine or restitution.

(l) Revocation Procedures - When probation officer has probable cause of violation of condition of probation, officer shall report this to the court. The matter may then be handled informally, or defendant may be arrested by probation officer without warrant and detained. County attorney may release defendant or file motion to revoke probation. The court must hold hearing. If clear and convincing evidence of violation presented, the court may revoke probation and impose sentence, or institute less severe sanctions.

(m) Probation Termination and Discharge - The court, on application of probation officer, or of offender, or on own motion, may discharge defendant at any time. Otherwise, discharge occurs at end of probation term. Through petition, the court may set aside a conviction.

(n) Civil Rights, Disabilities - Civil rights are restored after an honorable termination of probation.

(o) Presentence Activities - The presentence report inquires into information regarding the defendant and the offense. Presentence report is mandatory in felony cases and in any case in which the court orders the report be made. Report shall include: analysis of crime; criminal record of defendant; physical and mental condition; family situation; education; occupation; personal habits. Psychiatric observation period not to exceed sixty days may be ordered and result included in report. Presentence and psychiatric reports are privileged, but defendant or his attorney may see the report with court's permission.

SYNOPSIS OF STATUTES OF NEVADA

Relevant Code Provisions:

Revised Nevada Statutes

Title	Sections
14	176-135 to 176-245 177-125
16	201-180 to 201-230 207-180 213-107 to 213-200

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is a state level function administered by the state Board of Parole Commissioners and the chief parole and probation officer. The Board supervises the activities of the chief of parole and probation.

(c) Probation Officers' Appointment Source - The Board appoints, in its discretion, the chief who may be in "unclassified service of the state". The chief appoints personnel necessary to carry out the department's duties.

(d) Financing Probation - The state is charged the expense of returning probation violator to state and uses funds appropriated to the Department of Parole and Probation. The expense of tests for presence of controlled substance is charged to the state. Reports are paid for by the county. The salary of the chief is determined by law. Salaries of the assistant parole and probation officer and the employees of the board are fixed.

(e) Criteria for Probation - Convictions of capital murder, murder in 1st and 2nd degree, kidnapping, forcible rape, or any other offense stated elsewhere in the statutes, make defendant ineligible for probation. Those convicted for indecent exposure, obscene or threatening letters, or sexual molestation or crimes against nature with child less than 14 years old, must have psychiatrist certify that he is not a menace before probation is granted.

(f) Range of Probation Period - At the Court's discretion, probation period may be indeterminate or fixed. Court may terminate or extend the sentence, up to five years.

(g) Mixed Sentences - The court may not suspend execution of sentence of imprisonment after defendant begins his sentence.

(h) Probation Officers' Qualifications - The chief parole and probation officer must have training, experience, capacity for, and interest in correctional services and at least five years experience in correctional programs (three of those years in administration). Officers may not hold any other office or occupation.

(i) Probation Officers' Duties - Chief probation officer is responsible for regulation and operation of probation within districts. Assistant parole and probation officers investigate, supervise probationers, furnish probationer with statement of conditions and instructions, and such other duties as assigned by the Chief. Officers have power of process and arrest.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The court may fix terms and conditions including restitution. When convicted of a drug related crime and when circumstances warrant, probationer may be required to submit to periodic tests to determine use of a controlled substance.

(l) Revocation Procedures - Failure to submit to drug detection tests or discovery of drug use, results in revocation. Failure to pay restitution, unless caused by economic hardship, will result in a hearing and revocation. The court may issue a warrant for violating conditions, or a probation officer may arrest without a warrant or deputize another officer, providing him with a statement of the violation. This statement is presented to the detaining officials. The officer must notify the court and submit a report explaining the violations.

(m) Probation Termination and Discharge - Requirements for an honorable discharge from probation are: fulfillment of conditions and term of probation, recommendation for early discharge by chief probation and parole officer, fitness for honorable discharge shown. The indictment is dismissed after change of plea to not guilty.

A general discharge follows when probation term expires but probationer: 1) failed to make restitution; 2) does not qualify for honorable discharge; or 3) cannot be found, but has not committed an offense. Civil liability remains until restitution paid. Discharge can be changed to honorable if after ten years from discharge there are no offenses greater than traffic violation.

Probationer may be dishonorably discharged when 1) probation is revoked; 2) the term of probation expires and whereabouts of probationer are unknown and an arrest warrant is issued. The probationer is not released from any obligations set out by the Court.

(n) Civil Rights, Disabilities - Honorable discharge or general discharge releases probationer from disabilities.

(o) Presentence Activities- A presentence report is mandatory and the probation service is responsible for the report. Report contains the prior criminal record, information on character, finances, behavior and recommendations. The report is privileged, but may be disclosed to the district attorney, defense attorney and defendant. A physical and mental examination may be required.

SYNOPSIS OF STATUTES OF NEW HAMPSHIRE

Relevant Code Provisions:

New Hampshire Revised Statutes Annotated

Title	Sections
94	1(a)
99	2
161	8
169	13
172	13
504	1 to 19
612	3 to 23
651	2 and 4

(a) Definition of Probation - No provision.

(b) Probation Administration - Overall responsibility is vested in an appointed five-member Board of Probation which exercises its authority through a Board-appointed Director of Probation. The Director administers a state probation system consisting of a central office and a number of district probation offices throughout the state. Courts in large municipalities may have their own probation officers independent of the state's district offices (see below). Both state and municipal probation officers are subject to the supervision and regulations of the Board of Probation.

(c) Probation Officers' Appointment Source - State probation officers are appointed by the Board upon the recommendation of the Director. In towns of over 50,000 population, District Courts shall, and other courts may, appoint one or more probation officers to directly serve the court. These "municipal" probation officers must be approved by the Board. Both state and municipal probation officers may be removed from office by the Board, subject to regulations of the state personnel system.

The director of the state division of welfare may be appointed by the court to perform the function of probation officer in any welfare matters which may be before the court.

(d) Financing Probation - Total cost of state probation system is borne by state treasury, except in cases where a municipality of over 50,000 requests state to establish an office directly in that jurisdiction. In latter situation, salaries and expenses of probation officers are paid by the state and all other costs by the muncipality. Total cost of municipal (court-established) probation offices is borne by the local government.

(e) Criteria for Probation - Whether convicted of a felony, misdemeanor or violation, person may be placed on probation if court finds him "in need of the supervision and guidance that the probation service can provide."

(f) Range of Probation Period - Not to exceed five years for a felony, two years for a misdemeanor or one year for a violation.

(g) Mixed Sentences - Fine may be imposed in addition to placing a person on probation.

(h) Probation Officers' Qualifications - None specified in statutes. Board of Probation granted authority to establish rules and regulations for selection, employment, training and work of probation officers and to recommend to the state personnel system minimum qualifications and testing procedures for both state and municipal probation officers.

(i) Probation Officers' Duties - In addition to standard duties of investigation, supervision, record-keeping and reporting on probationers' progress, other duties of probation officers include: when ordered by the court, taking temporary custody of children for purpose of enforcing visitation rights of separated or divorced parents; collection and disbursement of fines and restitution payments ordered by the court; and collection of payments ordered in domestic relations cases.

(j) Volunteer Probation Officers - The Director of Probation may appoint qualified volunteer counselors' to assist probation officers in the supervision and rehabilitation of probationers. Volunteer counsellors can not receive compensation for their probation services.

(k) Conditions of Probation - Entirely within discretion of the court. May include restitution, treatment for alcohol and drug abuse problems, or mental health treatment on an inpatient or outpatient basis.

(l) Revocation Procedures - Probationer who has violated any condition of his probation may be arrested by a probation officer with or without a warrant, any other officer with a warrant, and the court, after hearing, "may make such orders as justice requires." If probation is revoked, defendant may be fined (if fine not originally imposed) or sentenced to imprisonment for original offense.

(m) Probation Termination and Discharge - Upon petition of probation officer or probationer, probation period may be terminated early

by court if warranted by conduct of petitioner. A court may at any time discharge a person from probation on its own initiative.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Unless waived by defendant and the state, a written presentence investigation report is required to be considered by a court before a person convicted of a felony can be sentenced. Presentence investigation is discretionary with the judge in sentencing a convicted misdemeanant. No person may be placed on probation until a probation officer's presentence report has been presented and considered by the court, provided that a judge may waive such investigation and report if he is satisfied they are not necessary. Presentence reports must make a recommendation as to disposition and refer to material facts uncovered in the investigation to support such recommendations.

Probation officer must notify counsel for state and defense at time of filing presentence report in cases involving adults that the report is available at office of the clerk of court for inspection and review.

Court is required to take steps to assure that defendant is afforded a fair opportunity to controvert factual contents of presentence investigation report, but is not required to disclose the sources of confidential information.

SYNOPSIS OF STATUTES OF NEW JERSEY

Relevant Code Provisions:

New Jersey Statutes Annotated

Title	Sections
2a	100-4; 164-6 to 164-17 168-1 to 14; 168-18 to 168-25; 169-6
39	39-5-7

(a) Definition of Probation - In any proceeding where no mandatory penalty is fixed by statute, the court may suspend imposition or execution of sentence and place the defendant on probation.

(b) Probation Administration - Management of probation programs is county level function.

(c) Probation Officers' Appointment Source - Chief probation officers are appointed by county court judges with notice to the freeholders and in accordance with state civil service procedures. Officers are appointed by the chief.

(d) Financing Probation - Salaries and related costs for operation of the probation program are paid from the county treasuries.

(e) Criteria for Probation - No provision.

(f) Range of Probation Period - Period of probation is no less than one (1) year and nor more than five (5) years. At anytime, court may shorten or lengthen probation period.

(g) Mixed Sentences - In its discretion, the court may suspend imposition or execution of sentence and in addition, order probation. Release on probation following partial service of sentence of confinement is within court's discretion. Reparation, fines, payment of prosecution costs, and/or restitutions may be conditions of probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Officers are required by statute to investigate matters and prepare presentence reports referred by the court. Chief probation officers are responsible for supervision of officers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions are left to discretion of court, however the statute sets out guidelines for conditions which encourage probationer cooperation and discourage undesirable conduct.

(l) Revocation Procedures - A probation violator may be arrested and detained with or without a warrant. After "summary hearing", the court may continue or revoke, execute imposition, or pronounce sentence where none exists.

(m) Probation Termination and Discharge - With consent of prosecution and on motion of defendant, court may place first offender (non-drug) on deferred prosecution. Upon fulfillment of probation terms, the court may "terminate and dismiss" all proceedings against the defendant. Discharge of defendant is also at the court's discretion.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - A presentence report may be prepared by probation officer at court's request. Such report includes a social history of the defendant and may include mental and physical examinations as well as fingerprints and criminal records (provided offender is not juvenile).

SYNOPSIS OF NEW MEXICO STATUTES

Relevant Code Provisions:

New Mexico Statutes (1953)

Titles	Sections
40A	22-17 to 29-22
41	17-12 to 20-10
46	12-8

(a) Definition of Probation - "Probation means the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions."

(b) Probation Administration - Probation system is state responsibility. The state Board of Probation and Parole employs officers, agents, assistants as needed to perform its duties, maintain records of its acts, and may adopt rules and regulations to effectuate its duties. The Director of Field Services, Division of Corrections Department, provides parole and probation services in each judicial district, supervises probationers, and cooperates with all agencies dealing with probation.

(c) Probation Officers' Appointment Sources - The Director of Field Services assigns officers to each judicial district.

(d) Financing Probation - Payment of costs of probation may be a condition of probation. The Board budgets funds to pay for returning probationers to court. At the Board's discretion and with the governor's consent, the Board may accept funds, equipment and supplies from the United States Government or its agencies.

(e) Criteria for Probation - When defendant is on deferred or suspended sentence and is in need of the supervision or guidance offered by the probation office, he may be placed on probation by the court. Probation may be recommended by Chief of Alcoholism Division where defendant is incarcerated for an alcohol related offense.

(f) Range of Probation Period - The total probation period may not exceed the maximum sentence for the crime involved, but may not exceed five years.

(g) Mixed Sentences - Probationer may be ordered to pay fine, make restitution, pay costs of probation, or undergo treatment for medical or physical problems.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Duties of Board and Director are enumerated in statute. Probation officers' duties are assigned by the Director.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The Board has general regulations concerning conditions to be applied when specific conditions are not set by court. The court may impose or modify any condition.

(l) Revocation Procedures - The court may issue a warrant for rearrest when conditions are violated or a notice to appear to answer charges is filed. The Director may arrest without a warrant or deputize officers to do so. The hearing may be informal. If a violation is discovered, the court may continue or revoke the probation. The balance of the original sentence, or less, may be imposed. If the sentence had been deferred, any sentence which might have originally been imposed can be ordered.

(m) Probation Termination and Discharge - When the period of deferment expires, criminal charges are dismissed. When the period of suspension expires, the criminal liability for the crime is satisfied and the probationer may petition governor for a pardon and full restoration of rights of citizenship.

(n) Civil Rights, Disabilities - Governor may restore rights of citizenship upon successful termination of suspended sentence.

(o) Presentence Activities - Any District or Magistrate Court may order Director to prepare presentence report including any information the Court requests.

SYNOPSIS OF STATUTES OF NEW YORK

Relevant Code Provisions:

McKinney's Consolidated Laws of New York Annotated

	Sections
Civil Practice Law & Rules	163
	168
Corrections	601
	702
Criminal Procedure Law	380.30
	390.20 to 390.60
	400.10 to 420.10
	560.30
	570.08 to 570.56
Domestic Relations	37
Executive	241 to 258
	837b
Judiciary	207
Judiciary - Family Court	175 to 456
	823
	841
Penal	60.01 to 65.15
Public Officers	3
Family Court Rules	2504.1 to 2508.5

New York Constitution, Article 17, Section 5

(a) Definition of Probation - No provision.

(b) Probation Administration - Each county is required to provide probation services to people through either of the following: a county probation department or agency; a multi-county (shared) probation agency; a court or multi-court probation service; or where the number of probation officers required for servicing a county is not more than five (as determined under standards for probation administration promulgated by the state director of the state division of probation), the chief executive officer of county may request that state division of probation perform probation services. If the division has sufficient personnel, the director may agree.

The State executive department of probation is headed by a director who supervises the administration of probation throughout the state, partly through promulgation of regulations after consultation with the state probation commission. Such

administrative rules are binding on all probation officers. have force and affect of law. In addition, there is a State probation advisory commission made up of seven members, to advise and consult with the director on all matters relating to probation within the state.

(c) Financing Probation - Mainly through state aid to county services; funding distributed to counties by division of probation under rules made by director after consultation with the state probation commission.

(d) Probation Officers' Appointment - The division director appoints state personnel, and the local department director appoints personnel in own department, (within limits of appropriations for salaries made by county legislature).

(e) Criteria for Probation - Statute disqualifies defendant who is sentenced for more than one crime, and one sentence is imprisonment, or who is as statutorily defined, a "second felony offender," for whom imprisonment is mandatory. In addition, the statute requires consent of prosecutor for probation of certain (class A-III) felony offenders.

(f) Range of Probation Period - For felony offenders, probation may not exceed five years (except class A-III felony, for which probation may not exceed life). Misdemeanor offenders, probation may not exceed one year. The court may terminate earlier in its discretion.

(g) Mixed Sentences - Statute provides that where court imposes prison sentence less than sixty days, the court may also impose an additional sentence of probation.

(h) Probation Personnel Qualifications - All salaried probation officers come under the competitive class of state civil service. They must be selected "because of definite qualifications as to character ability and training, and primarily with respect to...capacity for rightly influencing human behavior."

(i) Probation Officers' Duties - Probation officers responsible for the supervision of probationers (to keep informed of probationers activities and contact at least once a month), and other duties as court may direct or the Probation Director may require under the regulations.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The statute lists several general conditions, but leaves open to court's descretion to work out specific conditions in a given case.

(l) Revocation Procedures - The statute requires summary hearing with the following: notice to defendant of charges; opportunity to be heard on part of defendant; opportunity to cross examine witnesses and opportunity to present evidence; counsel, and appointed counsel if indigent.

(m) Probation Termination and Discharge - The court may terminate probation at any time in its discretion, if the crime is not class A-III felony. There is a conditional discharge provision providing a special sentencing alternative.

(n) Civil Rights, Disabilities - Special provision that certificate of relief from disabilities be available to probationers meeting statutory criteria, in the discretion of court imposing original probation.

(o) Presentence Report - The presentence report is mandatory for a felony, for a misdemeanor, or where sentence of imprisonment or probation greater than 90 days is involved. Presentence report is discretionary in all other cases. Report for misdemeanor may use "short-form report." Disclosure of report to defense counsel or defendant is required.

SYNOPSIS OF STATUTES OF NORTH CAROLINA

Relevant Code Provisions:

General Statutes of North Carolina

Title	Sections
15	197 to 209
49	8
90	95.1
122	27
148	74

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is state level function. State Secretary of Corrections supervises work of probation officers and makes assignments to specific courts, consults and cooperates with courts in development of probation administration, and is empowered to refer cases to probation officers for investigation. Secretary is required to render cooperation to, and seek cooperation from, other government units in order to carry out probation function.

(c) Probation Officers' Appointment Source - State Secretary of Corrections has responsibility for appointment of probation officers.

(d) Financing Probation - Probation officers' salaries fixed by Secretary of Correction.

(e) Criteria for Probation - Generally, court has power to suspend sentence and place defendant on probation or special probation (latter requires meeting certain statutory criteria), unless crime punishable by death or life imprisonment, or person convicted of engaging in a "continuing criminal enterprise" (as defined by statute). Special probation is an alternative to probation or lengthy incarceration and statute specifies criteria.

(f) Range of Probation - Probation period is delivered by the Court but may not exceed five years with modifications or extensions.

(g) Mixed Sentences - For term of "Special probation" defendant may be subject to imprisonment, local confinement or treatment facility, with execution of remainder of sentence suspended; defendant is then placed on special probation for balance of sentence.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Officers are responsible for preparation of reports, supervision and maintenance of probationers in their charge. Officers hold power of arrest.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has discretion to set conditions and may include those listed by statute. Weekend or other periodic incarceration in county jail may be condition of probation.

(l) Revocation Procedures - Probation officer may arrest probationer who, in his judgment, violated conditions of probation. Probation officer must give timely notice to probationer disclosing grounds upon which revocation by court is requested. Probationer entitled to counsel, including court-appointment (where indigent and confinement is potential sentence). Probationer is entitled to appeal revocation to the Superior Court.

(m) Probation Termination and Discharge - Court has power to terminate probation under power to "suspend sentence and continue case from term to term". Probationer has right to court review to determine question of termination after serving three years of a greater-than-three-year probation sentence.

(n) Civil Rights and Disabilities - Upon discharge from probation, defendant who is first offender and meets statutory criteria is entitled to expungemet of arrest and other criminal records.

(o) Presentence Activities - Presentence report is required in felony cases and may be prepared at the Court's descretion in other types of cases. Disclosure of report to defendant is not required but is allowed upon the discretionary order of the Court or Secretary of Correction.

SYNOPSIS OF STATUTES OF NORTH DAKOTA

Relevant Code Provisions:

North Dakota Century Code

Titles	Sections
12	53-04 to 53-20 56-01 to 56.1-04 1-32-07

Rules of Court

Rules
32 38

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation management is a dual function of the state executive and judiciary. Costs are shared by the state and localities. The Supreme Court may adopt rules for the courts to apply to the probation system. The probationer is under the control and management of the Parole Board and is subject to the same rules and regulations as apply to parolees. The probationer convicted of a felony is subject to control of parole officer. In the case of a misdemeanor, the court may waive supervision by parole officer and appoint State's Attorney, Clerk of District Court, Sheriff or any other to act as sponsor.

(c) Probation Officers' Appointment Source - Court appoints sponsor of probationer.

(d) Financing Probation - The county must pay the costs of rearrest of probationer when probation conditions are violated.

(e) Criteria for Probation - Probation must follow suspension of sentence for a felony. Execution of sentence to confinement in prison or jail may be suspended when (1) character and circumstances permit and when (2) the public good does not require penalty. Upon misdemeanor conviction, the sentence may be suspended if the court feels it is just and right under the circumstances.

(f) Range of Probation Period - The probation period shall not exceed the maximum term which might have been imposed except in cases of abandonment or nonsupport. In nonsupport cases, supervision may continue for as long as probationer has responsibility for support.

(g) Mixed Sentences - Fine or restitution may be imposed.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Court appointed sponsors assist probationer and are responsible for reporting to Parole Board. Probation officers are responsible for investigating matters referred by Court, supervise and maintain records on probationers in their charge.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The Parole Board promulgates rules and regulations for probationer conduct. The court may determine and modify conditions. The statute sets out guidelines for the court to follow in determining conditions of probation.

(l) Revocation Procedures - If probationer convicted of a felony violates probation, he is subject to arrest on order from parole board or court as an escaped convict. Any parole or peace officer may arrest without warrant when probable cause is shown. A probationer leaving the jurisdiction without permission is considered an escapee or fugitive. Upon notification of the violation, the court orders a full investigation and personal hearing. The hearing takes place in open court before chief parole officer, deputy and other authorized officials excluding officer making allegations. The probationer receives a notice of allegations, and has right to counsel before hearing, to confront and examine accusers, and to support his case with evidence.

(m) Probation Termination and Discharge - The court may terminate sentence at any time when it serves the ends of justice. When probationer is discharged prior to the expiration of his term, the court may set aside the guilty verdict, dismiss the indictment, and release defendant from all penalties and disabilities.

(n) Civil Rights and Disabilities - The probationer has the right of appeal to the Supreme Court. Probation discharge releases probationer from all disabilities.

(o) Presentence Activities - The court may order a presentence investigation and report before imposing sentence. The report contains information about the defendant's background which may be useful to the court in determining sentence. The defendant and defense counsel may review the contents of the report before sentencing.

SYNOPSIS OF STATUTES OF OHIO

Relevant Code Provisions:

Page's Ohio Revised Code Annotated

Title	Sections
7	715.16
19	1901.32 to 1901.33
23	2301.27 to 2301.32
29	2907.27
	2923.14
	2929.51
	2947.06 to 2947.27
	2951.02 to 2951.13
	2961.01
	2963.24
	2967.02
51	5149.06 to 5149.23

(a) Definition of Probation - No provision.

(b) Probation Administration - The state Adult Parole Authority exercises "general supervision over the work of all" probation officers in all counties and courts in the state and administers the statutory provisions regarding probation. The state authority may undertake to provide probation services in any county lacking a probation department.

The county Courts of Common Pleas may establish county Departments of Probation and maintain oversight and make regulations in supervision of such departments. The judges of the Common Pleas Courts may establish probation departments to serve all the courts in a given county, or to serve more than one county, subject to the approval of the county board of commissioners. (House Bill #400, Community Corrections Act, introduced in 1977 would provide for changes in probation administration if enacted).

The Probation Development and Supervision Section of the Adult Parole Authority assists counties in the development of probation services, and has discretion to "supervise selected probationers from local courts."

(c) Probation Personnel Appointment - The judges of the Common Pleas, Municipal, and Police Courts, may appoint probation officers, subject to Adult Parole Authority and county civil service rules.

(d) Financing Probation - The costs of administration and salaries for the personnel of each county department of probation is paid from each county's treasury; the costs of a multi-county probation department are prorated to the participating counties on the basis of their populations.

(e) Criteria for Probation - There are specific criteria automatically entitling defendant to probation; court must consider statutory guidelines in exercising discretion to place defendant on probation.

(f) Range of Probation Period - The "total period of probation shall not exceed 5 years.

(g) Mixed Sentences - Court has the option of permitting the defendant to serve a term of confinement, which may be for intermittent periods, and then serve the balance of the sentence on probation.

The law provides that between 30 and 60 days after service of sentence of confinement defendant may be eligible for probation (euphemistically, "shock probation"). Defendant may make motion for such probation and court is required to hear the request within 60 days and render order within 10 days.

(h) Qualifications of Probation Officers - Qualifications of probation officers are prescribed by the Adult Parole Authority, and all positions within a county probation department "shall be in the classified service of the civil service of the county". Qualifications for unpaid officers are same for salaried officers.

(i) Duties of Probation Officer - Probation officers may arrest probationers without warrant for violation of conditions of probation (applies to parole violators as well). They must conduct investigations as the court directs; this is always required for mandatory presentence reports.

In accordance with the court's probation order, probation officers must keep informed of probationer activities, encourage the improvement of probationer conduct, keep detailed records of probation work that they perform, and report to the Adult Parole Authority. Probation officers are further responsible for some parole supervision.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Probationer must be required to abide by law and not leave state without prior permission. Statute does not provide court with guidelines rather broad discretion "in the interest of doing justice, rehabilitating the offender, and insuring his good behavior" may be exercised by the Court. Drug dependent offender has statutory "right to request conditional probation for purposes of treatment and rehabilitation."

(l) Revocation Procedures - There are no specific statutory standards for revocation. Court that originally sentenced defendant must "immediately inquire into the conduct" of probationer arrested and brought before it. Probation officer has power to arrest without warrant and bring defendent before court that originally tried and sentenced defendant.

(m) Termination and Discharge - Upon completion of terms of probation, court required to discharge probationer, court may terminate earlier at its discretion (i.e., if court finds that justice and defendant's conduct warrant early termination).

Period of probation may be extended, but not longer than 5 years.

(n) Civil Rights and Disabilities - Civil rights that are denied under state law to convicted felons (i.e., right to hold office, to be a juror or elector), are restored to the defendent when granted probation.

(o) Presentence Activities - Presentence investigation is mandatory in all felony cases, upon conviction or guilty plea. The disclosure of presentence reports to the defendant or his counsel is discretionary with the court.

The probation officer has discretion in carrying out an authorized presentence investigation to include physical or mental examination of defendant. The Court also may appoint psychology experts in aid of its sentencing decision. The defendant may be allowed by the court to give testimony in mitigation of sentence after verdict of guilty.

SYNOPSIS OF STATUTES OF OKLAHOMA

Relevant Code Provisions:

Oklahoma Statutes Annotated

Titles	Sections
10	116 to 116g
11	794
19	180.65
21	1266.5
22	982 to 1327
57	347 to 517

(a) Definition of Probation -"Probation is a procedure under which a defendant found guilty of a crime, is released by the court subject to court-imposed conditions and supervision of the Department of Corrections".

(b) Probation Administration - Administration of probation is a county level function shared by the Probation Office and the Division of Community Services. In counties having a population of 190,000 or more and containing a city of 100,000 population or more, offices of Probation Officer are established.

(c) Probation Officers' Appointment Source - Appointments of probation officers and assistants are made by "a majority of the courts of record" in each county.

(d) Financing Probation - A court granting probation affixes a fee not exceeding $5.00 per month to be paid by the probationer. These fees are credited to a Probation and Parole Fund for payment of expenses of supervising probationers. Where restitution is also involved, the probation fee must be paid in addition to the restitution. Probation officers' salaries are set by statute dependent upon certain population variables. Assistants' salaries are set by a majority of judges of the courts of record of the particular county.

(e) Criteria for Probation - When convicted of a crime and no death sentence is imposed, a person is eligible for probation provided it is a first or second conviction. The court has the discretion to suspend execution of sentence in whole or part with or without probation, and may at any time during the suspension, in addition, order restitution. The court may also choose to grant probation with or without payment of a fine.

(f) Range of Probation Period - Probation supervision "shall not exceed five (5) years; two (2) years under deferred prosecution.

(g) Mixed Sentences - County courts of record may suspend imposition of sentence, require payment of a fine with or without probation, or require restitution with or without probation. The court may also, without entering judgment and with consent of the defendant, defer further proceedings and place defendant on probation provided he is a first offender. Under the "deferred judgment procedure," term of probation shall not exceed two (2) years. When probation is completed, records are expunged.

(h) Probation Officers' Qualifications - "A person of good character, with training and experience (Bachelor's Degree required by statute) in probation, parole, or other related form of social case work" is eligible for appointment. All officers hired prior to enactment of present legislation were exempted.

(i) Probation Officers' Duties - The officers are responsible for the "supervision, care, investigation, and rehabilitation" of probationers. When so ordered, officers must investigate pending matters before the court and report to same. Responsibility for presentence reports lies with the Division of Probation and Parole of the Department of Corrections and the Division of Community Service. All probation officers are "peace officers," and therefore, have the requisite powers described by law.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Generally, conditions are left to the court's discretion. Restitution may be ordered in conjunction with probation and as a condition of a suspended sentence.

(l) Revocation Procedures - When sufficient information exists to allege probation violation, the probationer can be arrested on a warrant. Where unlawful revocation is alleged, probationer may begin proceedings in the original sentencing court.

(m) Probation Termination and Discharge - Under the "deferred judgment procedure" execution of sentence may be imposed where probation conditions are violated. When probation completed, record expunged.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - When conviction of a felony is completed and no death penalty is imposed, the court must order a presentence report. The contents of the report are made available to the defendant, his counsel, and the prosecution. Waiver of a presentence report is possible when both defense and prosecution concur. No presentence report may be used in appeal proceedings. At the court's or the Department of Correction's discretion, the presentence invesitgation may include a physical and mental examination. Either the defendant or the prosecution may request a hearing on the contents of the report or the examinations to controvert the facts.

SYNOPSIS OF STATUTES OF OREGON

Relevant Code Provisions:

Oregon Revised Statutes

Titles	Sections
14	133.833
	137.010 to 137.630
	138.040
	144.060 to 144.720
16	161.675
	161.715
	166.230
34	421.284 to 423.027
35	426.620

(a) Definition of Probation - No provision.

(b) Probation Administration - Courts may place probationers under its supervision or entrust probationer to supervision of State Corrections Division. Adult Community Services Unit (within the Division) provides probation services including supervision, for persons placed on probation, makes investigations as directed by the Corrections Division, and enacts and enforces regulations for the administration of probation by the Unit.

(c) Probation Officers' Appointment Source - Any court of criminal jurisdiction, including muncipal court, may appoint probation officers, and designate certain of them as chief probation officers. Alternatively, courts may request the Corrections Division to carry out probation function in lieu of probation officers, and the Administrator of the Division must comply with such request "whenever the members of the staff (of the Division) are available for such duty."

(d) Financing Probation - Corrections Division may be funded from monies of county, muncipality, or the United States Government, and render probation services to the foregoing entities, with the governor's written consent.

(e) Criteria for Probation - Court may grant probation in its discretion to any person "if the court is of the opinion that it is in the best interests of the public as well as of the defendant."

(f) Range of Probation Period - Court may impose "definite or indefinite period of not less than one nor more than five years" probation.

(g) Mixed Sentences - Imprisonment, fine or both may be required by court.

(h) Probation Officers' Qualifications - Court, in appointing probation officers, be required to select persons based on definite qualifications as to character, personality, ability, and training.

(i) Probation Officers' Duties - Officers are required to make investigations and reports as ordered by judge, to supervise persons placed on probation, and to instruct them regarding the conditions of their probation. Probation officers "have the powers of peace officers in the execution of their duties," including arrest without warrant of probationers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has general power to impose conditions of probation, including those suggested by statute. If court determines defendant is "sexually dangerous person," court may require probation with "condition that the patient receive outpatient treatment" for this condition. Court may place person convicted of alcohol-related offense on probation with condition that person participate in alcoholism treatment program administered by State Mental Health Division. Court may require "person whom the court has good cause to believe is or has been a drug-dependent person" to submit to periodic chemical testing by State Mental Health Division for drug use as condition of probation.

(l) Revocation Procedures - Upon arrest by probation officer of probationer believed to have violated condition of probation, "the court, after summary hearing, may revoke the probation... and cause the sentence imposed to be executed." Statute does not set out standards for due process during proceedings or provision for counsel.

(m) Probation Termination and Discharge - Court may discharge defendant when it believes "that no proper purpose would be served by imposing any condition upon defendant's release," unless conviction is for Class A or B felony, murder or treason.

(n) Civil Rights, Disabilities - Persons convicted of felony prior to August 9, 1961, and subsequently discharged from probation, have restoration of political rights under specific statutory provision.

(o) Presentence Activities - Court is required to order and consider presentence report. Report must be made available to defendant or his counsel, and to the district attorney. Court may order physical or mental examinations of defendant.

SYNOPSIS OF STATUTES OF PENNSYLVANIA

Relevant Code Provisions

Purdon's Pennsylvania Statutes Annotated

Titles	Sections
16	440 to 9960.6
17	655 to 691
18	1321 to 5121
19	1023 to 1091
48	135
61	314 to 1690.106

Purdon's Pennsylvania Rules of Criminal Procedure

Section

1409

(a) Definition of Probation - No provision.

(b) Probation Administration - At the state level, the Board of Probation and Parole has power to establish uniform state wide probation and presentence procedures. The Board is assisted by the Advisory Committee on Probation which reviews the standards for probation personnel and services in the counties.

On the county level, the presiding judge of each county court appoints the chief and other probation officers. In addition, the field staff of the State Board supervise those probationers certified to them by the county courts.

(c) Probation Officers' Appointment Source - The judges of the county courts have broad powers to appoint probation officers and assistants on an ad hoc basis . Court may request services of State Board's field staff.

(d) Financing Probation - Probation services are paid primarily by the county, with additional state funds under statutory grant-in-aid program administered by the Board. Generally grants-in-aid are used for purposes of expansion and improvement of probation services.

(e) Criteria for Probation - Statute sets out sentencing guidelines which judge must "accord weight" when sentencing, and when imposing probation (e.g. tendency of defendant to cause criminal harm in community). The statute also provides that where it "appears that probation is unnecessary, the court may impose a penalty of guilty without further penalty," and court may "impose probation in lieu of sentence" (unless conviction is for first-degree murder).

(f) Range of Probation Period - Probation period may not be less than minimum nor exceed maximum prison terms for offense. When no minimum term is fixed by law, probation "shall in all cases be 1/4 of the maximum sentence."

(g) Mixed Sentences - Court may impose sentence of partial or total confinement in addition to probation, as well as requirement that probationer pay restitution or fine.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Officers are responsible for investigation of matters referred by the court, supervision of probationers, and related duties. Officers have power of arrest without warrant.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions are left to court's discretion, however, statute lists general guidelines which may be followed.

(l) Revocation Procedures - Probationer may be arrested without warrant for violation(s), and "finding of record" of violation is mandated. Statute requires speedy hearing by court with presence of defendant and representation by counsel.

(m) Probation Termination and Discharge - The court may discharge probationer upon finding of satisfactory completion of condition of probation. The court may terminate or extend supervision of probationer, or alter conditions of probation in its discretion.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Court must order investigation and report of all previous criminal charges brought in any court of record against the defendant being considered for sentence, and may order that such report be prepared by probation officers of the State Board.

SYNOPSIS OF STATUTES OF RHODE ISLAND

Relevant Code Provisions:

General Laws of Rhode Island, 1956

Titles	Sections
12	18-1 to 18-2
	19-6 to 19-17
13	8-22
42	56-7
21	28.245 (1) and (2)

(a) Definition of Probation - Before sentence is imposed, any court may "provisionally place any offender, juvenile or adult, who lawfully can be admitted to bail" under the "control and supervision of the Director of Corrections or such probation officers as the Director may designate".

(b) Probation Administration - Probation is a state level function managed by the Corrections' Department, Division of Field Services. Policy is formulated and rules and regulations are adopted, at the direction of the Department of Corrections with the approval of the governor and the Parole Board.

(c) Probation Officers' Appointment Source - No provision.

(d) Financing Probation - No provision.

(e) Criteria for Probation - Any court may place the person on probation, with or without imposing a suspended sentence except in cases carrying mandatory life imprisonment.

(f) Range of Probation Period - The probation period, together with any extension, cannot exceed one year, except where a trial court may impose a longer period of probation for charges which by law carry longer penalties than one year. The total period of probation can not exceed the longest sentence which the court may impose. Probation periods may be shortened at the discretion of the court.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - No provision.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions generally are set by the court.

(l) Revocation Procedures - When violations of probation term are found, the police or probation authority must inform the attorney general and an order for a court appearance is filed. After receipt of the report by either the police or probation department in open court with the defendant present, the court may: remove the suspension; or commit the defendant on the imposed sentence; or commit the defendant on a lesser sentence; or impose a sentence if none exists; or continue the suspension.

(m) Probation Termination and Discharge - The court has the power to terminate probation prior to expiration of term. The court may commit the defendant at any time subsequent to pronouncement of sentence of probation, and the period of commitment may be greater or less than the period of probation.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Presentence reports are mandatory after a finding of guilt or plea of nolo contendere on any charge carrying a penalty of one year or more of imprisonment. The Administrator of Probation and Parole is responsible for preparation of the report and all state and local agencies are required by statute to furnish information for the report when requested by the Administrator.

SYNOPSIS OF STATUTES OF SOUTH CAROLINA

Relevant Code Provisions

South Carolina Statutes Annotated

Title	Section
15	629.32 and 699.13
55	11
55	551 to 556
55	571 to 579
55	591 to 596
55	631

South Carolina Constitution, Article 11

(a) Definition of Probation - "After conviction of plea for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of sentence and place the defendant on probation or may impose a fine, and also place the defendant on probation."

(b) Probation Administration - Policy for the probation program is formulated by a Probation, Parole, and Pardon Board composed of gubernatorial appointees from each congressional district of the state. The Board meets annually at a time set out by statute. The daily operations of the probation program are the responsibility of the Supervisor of Probation who is appointed by the Board.

(c) Probation Officers' Appointment Source - Appointment of officers is made by the Board. Officers serve under the supervision of the Supervisor of probation in designated courts and districts. Probation officers must take an oath of office noted by a clerk of court.

(d) Financing Probation - Officers' salaries are set by the Board within statutory limits. Office space and facilities must be provided by the county.

(e) Criteria for Probation - Court may order probation except in cases carrying the death penalty or life imprisonment. The Board may grant probation on a 2/3 vote of its membership. In nonsupport cases, a defendant is placed on probation and the case handled as if there were a conviction.

(f) Range of Probation Period - Probation period or sentence suspension cannot exceed five years. At the court's discretion, the period may be continued or extended within the

five year limit. When the defendant has been committed following revocation of probation, the time of sentence is figured from the date of commencement of the service of sentence.

(g) Mixed Sentences - The court may suspend the sentence, place the defendant on probation, impose a fine with or without probation conditions.

(h) Probation Officers' Qualifications - The statute does not specify standards, but merely calls for hiring officers "required for service".

(i) Probation Officers' Duties - Officers must investigate all cases referred by judges, or supervisors of probation or parole.

By statute, the officer must furnish each probationer with a written statement regarding conditions of probation and instruct probationer accordingly.

The officer is required to keep records on the probationers in his charge.

Officers have arrest powers and the power of process. They are considered representatives of the court and the Board, and all information obtained in the discharge of their duties is confidential and prohibited for use by the court or other agencies.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Probation conditions are left to the court's discretion. However, the statute outlines guidelines for conditions which encourage the probationer to refrain from certain specified activities and to cooperate with probation officers.

(l) Revocation Procedures - A county court may issue arrest warrants for probation violators where the case was originally heard by said court. Revocation or suspension may be granted in the county court whether or not the matter was originally heard in that court.

Where arrest occurs, the arresting officer must have a written warrant from the probation officer which sets out appropriate information required by statute. Any person arrested for probation violation is entitled to release on bond.

If the revocation case is brought before a circuit court, the judge may require the defendant to serve all or a portion of the imposed sentence. Where a portion of the sentence is imposed, the remainder stays in force and the defendant can be brought before the court "from time to time".."so long as all of his sentence has not been served and the period of probation has not expired".

(m) Probation Termination and Discharge - Upon satisfactory completion of probation conditions, the court must enter a discharge of the defendant.

Probation periods may be extended or shortened at the court's discretion but within a five year maximum limit set by statute.

(n) Civil Rights, Disabilities - Person arrested for probation violation is entitled to release on bond.

(o) Presentence Activities - At the court's direction, a probation officer must prepare a written presentence report which includes information on the defendant's background and history and where practicable may include physical and mental examinations.

When a felony is charged and the service of a probation officer is available to the court, a report must be prepared.

SYNOPSIS OF STATUTES OF SOUTH DAKOTA

Relevant Code Provisions:

South Dakota Compiled Laws (1967)

Titles	Sections
23	48-17 to 62-2
39	17-113 to 17-114

(a) Definition of Probation - No provision.

(b) Probation Administration - Management of the probation system is at the state level, within the purview of the Board of Pardons and Parole.

(c) Probation Personnel Appointment Source - No provision.

(d) Financing Probation - No provision.

(e) Criteria for Probation - Court may order probation "when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby." Probation is permitted for first offenders who are convicted or plead to a felony or a misdemeanor (where life imprisonment is not a penalty).

(f) Range of Probation Period - The probation period is left to the court's discretion.

(g) Mixed Sentences - Restitution may be required by the court.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Officers are charged with supervision of probationers and investigations of matters referred by court.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions are left to the discretion of the court.

(l) Revocation Procedures - The Board of Pardons and Paroles is required by statute to develop a file on all persons placed on probation. Whenever the Director of the Board finds an alleged probation violation, or "when it appears to him necessary in order to prevent escape, or enforce discipline," he may arrest probationer without warrant. The Director must immediately report the alleged violations to the court and submit reasons why the conditions are not being met. The court, upon reviewing these reports, may revoke probation or suspension.

(m) Probation Termination and Discharge - Upon successful completion of the terms and periods of probation, the court must discharge the defendant without adjudication of guilt. A nonpublic record of the discharge is retained. A deferred imposition of sentence when applying penalties for second or subsequent offenses is not regarded as a first time conviction and discharge and dismissal may occur only once with respect to any person.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Upon the defendant's consent in open court, the court may order the Director of the Board of Pardons and Paroles to prepare a presentence report. The report remains confidential and cannot be used against the defendant in any other action. If filed in another case, it must be sealed in an envelope. Whenever a person is sentenced to imprisonment and subsequently granted probation, the court must send a report to the Director of the Board explaining the reasons for granting probation.

SYNOPSIS OF STATUTES FOR TENNESSEE

Relevant Code Provisions

Tennessee Code Annotated

Title	Sections
40	2901 to 3611

(a) Definition of Probation - "Probation is the release by a court of a person found guilty of a crime, upon verdict or plea, without imprisonment subject to conditions imposed by the court and subject to supervision of the probation service."

(b) Probation Administration - Probation activities are administered at the state level under the direction of a Director of Probation and Paroles who is appointed by the Commissioner of Corrections subject to the approval of the Governor. The statute sets out eligibility standards for the Director's position and notes that the Director works in conjunction with the Board of Pardons and Paroles.

(c) Probation Personnel Appointment Source - The Commissioner of Corrections is responsible for appointment of probation officers. Officers are assigned to counties embraced by districts.

(d) Financing Probation - No provision.

(e) Criteria for Probation - No eligibility standards are noted in the statute; however, first time misdemeanants may be considered for deferred prosecution and probation.

(f) Range of Probation Period - The trial judge has the discretion to set the duration of the probation, but the time must be at least as great as the minimum sentence and not exceed the maximum penalty for the offense charged.

(g) Mixed Sentences - The court has the authority to suspend sentence and place defendant on probation without requiring that the defendant pay the costs accrued in the case. The court is required to collect a $21.00 fee in any conviction, such monies to be placed in the criminal injuries compensation fund.

(h) Probation Officers' Qualifications - The statute sets out age and education requirements for probation officers.

(i) Probation Officers' Duties - Officers are required "to supervise, investigate, and check on the conduct" of probationers in their districts.

(j) Volunteer Probation Officers - No provision.

(k) Conditions for Probation - The setting of conditions for probation is left to the trial judge's discretion.

(l) Revocation Procedures - Trial court has the authority to issue an arrest warrant for probation violator. However, violator may be arrested with or without a warrant, dependent upon circumstances. the defendant is entitled to a prompt hearing of the revocation matter and his rights are noted in the statute. If the trial court finds violations, it may revoke the probation and suspension of sentence and "cause the defendant to commence the execution of the sentence originally entered."

(m) Probation Termination and Discharge - Discharge and dismissal may occur without adjudication of guilt at the discretion of the trial court. A non-public record of the discharge is retained. Discharge may occur only once for any person.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - No defendant may be placed on probation without submission of a presentence report to the trial court. The report must be completed by the probation officer within ten (10) days; includes background information on the defendant which aids the court in its determination; and when the court deems necessary, may include mental and physical examinations.

SYNOPSIS OF STATUTES OF TEXAS

Relevant Code Provisions:

Vernon's Texas Codes Annotated

Articles

320a-1
326k-27
2292-1 to 2292-4
2372h-6
6701L-1
6819-a26

Code of Criminal Procedure

Articles

17A.08
42.12
42.13

(a) Definition of Probation - "'Probation' shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended;" or, "the release by a court under terms and for a period specified by the court of a defendant who has been found guilty of a misdemeanor."

(b) Probation Administration - Probation officers in each county administer the probation system and may be authorized by district judges and juvenile board of county to "establish a separate division of adult probation;" integration of this scheme with the state-level Board of Pardons and Paroles is not specified by statutory provision.

(c) Probation Officers' Appointment Source - Probation personnel are appointed "by one or more courts of record having original criminal jurisdiction." "Judge must appoint chief probation officer" where more than one probation officer is required, "and further may authorize such chief probation officer to appoint additional probation officers and such other personnel as required."

(d) Financing Probation - "The salaries of personnel, and other expenses essential to the adequate supervision of probationers, (are)...paid from the funds of the county or counties comprising the judicial district or geographical area served by probation officers;" total expenses of probation are prorated among counties based on size of population. Muncipalities are

expressly authorized by statute to "allocate such sums of money as their respective governing bodies may approve...for the support...of effective probationary programs". Counties and judges are authorized by statute to "accept grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs."

(e) Criteria for Probation - The court may, in its discretion, place convicted defendant on probation where crime does not involve maximum imprisonment over ten years. In misdemeanors, where the "maximum permissible punishment is by confinement in jail or by a fine in excess of $200.00 or by both such fine and imprisonment," probation is mandatory if defendant applies for it and has not been under probation during previous 5 years, has paid all costs and fines, has been recommended for probation by the verdict of the jury hearing the case, and if "the court believes that the ends of justice and the best interests of society and of the defendant will be served by granting him probation". In its discretion,court may grant probation regardless of jury's recommendation or defendant's prior conviction. When the defendant applies for probation, the court "must receive competent evidence concerning the defendant's entitlement to probation."

(f) Range of Probation Period - Probation period may not exceed 10 years, or be less than the minimum period prescribed for the offense for which the defendant was convicted. The probation period for any person convicted of driving while intoxicated must be set at "not less than 6 months.

(g) Mixed Sentences - Court may impose, as condition of probation, that defendant serve "a term of imprisonment not to exceed 30 days, or 1/3 of the sentence, whichever is less."

(h) Probation Officers' Qualifications - Minimum qualifications for officers include: a college degree, plus two years of social welfare or related correctional employment; or, licensed attorney status; "providing that additional experience in any of the above work categories may be substituted year for year for the college education, with a maximum substitution of two years." In a county with less than 50,000 population, completion of 2 years of college is required.

(i) Probation Officers' Duties - Probation officers must fully investigate the defendant prior to sentencing as directed by the court. Officers must supervise probationers and may arrest probationer for violation of conditions of probation.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has general power to impose conditions and may follow list of conditions suggested by statute.

(l) Revocation Procedures - A probationer arrested for violation of condition of probation must then be "brought promptly before the court." "The court, upon motion of the state and after a hearing with a jury...may revoke the probation as the evidence warrants." Further, no appeal may be taken from determination by court that violation of a condition has occurred.

(m) Probation Termination and Discharge - The court must dismiss proceedings against the defendant and discharge on expiration of the probationary period imposed at sentencing. Court may discharge probationer prior to expiration of period after the defendant has completed 1/3 of original probation period, or 2 years of probation, whichever is less.

(n) Civil Rights, Disabilities - Discharge from probation "may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense."

(o) Presentence Activities - Court may order written presentence report made, including inquiry into full circumstances of defendant. Whenever practicable, investigation may include a physical and mental examination of the defendant. Disclosure of report to the defendant or his counsel, and to the state's attorney, is mandatory upon request.

SYNOPSIS OF STATUTES OF UTAH

Relevant Code Provisions:

Title	Sections
77	62-20 to 62-22 62-28 to 62-30

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is administered at the state level by the adult parole and probation section of the State Division of Corrections. The Director of the Division of Corrections appoints a chief of adult probation and parole to head the section, but the division is ultimately responsible for the management and control of the section. The division must also establish such parole and probation districts as are needed for the effective administration of the adult parole and probation section; these districts are staffed with district agents. Additionally, the division must establish sufficient clinic facilities "for the purpose of thoroughly investigating the social, mental, and physical conditions of those charged with the various crimes," and reporting this to the court hearing the charges.

(c) Probation Officers' Appointment Source - The chief of adult probation and parole appoints probation officers, supervisors, assistants, and other employees according to State civil service procedures. The director of the Division of Corrections appoints district probation agents, "subject to the advice of" the district judges within the district.

(d) Financing Probation - No provision.

(e) Criteria for Probation - Probation may be granted in the court's discretion.

(f) Range of Probation Period - No provision.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - Probation and parole section chief and employees are within classified service of state merit system, and must meet qualifications established by system.

(i) Probation Officers' Duties - "The legal custody of all probationers is vested in the chief (probation) agent and the court having jurisdiction of the offender." District probation agents have those powers that peace officers possess and may be exercised anywhere with the state.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are set in the trial court's discretion.

(l) Revocation Procedures - Where probationer violates conditions of probation, the probation officer in charge of the probationer shall immediately report the violation to the court. Probationer is entitled under statute to reasonable notice in writing of allegations concerning violations, revocation hearing which affords probationer opportunity to be heard, to examine witnesses, to present evidence in support of his case; and to be assisted by counsel. A record is made and preserved of the hearing.

(m) Probation Termination and Discharge - No provision.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - The State division of corrections must maintain clinics for the examination of the social circumstance, and the mental and physical condition of defendants; it must conduct such examinations when required by the court and make recommendations regarding the defendant when asked to by the court. The division may employ experts to aid it in this task.

SYNOPSIS OF STATUTES FOR VERMONT

Relevant Code Provisions:

Vermont Statutes Annotated

Titles	Sections
13	2634
28	4 to 1220

Rules of Criminal and Appellate Procedure

Sections
32
38

(a) Definition of Probation - The Court may grant probation which is a "procedure under which respondent, found guilty or pleading, is released without confinement" with certain conditions.

(b) Probation Administration - Probation program is managed at the state level by Commissioner of Corrections in conjunction with Board. Commissioner serves as State Probation Officer.

(c) Probation Officers' Appointment Source - Officers are appointed by the Commissioner and work under his supervision.

(d) Financing Probation - Probation is state funded, and costs of temporary support and travel expenses of probationer are paid by the state.

(e) Criteria for Probation - Eligibility decisions are left to the court's discretion.

(f) Range of Probation Period - The duration of the probation period is left to the court's decision and may be shortened or lengthened.

(g) Mixed Sentences - Payment of a fine may be a condition of probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Officers are required to prepare presentence reports and provide probationers with written statement of conditions. Officers hold arrest powers.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The sentencing court has responsibility for setting out conditions of probation. At any time, the court may "enlarge, alter, or amend it conditions, extend the term, or discharge the probationer. Probationer has "reasonable opportunity" to contest modification of probation. Court may require attendance at a treatment facility as condition.

(l) Revocation Procedures - Court may not revoke probation without hearing. Revocation proceeding must be open; probationers' rights are enumerated by statute as are the grounds on which probation may be revoked. Where violations are established, court may revoke and suspend sentence, continue existing sentence, lengthen probation period, conduct conferences with probationer, or issue a warning against future violations.

(m) Probation Termination and Discharge - In its discretion, the court may declare early discharge or upon successful completion of probation, must discharge the defendant.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - A report is required before adjudication of guilt except where (1) the offense is a misdemeanor; (2) two or more felony convictions exist; (3) defendant refuses to cooperate; or (4) it is "impractical" to verify defendant's background.

SYNOPSIS OF STATUTES FOR VIRGINIA

Relevant Code Provisions:

Code of Virginia (1950)

Titles	Sections
18	2-251 to 2-353
19	2-110 to 2-356
20	62 to 290.6

(a) Definition of Probation - No provision.

(b) Probation Administration - Probation is handled through tripartite administration in which the State Department of Corrections supervises general operations of program, trial courts, appoint and supervise officers, and counties provide financing. State is divided into parole district with one probation officer in each district.

(c) Probation Officers' Appointment Source - Officers are appointed by circuit court judges based on population variables set out by statute.

(d) Financing Probation - Counties are responsible for payment of salaries of probation officers and provision of physical facilities.

(e) Criteria for Probation - Eligibility criteria are left to the discretion of the court. By statute, first offenders (non drug) are allowed deferred prosecution and probation.

(f) Range of Probation Period - Duration of probation is set by trial court.

(g) Mixed Sentences - Court may order payment of fine or restitution as additional condition of probation. Probation may be ordered by the court prior to completion of sentence of commitment. Where execution of sentence is suspended, the original sentence remains in force and neither the probation or the suspension time is credited.

(h) Probation Officers' Qualifications - Officers serve at the pleasure of the appointing judge.

(i) Probation Officers' Duties - Officers must investigate, supervise, and assist all probationers, arrest probation violators, and maintain records on the clients in their charge.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are matters left to the court's discretion. Where drug offenses are involved, periodic medical examinations may be a condition of probation or suspended sentence. Restitution or payment of fine may be conditions of probation.

(l) Revocation Procedures - Probation violators may be arrested without a warrant. While a revocation hearing is mandated by statute with reasonable notice to all parties, specific procedures and rights are not enumerated.

(m) Probation Termination and Discharge - Under deferred prosecution procedure, defendant may be placed on probation and discharged and dismissed following completion of the probation period. (First offenders and non-drug offenders are eligible.)

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Presentence report may be ordered by court after judgment of guilt or plea of guilt and on defendant's motion. Defense has opportunity to examine contents of report and controvert facts. The report is filed as part of the trial record.

SYNOPSIS FOR STATUTES OF WASHINGTON STATE

Relevant Code Provisions:

Revised Code of Washington Annotated

Titles	Sections
9	95.200 to 96.050
26	12.130 to 13.020
35	20.255
36	01.070
72	04a.050 to 04a.100

(a) Definition of Probation - "After conviction by plea or verdict of guilty, the court may grant or deny probation" or at a later time, in the presence of the defendant, may hear and determine the matter of probation for the defendant.

(b) Probation Administration - Probation policy is developed at the state level through the auspices of the Director of Institutions and his supervisor of the Division of Probation and Parole.
Probation programs are adminis ered at the local level by probation staffs and counties are subsidized by the state for these programs and facilities.

(c) Probation Officers' Appointment Source - Probation officers are appointed and supervised by the Director of Institutions and the municipal courts where they are appointed by the Municipal judges.

(d) Financing Probation - Probation is financed by the state and localities sharing the costs.

(e) Criteria for Probation - Probation criteria are left to court's discretion.

(f) Range of Probation Period - In granting probation, the court may suspend imposition or execution of sentence and may direct suspension to continue for a time not exceeding the maximum term of sentence except in certain circumstances.

(g) Mixed Sentences - The court in granting probation may make imprisonment up to one year in the county jail a condition of probation. The court may also fine (not to exceed $1,000 plus costs) the defendant. The court has the choice of any combination of fine, imprisonment, and probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Probation officers must assist the family courts, make investigations and reports as requested, and supervise probationers in their charge, among other duties.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are left to the discretion of the court. The court may make imprisonment or fine a condition of probation.

(l) Revocation Procedures - Where probation authority believes violations have occurred, the defendant may be arrested without a warrant and the court may revoke probation with hearing but no specific notice to the defendant. Where the judgment is pronounced, the sentence (after revocation) takes full effect.

(m) Probation Termination and Discharge - The court may at any time discharge and dismiss a probationer. In addition, persons discharged before the termination of the period may, up to the date of expiration of the maximum period of the sentence, withdraw a plea of guilty and enter a not guilty plea; whereupon, the court may dismiss the indictment or information.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Presentence reports are prepared at the discretion of the trial court which may direct the probation authorities to prepare a report with information on the defendant's record and background which may be useful to the court.

SYNOPSIS OF STATUTES OF WEST VIRGINIA

Relevant Code Provisions:

Chapters	Sections
6	6-7-2a
7	7-1-3r
61	61-11-16
62	62-11A-1 to 62-13-7

(a) Definition of Probation - No provision.

(b) Probation Administration - Administration of probation is a state level function. Within the office of Commissioner of Public Institutions is a Director of Division of Correction responsible by statute for all persons released on probation. Policy formulation is guided by a three member Board of Probation and Parole.

(c) Probation Officers' Appointment Source - Each circuit court appoints a probation officer subject to approval of the Supreme Court of Appeals.

(d) Financing Probation - Salaries and costs of probation are paid by the state out of the judicial accounts.

(e) Criteria for Probation - Statute mandates that all persons not convicted of a felony within the last five years from date of felony charged and who are found guilty or plead guilty (where maximum penalty is less than life imprisonment) and all persons found guilty on pleading guilty to a misdemeanor are eligible for probation. Statute directs that where conviction or plea of guilty is in court not of record, defendant may file petition for suspension of sentence and grant of probation.

(f) Range of Probation Period - Maximum limit of probation, including extensions, is five years. Upon information provided by the probation officer, court may choose to extend or shorten probation period. All orders for amendment of probation period are entered into the court record.

(g) Mixed Sentences - Court may suspend imposition or execution of sentence and release defendant on probation (exception: when defendant has been imprisoned for thirty days under the sentence). Restitution and fine may be considered as condition of probation.

(h) Probation Officers' Qualifications - Probation officers serve at the pleasure of the court, pursuant to qualifications satisfactory to the court.

(i) Probation Officers' Duties - Officers must investigate all cases referred by the court, furnish the probationer with a written statement of conditions with rules attached, supervise probationers in his charge, maintain records. Officers hold power of arrest without warrant.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Conditions of probation are enumerated by statute covering such matters as prohibitions against further criminal activity, and cooperation with probation authorities. The statute also leaves to the discretion of the court certain other conditions such as fines, restitution, or contributions of earnings.

(l) Revocation Procedures - Where probation violations are alleged, probationer may be arrested and detained with or without warrant or on order of arrest. Probationer must be brought before the court for a "prompt and summary hearing" whereupon probation may be revoked; imposition of new sentence may occur, and an order for execution of sentence may be filed. Computation of the incarceration period cannot include time between release on probation and arrest.

(m) Probation Termination and Discharge - Where the probationer has successfully complied with conditions of probation, court may order discharge and dismissal. All orders of discharge become part of the court record.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Where defendant is convicted of felony, presentence report must be submitted to court. Submission of report in misdemeanor cases is left to the discretion of the court. Probation officers prepare reports which include information on the offender's background and history which may aid the court in determining propriety and conditions of release. Under certain circumstances, defendant may be delivered into custody of Diagnostic and Classification Division prior to imposition of sentence. The duration of these examinations must be credited to the sentence.

SYNOPSIS OF STATUTES OF WISCONSIN

Relevant Code Provisions:

West Wisconsin Statutes Annotated

Chapters	Sections
57	57.072
	57.075
161	161.47
946	946.46
968	968.09
972	972.13-15
973	973.05-10

(a) Definition of Probation - No provision.

(b) Probation Administration - The Department of Health and Social Services administers probation matters. "Rules and regulations are established by the Department for the supervision of probationers."

(c) Probation Officers' Appointment Source - Officers are appointed by the Department.

(d) Financing Probation - Probation is state funded but statutes do not specify procedures.

(e) Criteria for Probation - Court has discretion to either withhold or impose sentence (and if imposed, to stay execution of sentence), and to place defendant on probation under the Department, unless the defendant was previously convicted of state crime or of any drug-related offense. Court may find defendant to be a "youthful offender" under statute, and place on probation under special statutory provision.

(f) Range of Probation Period - For felonies, probation period "may not be less than 1 year nor more than either the statutory maximum term of imprisonment for the crime or 3 years, whichever is greater." For misdemeanors, period is "not less than 6 months nor more than 2 years." "The period of probation may be made consecutive to a sentence on a different charge" (e.g., another probation sentence).

(g) Mixed Sentences - A fine may be imposed by the court.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Duties are prescribed by the Department. An officer has the power of arrest of probationer without warrant for breach of probation conditions.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court "may impose any conditions which appear to be reasonable and appropriate," including payment of fine or periodic confinement.

(l) Revocation Procedures - "If a probationer violates the conditions of his probation, the Department may order him brought before the court for sentence which shall then be imposed".

(m) Probation Termination and Discharge - Statute provides for mandatory discharge of probationer "upon fulfillment of the terms and conditions of probation". Court may, "prior to expiration of any probation period,...extend probation for a stated period," or may terminate the term of probation.

(n) Civil Rights, Disabilities - Discharge after completion of probation "shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime."

(o) Presentence Activities - Presentence report is discretionary with the trial court. When such report is made, "judge shall disclose the contents of the report to the defendant's attorney and to the district attorney prior to sentencing". When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant."

SYNOPSIS OF STATUTES FOR WYOMING

Relevant Code Provisions

Wyoming Statutes, 1957

Titles	Sections
5	84.1 to 114.38
6	95
7	10.1 to .361
14	82 to 89
20	74
35	347.37

Wyoming Statutes - Rules of Court

Sections
33
36
39

(a) Definition of Probation - Probation may be ordered with the "imposition and execution of sentence suspended after a plea of guilty or nolo contendere or after conviction in any district or juvenile court or by any court of a foreign state having jurisdiction to place offenders on probation."

(b) Probation Administration - Probation services are delivered by state and local agencies. The probation program is administered at the state level through a state Probation and Parole Officer who is appointed by the Governor. All counsellors are under Officer. At the local level, some financing and administration of probation is handled by the county and its Commissioners.

(c) Probation Officers'. Appointment Source - Counsellors are appointed by the county commissioners with the approval of the district judge(s). Salaries for counsellors are determined by the county.

(d) Financing Probation - Costs of probation are shared by the county and the state.

(e) Criteria for Probation - County courts may place defendants on probation after conviction or with the defendant's consent, before trial.

(f) Range of Probation Period - Period of probation may not be longer than the maximum provided by law for the crime for which defendant is convicted. Where offense charged is indecent exposure, duration may not exceed one year. Court has discretion to lengthen or shorten probation period.

(g) Mixed Sentences - Court may suspend imposition or execution of sentence (except in crimes punishable by death or life imprisonment) in whole or part, place the person on probation; and/or impose a fine. With the defendant's consent, the court can defer proceedings and place the person on probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Counsellors are required to prepare presentence reports, furnish probationers written statements of conditions of probation, and supervise and maintain records on probationers in their charge. All counsellors' records are confidential.

(j) Volunteer Probation Officers - The state probation officer is directed to hire "citizens of good moral character" and to train and organize them as probation counsellors. Volunteers duties include assistance to field supervisors; maintenance of liaison with all government agencies; assistance in programs relating to social, moral, and psychological needs of probationers. No compensation is paid but travel expenses may be reimbursed at the officer's discretion. Volunteers do not have arrest powers.

(k) Conditions of Probation - Imposition or modification of conditions of probation is left to the court's discretion. Counsellors will not be responsible for supervision of probationers without specific probation order from the court. Treatment as outpatient may be made condition of probation.

(l) Revocation Procedures - Probation violators may be arrested and detained without a warrant. Statute sets out revocation hearing procedures and rights of probationer. Upon finding of revocation, the court may take into consideration recommendations of probation department in determining disposition of cases.

(m) Probation Termination and Discharge - Discharge and dismissal is within the court's discretion for first time offenders who are placed under a deferred prosecution program. Discharge is without adjudication of guilt and only one discharge is allowed to any person.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - In all felony cases, unless otherwise directed by the court, a presentence report must be prepared and submitted. Preparation may be done by the county attorney or by the probation officer and includes information on the defendant's background and history which may assist in determining disposition. Mental and physical examinations may be included. If commitment ensues, copy of presentence report is forwarded to institution. The contents of the report are available to defense and prosecution, and an opportunity is afforded for contesting the facts.

SYNOPSIS OF STATUTES OF DISTRICT OF COLUMBIA

Relevant Code Provisions:

District of Columbia Code Encyclopedia

Titles	Sections
11	11-933 and 11-934
16	16-710
22	22-2703
24	24-103 to 24-105
47	47-213

(a) Definition of Probation - No provision.

(b) Probation Administration - The statute provides that the Director of Public Health of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court "perform such duties as may be directed by the court in effectuating compliance" by the probationer with the probation conditions imposed. The District of Columbia Court of General Sessions has authority to appoint "a (chief) probation officer," and to direct probation officers in the investigation and supervision of cases. The chief probation officer generally supervises and directs all probation personnel. There is a separate office for the probation officer for the U.S. District Court for the District of Columbia.

(c) Probation Officers' Appointment Source - The District of Columbia Court of General Sessions appoints the chief probation officer, who in turn appoints assistant probation officers and other personnel.

(d) Financing Probation - The Chief Judge of District of Columbia Court of General Sessions fixes compensation in accordance with the Classification Act of 1949, and congressional appropriations are made to fund the probation system.

(e) Criteria for Probation - The Court may, upon conviction impose sentence, suspend its execution, and place the defendant on probation, "if it appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby."

(f) Range of Probation Period - No provision.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - Offficers must "carefully investigate all cases referred to them by the court," keep court fully informed of conduct of probationers by submitting periodic reports to court, and perform duties directed by court in implementing probation orders.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has discretion to impose conditions it "may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant."

(l) Revocation Procedure - No specific procedure is set out in the statute. A probationer unable to afford counsel who is charged with violation of probation conditions is entitled to appointment of counsel.

(m) Probation Termination and Discharge - Court has discretion to discharge probationer at end of term of probation, or to extend period of probation, "as shall seem advisable."

(n) Civil Rights and Disabilities of Probationers - No provision.

(o) Presentence Activities - The court may order presentence investigation and court or probation officers may utilize the services of government-appointed psychiatrist and psychologist in carrying out presentence investigation.

SYNOPSIS OF STATUTES OF PUERTO RICO

Relevant Code Provisions:

Puerto Rico Statutes Annotated

Titles	Sections
4	1142
34	1026 - 1029
34	1881b - 1881y

(a) Defintion of Probation - No provision.

(b) Probation Administration - Probation is administered at the Commonwealth level by the Correctional Administration. Parole and probation policy is initially determined by a tripartite leadership composed of appointees designated by the Governor, the Chief Justice of the Supreme Court of Puerto Rico, and the Correctional Administration, respectively.

(c) Probation Officers' Appointment Source - No provision.

(d) Financing Probation - No provision.

(e) Criteria for Probation - A court may suspend sentence and grant probation for felonies (certain categories of felonies excluded by statute) and for misdemeanors (certain misdemeanors excluded by statute) where a misdemeanor is charged but arises out of the same facts which would permit the return of an indictment for a felony. Probation is granted when the following are present: if prior to date of sentencing, no additional offenses are committed; and if the defendant is not dangerous to the interest of the "community's due protection"; and if the court has reviewed a presentence report.

(f) Range of Probation Period - The duration of the probation period is the expiration of the maximum term of the sentence. Once probation is granted, the individual remains under the legal custody of the Court until the expiration of the probation period.

(g) Mixed Sentences - At the discretion of the trial court, a fine may be imposed in addition to probation.

(h) Probation Officers' Qualifications - No provision.

(i) Probation Officers' Duties - "Special probation officers shall have such powers and exercise such functions as were previously exercised by the probation officer for the Minor's Guardian Court."

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The Corrections Administration exercises supervision over the probationer in order "to accomplish the rehabilitation of the person and to protect the community". Any person placed on probation is subject to a "disciplinary regime of life", to "a treatment plan", the duration and conditions of which are at the discretion of the Corrections Administration. Restitution may be condition of probation.

(l) Revocation Procedures - At the trial court's discretion, probation may be revoked when the probation is "incompatible with the proper security of the community or with the purpose of rehabilitatting the offender". Upon revocation, the individual loses his probation time credits. The trial court may request at any time that a report on the probationer's conduct be produced by the Corrections Administration.

(m) Probation Termination and Discharge - No provision.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - A presentence report is madatory before pronouncement of sentence in all felony cases other than first degree murder and in all misdemeanor cases. A full presentence report is required in felony cases, and "a short data form" is allowed in misdemeanor cases. Both reports are produced by the Corrections Administration. Defense and prosecution are given the contents of the presentence report and a hearing can be ordered to controvert the facts presented in the report. Sources of confidential information need not be disclosed.

SYNOPSIS OF STATUTES OF THE UNITED STATES

Relevant Code Provisions:

United States Statutes Annotated

Titles	Sections
18	844
	924
	3651 to 3656
28	526

(a) Definition of Probation - No provision.

(b) Probation Administration - The Director of the Administrative Office of the United States Courts, prescribes regulations for the proper conduct of Federal probation work and for the improvement of the efficiency of administration of the Federal probation system and of the enforcement of the probation laws in all United States courts. The Director, by himself or by means of the Attorney General of the United States, may investigate the activities of Federal probation officers, and has complete access to their records at all times. The Director must annually report on the operation of the probation system in the federal courts. The chief probation officer directs the work of all probation officers serving in the court which appointed him.

(c) Probation Officers' Appointment Source - Any federal court with original criminal jurisdiction may appoint probation officers and chief probation officers, who are to be under the direction of the court making such appointment.. A copy of the court's order of appointment must be filed with the Director of the Administrative Office of the United States Courts.

(d) Financing Probation - Congress appropriates funds for the federal courts and probation system.

(e) Criteria for Probation - The court may impose probation "when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served;" court may not grant probation for offense punishable by death or by life imprisonment.

(f) Range of Probation Period - The period of probation plus any extension may not exceed five years.

(g) Mixed Sentences - The court may, when it appears to be advisable, require defendant to be confined in "jail-type" or "treatment institution" for a period not exceeding six months.

(h) Probation Officers' Qualifications - United States Civil Service Commission sets out probation personnel minimum qualifications in regulations.

(i) Probation Officers' Duties - Probation officers must supervise probationers; keep informed of and report on their conduct; "use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition;" keep records of work; and perform additional duties as the courts and United States Parole Commission may request.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has broad discretion to impose conditions of probation. Statute sets out suggested guidelines, including participation of probationer program of residential community treatment; participation of drug dependent person in community supervision program; payment of fine, restitution, or support.

(l) Revocation Procedures - Court may not revoke probation unless it holds a "hearing at which the defendant shall be present and apprised of the grounds of which" revocation is alleged.

(m) Probation Termination and Discharge - Court has power to terminate prior to expiration of probation term. Court may reduce sentence within 120 days after sentence is imposed.

(n) Civil Rights, Disabilities - No provision.

(o) Presentence Activities - Presentence investigation and report is mandatory unless waived by defendant with permission of court, or unless court finds sufficient sentencing information in the record. Report contains any prior criminal record and the circumstances affecting defendant's behavior. Report must be disclosed to defendant or defense counsel, but not to the extent that, in the opinion of the court, it may cause harm to the defendant or other persons.

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SYNOPSIS OF STANDARDS RELATING TO PROBATION

American Bar Association (1970)

(a) Definition of Probation - "[T]he term 'probation' means a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of the sentence or to resentence the offender if he violates the conditions." It "should not involve... suspension of the imposition or the execution of any other sentence."

(b) Administration of Probation - Probation may be administered at either state or local level, but (1) "in no event should control be vested in an agency having prosecutorial functions." (2) Also, "an appropriate state agency" should have responsibility for the establishment through regulations and otherwise, and enforcement, of minimum standards for the supervision of probationers, maintenance of adequate records, and for setting the level of adequacy for administrative services in support of the probation effort. These standards "should be applicable to all probation departments within the state." (3) The primary goal of structuring administration of probation should be "to implement properly the standards" which follow.

(c) Probation Personnel Appointment - (1) Chief Judge of local court should have sole responsibility to appoint chief probation officers in local probation departments; (2) agency to screen applicants for position of chief probation officer is advisable, and "should consist of representatives of government, the judiciary, the bar, and the community." (3) merit system procedure should be method chief probation officer must use to select probation officers and other personnel, with due process hearing required prior to removal of such personnel.

(d) Financing Probation - State legislatures should provide sufficient funding to courts and probation system in order to implement the standards contained herein.

(e) Criteria for Probation - "Probation should be the (automatic) sentence unless the sentencing court finds that: "(1) confinement is necessary for the public safety; or (2) confinement

would allow most effective correctional treatment for defendant; or (3) "it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed." Also the decision whether to grant probation should not depend on the existence of a prior criminal record or whether the defendant pleads guilty to the charge in question.

(f) Range of Probation Period - Should be a time period fixed by statute "which should in no event exceed two years for a misdemeanor or five years for a felony."

(g) Revocation Procedures - (1) Hearing - in open court; prior written notice to defendant of alleged violations required, and written record of proceedings made. (2) Counsel - retained, or appointed, if indigent. (3) Government must prove violation of probation by "a preponderance of the evidence;" Given this proof of violation, the court should not sentence defendant to imprisonment unless it finds that (a) confinement is necessary to protect the public, or to meet the correctional treatment needs of defendant, or (b) that "it would unduly depreciate the seriousness of the violation if probation were not revoked." (4) Revocation order should be considered final order and be appealable. (5) Alternatives less severe than revocation of probation "should be considered in every case."

(h) Termination and Discharge - Probation terminates (1) upon successful completion of term set by court (2) by court's exercise of power of early termination prior to completion of term; "[s]uch authority should be exercised prior to the term ...if it appears that the offender has made a good adjustment and that further supervision or enforced compliance with other conditions is no longer necessary."

(i) Conditions of Probation - (1) All conditions should be set by court, and "should be sufficiently precise so that probation officers do not in fact establish them." (2) The only statutory condition of every sentence of probation should be "that the probationer lead a law-abiding life during the period of his probation;" additional "conditions imposed by the court should be designed to assist the probationer in leading a law-abiding life;" conditions "should not be so vague or ambiguous as to give no real guidance." (3) Conditions requiring payment of fines, restitution, etc., should be within probationer's financial capability; "probationer should not be required to pay the costs of probation." (4) Statute should contain several specific guidelines as to appropriate additional conditions.

(j) Mixed Sentences - No provision.

(k) Qualifications of Probation Officers - (1) Bachelor's degree, plus one year of graduate work or full-time work experience; in-service education should be available to probation personnel; (2) "[i]t is desirable that the staff include individuals who may lack such professional qualifications but have backgrounds similar to those of the probationers themselves. In addition, in appropriate cases citizen volunteers...(may) assist probation officers."

(l) Duties of Probation Officers - (1) Supervision of probationers, with a sufficiently low average caseload to develop techniques to maximize benefits of supervision; preparation of pre-sentence reports; (2)additional duties such as providing courts with pretrial release reports providing prosecutors with trial diversion assistance. (3) "Probation officers should not be authorized to arrest probationers."

(m) Civil Rights and Disabilities - "Every jurisdiction should have a method by which the collateral effects of a criminal record can be avoided or mitigated following the successful completion of a term on probation and during its service."

(n) Presentence Activities - (1) Presentence report - should be mandatory in all cases where confinement for one year or more is possible; where defendant is less than 21 years old or is a first offender, unless court specifically orders that no report be made; (2) statutory guidelines should be set out regarding length and contents of report; (3) standards for disclosure of presentence report should be developed and implemented (see A.B.A. Advisory Committee on Sentencing Alternatives and Procedures).

SYNOPSIS OF MODEL PENAL CODE ARTICLES ON SUSPENSION OF SENTENCE; PROBATION; AND ORGANIZATION OF CORRECTION

American Law Institute (1962)

(a) Definition of Probation - No provision.

(b) Probation Administration - The code suggests two alternative organizational models to be considered by a state legislature seeking to adopt a new scheme of probation administration. (1) Division of Probation and Parole model - directly administers all probation services in state. Division is headed by probation and parole administrator who is ultimately responsible for effectuating the probation function throughout the state; the administrator must supervise the administration of probation by enacting regulations for the conduct of the action arm of the Division, the field probation and parole service. The service is responsible for carrying out all investigations, supervision, and reporting of probationers. (2) The code also provides a division of probation model - field probation services are rendered by the division in jurisdictions lacking their own local probation service; Division of Probation is under direction of probation administrator who exercises the powers to maintain oversight of all probation departments, down to the local level, in the state; also, to "direct the extension of (state) probation field services to any county...he finds...is not supplying adequate probation services to its criminal courts," upon consultation with the county to which services are to be extended, the probation administrator administers "with the advice of the state commission of correction and community services," (an additional organization suggested by the Code).

(c) Probation Officers' Appointment Source - (1) Division of Probation and Parole Administrator appoints such probation personnel "as may be required to carry out adequate probation supervision of persons sentenced to probation" on state-wide level; (2) Division of Probation Administrator may appoint probation officers only in "any county or other governmental subdivision of (the) state which has no probation service of its own;" otherwise, the local courts appoint probation officers to serve the persons processed through such courts.

(d) Financing Probation - The organizational and administrative models proposed by the Code are dependent largely, if not exclusively, on funds appropriated by the state legislature; only limited financing on county level is involved.

(e) Criteria for Probation - Code provides court with several explicit guidelines in determining whether to withhold sentence of imprisonment and for placing defendant on probation: (1) criteria indicative of probation include prior criminal record, mitigating circumstances surrounding defendant's criminal conduct, the likelihood that the particular defendant would respond positively to probationary treatment. (2) Factors going against probation are more general - risk of second crime being committed by probationer; advisability of correctional treatment of defendant in confinement; seriousness of particular crime in question requires recognition through a stiffer sentence than probation. (4) Code additionally provides detailed criteria for imposing sentences of imprisonment, fine, and for granting parole.

(f) Range of Probation Period - When the court initially orders probation, it shall be for a standard period of time set as two years for a misdemeanor or five years for a felony, unless the court subsequently orders the probationer to be discharged.

(g) Mixed Sentences - Court may condition order of probation on requirement that defendant serve a sentence of imprisonment not to exceed 30 days (i.e., "shock probation").

(h) Probation Officers' Qualifications - No specific qualifications are suggested; the Administrator of the Division of Probation (where this organizational model is adopted - see above), is empowered to "establish policies and standards and make rules and regulations regarding ...the qualifications of probation officers."

(i) Probation Officers' Duties - (1) The Code develops systematic body of duties of probation officers including the investigation and supervision of probationers and the accompanying duty to "admonish probationers who appear to be in danger of violating the conditions of ....probation;" the duty to advise the sentencing court of the need to modify the conditions or terminate the period of probation. (2) An additional set of responsibilities is set out for district probation supervisors, who must establish procedures for the direction and management of probation officers in their jurisdictions, and account for the activities of such personnel as well as those of probationers, to the state administrator of probation services. (3) The Administrator prescribes additional duties, and also makes regulations regarding suggested probation caseloads.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - The court "may attach such reasonable conditions as it deems necessary to insure that the probationer will lead a law-abiding life or likely to assist him to do so." (1) such conditions are described by a series of general guidelines conditions, including that of requiring the posting of a monetary bond by probationer to help assure the performance of conditions imposed; (2) the court is somewhat limited to conditions "reasonably related to the rehabilitation of the defendant and not unduly restricted of his liberty or incompatible with his freedom of conscience." Also, the court "shall eliminate any requirement (imposed on probationer) that imposes an unreasonable burden on" him.

(l) Revocation Procedures - Court, prior to revocation, must afford probationer a hearing at which he is entitled to notice of the grounds for revocation and of the evidence against him; probationer further entitled to dispute such evidence, to offer evidence on his behalf, and to representation by counsel during the proceedings.

(m) Probation Termination and Discharge - Court has broad discretionary power to terminate period of probation and discharge probationer at any time; such early discharge results in defendant being free from further liability for serving a sentence for the crime in question.

(n) Civil Rights, Disabilities - Court may order that defendant who has fully complied with probation conditions "and has satisfied the sentence," shall not be considered to have been convicted for purposes of any disqualification or disability imposed by law upon conviction of a crime."

(o) Presentence Activities - (1) Court may not impose any sentence until it orders and accords "due consideration to a written report of (the) investigation "of defendant who is convicted of felony, or who will be sentenced to extended imprisonment, or who is under 22 years old;" the court has discretion to order a presentence report in any other case. (2) Court may further require that defendant submit to presentence psychiatric examination period not to exceed 60 days, "or such longer period as the court determines to be necessary for the purpose." (3) Contents of presentence report must be disclosed to defendant or his counsel, and defendant entitled to opportunity to contest the report; defendant to be sentenced to extended imprisonment is entitled "to hear and controvert the evidence against him and to offer evidence upon the issue" of imprisonment.

SYNOPSIS OF STANDARDS ON PROBATION

National Advisory Commission on Criminal Standards and Goals (1973)

(a) Definition of Probation - No provision.

(b) Administration of Probation - (1) Administration and implementation of probation function should be made exclusively by the state correctional agency, within the executive branch of state government. (2) The agency's responsibilities should include: establishing statewide probation policies and planning; monitoring of system performance; consultating with courts and local probation agencies. (3) The agency should determine the demand for probation services, and set the appropriate standards regarding the level and number of probation personnel and programs in each region of the state.

(c) Probation Officers' Appointment - Appointment should be at state level, using a comprehensive and systematic method to recruit, screen, educate, and evaluate the effectiveness of, probation personnel, "including volunteers, women, and ex-offenders."

(d) Financing Probation - State is source of funds;" [i]t is essential that funds be provided for the purchase of services" for the rehabilitation of probationers in their own communities; the state correctional agency should have authority to render "[f]inancial assistance through reimbursement or subsidy to those probation agencies meeting standards set forth in" these standards.

(e) Criteria for Probation - (1) Should be patterned after Model Penal Code - sentencing provision, Section 7.03. "Criteria for Sentence of Extended Term of Imprisonment; Felonies." These criteria are designed as guidelines for the exercise of judicial sentencing discretion. (2) Additional criteria should require the sentencing court to grant probation unless specific conditions exist for imposing imprisonment; require court to consider certain factors in favor of granting probation, relating to the individual defendant in question. (Std. 16.11). (3) Appellate court should be authorized to review decisions denying probation. (Std. 16.11).

(f) Range of Probation Period - Probation term should not "exceed maximum sentence authorized by law except that probation for misdemeanors should not exceed one year."

(g) Mixed Sentences - Court may impose condition of imprisonment not to exceed 30 days, in addition to probation.

(h) Probation Officers' Qualifications - "Educational qualification ... should be graduation from an accredited 4 - year college.

(i) Probation Officers' Duties - (1) The primary function of the probation officer should be that of community resource manager for probationers.

(j) Volunteer Probation Officers - Increased use should be made of volunteers "who can serve as success models" to probationers; no further specific guidelines are stated.

(k) Conditions of Probation - (1) Should be patterned after Model Penal Code - Sentencing Provisions, section 301.1, "Conditions of Suspension or Probation." (2) There should be requirement "that any condition imposed in an individual case be reasonable related to the correctional program of the defendant ... " (3) The "mechanical imposition of uniform conditions on all defendants should be avoided." (4) Probationer may be required to post bond to ensure performance of conditions.

(l) Revocation Procedures - (1) Probationer arrested for alleged violation of probation has right to prompt probable-cause hearing by neutral official (not probation officer), including right to counsel and opportunity to be heard and to cross-examine witnesses. (2) Probationer also entitled to probation revocation hearing by court with above rights; additional "requirement that before probation is revoked the court make written findings of fact based upon substantial evidence of a violation of a condition of probation." (3) Authorization should be made for informal alternatives to formal revocation procedure, including conferences or rendering warnings regarding compliance with probation conditions. (4) Appellate court should be authorized to review decisions to revoke probation.

(m) Probation Termination and Discharge - Court should be authorized to discharge probationer at any time.

(n) Civil Rights and Disabilities - Persons who are not actually confined (i.e. probationers) should not be deprived of any civil right, except denial of license in certain cases "when there is a direct relationship between the offense committed or the characteristics of the offender.and the license ... sought."

(o) Presentence Activities - Presentence report required in all (1) felony cases; (2) cases involving defendant who is minor; (3) cases involving sentence of confinement. (4) Report must be disclosed to defendant, defense counsel, and prosecutor.

SYNOPSIS OF STANDARD PROBATION AND PAROLE ACT

National Council on Crime and Delinquency (1955)

(a) Definition of Probation - "A procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court, without imprisonment, subject to conditions imposed by the court and to the supervision of the probation service."

(b) Administration of Probation - Alternative (1) - State board of probation and parole, headed by director, which shall administer, and endeavor to secure the effective application and improvement of the probation and parole system and the laws upon which it is based; the board may adopt regulations concerning conditions of probation, except that such regulations are inapplicable when inconsistent with court-imposed conditions. Alternative (2) - State probation commission, headed by director, which "shall exercise jurisdiction over the administration of probation in all courts of the state...(and) shall endeavor to secure the effective application of the probation system." The commission shall implement this function through the adoption of regulations which shall have the force and effect of law. [Note - this model legislation offers two alternative systems for achieving the effective administration of probation].

(c) Probation Officers' Appointment Source - Alternative (1) - Under state probation and parole board system, director of probation and parole appoints, with approval of board, all probation personnel; director and all personnel to be within classified service of state civil service. Alternative (2) - Under state probation commission system, commission appoints state director of probation and may employ such other employees to carry out work of commission; director and employees of commission to be within classified service of state civil service. Judges of court jointly appoint chief probation officer, who appoints probation officers and other personnel; all personnel to be within classified service of state civil service.

(d) Financing Probation - (1) Under state board system, state legislature appropriates funds for given fiscal period: (2) Under commission system, local government treasury half of probation personnel compensation, and the commission funds the other half.

(e) Criteria for Probation - No provision.

(f) Range of Probation Period - Court may not fix for more than five years, but may renew for fixed periods of not more than five years, but total period may not exceed maximum term provided by law.

(g) Mixed Sentences - No provision.

(h) Probation Officers' Qualifications - To be specified by the classified service qualifications of the state civil service or public personnel system.

(i) Probation Officers' Duties - (1) Investigate all cases referred by director of probation and parole or by any court and prepare pre-sentence reports; keep informed of probationers' activities; instruct probations regarding probation conditions; keep records of work. (2) Coordinate work with other social welfare agencies, and aid probationer in improvement of conduct. (3) Probation officer has power of arrest without a warrant.

(j) Volunteer Probation Officers - No provision.

(k) Conditions of Probation - Court has broad "authority to impose or modify any general or specific conditions of probation," including condition that defendant be placed in diagnostic, treatment, or residence facility for initial period not to exceed 90 days. No statutory guidelines stated.

(l) Revocation Procedures - (1) Probation officer may arrest probationer without warrant, and after arrest must report circumstances of probation violation to the detaining authorities and to the court; court shall promptly conduct hearing on alleged violation. (2) Hearing may be informal or summary, and defendant must be provided notice of probation violation charges; no further procedural guidelines established in this provision.

(m) Probation Termination and Discharge - Court may terminate or extend probation at any time.

(n) Civil Rights, Disabilities - Unless committed to an institution, defendant shall not lose any of his civil rights.

(o) Presentence Activities - Presentence report required when possible sentence is imprisonment of more than one year. Court has discretion to order report for defendant convicted of lesser crime; court or probation officer has discretion to order physical and mental examination of defendant; state board or court has discretion to disclose report to defendant and defense counsel, "or other person having a proper interest therein."

SECTION 3

ANALYSES OF STATUTORY AND CASE LAW

I. PROBATION ADMINISTRATION

A. Administration of Probation

By administration of probation is meant procedures for the management of probation personnel and resources in order to implement the probation functions of presentence investigation and caseload management. Generally, the organizational structure of the probation service of a jurisdiction is outlined by statute, with detailed operational structure and procedures adopted by administrative regulation or court rule.

An examination of state and federal statutes reveals that these statutes may be categorized into five classes, which differ mainly in terms of the centralization of administration of probation services. Other differing characteristics noted are the degree of detail with which the statutes address probation system administration.

Class 1

Five states[1] have unified corrections systems; that is, all traditional major corrections functions are placed, by statute, under a single state administrative agency. This organizational structure has been recommended by the advisory commission on intergovernmental affairs,[2] and represents the ultimate level of state centralized corrections administration. The National Advisory Commission on Criminal Justice Standards and Goals is also in agreement with this model of administration.[3]

Class 2

The statutes in the majority of states (approximately thirty) provide for administration of probation in combination with parole by

the same agency.

In Florida, for example, there are no county probation departments, and the state Parole and Probation Commission administers all probation services through area offices.[4] A variation within this class of states is found in the Wisconsin statute, which provides an option for counties above a 50,000 person population to maintain their own probation services, apart from the state probation service administered by the department of corrections.[5]

The federal probation statute provides that probation officer duties include those which "the United States Parole Commission shall request," and administration of the federal probation service is the responsibility of the Director of the Administrative Office of the United States Courts.[6]

Class 3

A small minority of states provide for the administration of probation by a state agency separate from the parole function.[7]

There is agreement among the model statutes and standards that either administration of probation separate from parole or in combination with parole is appropriate. The National Council on Crime and Delinquency's Standard Act for State Correctional Services, (1966), provides two alternative structures for state administration of probation apart or in combination with parole administration. The American Law Institute, in its Model Penal Code, Part IV, "Organization of Correction," (1962), offers a similar set of alternative administrative structures.

Class 4

In at least four states, the statutes provide for local administration of probation by the courts, and overall supervision of probation officers and services by a state agency,[8] commissioners,[9] or the state supreme court.[10]

In Ohio, for example, the courts of Common Pleas in each county may establish a county department of probation, and the courts have the power to supervise the work of probation officers.[11] County probation departments are subject to and must report[12] to the state Adult Parole Authority. The authority may "exercise general supervision over the work of all probation and parole officers throughout the state, including those appointed in county probation departments."[13] Massachusetts offers a further example of state supervision of local probation. There, the Commissioner of Probation has executive control and supervision of probation services in all courts throughout the state, and establishes state-wide standards for probation work.[14]

This form of administration is endorsed by the National Council on Crime and Delinquency, in its Standard Probation and Parole Act, (1955). The Act's Alternative Section 3, would provide that probation be administered by local courts, subject to state supervision. Another alternative administrative section in the Act would establish a state board of probation and parole to administer all probation services in the state. Regardless of the alternative adopted by a jurisdiction, the state supervisory body is required under the Act to "endeavor to secure the

effective application and improvement of the probation and parole system and the laws upon which it is based."

Class 5

The remaining states provide by statute for the local administration of probation by the courts,[15] or in one case, by a local board.[16] In a number of states in this class and in class four (above), there is statutory authorization for a system of concurrent administration of probation. Locally administered probation offices may be established by county governments, and a state probation agency directly provides administration and personnel to counties which cannot support, or choose not to maintain, local probation services.[17]

B. Appointment of Probation Officers

By appointment of probation officers is meant that procedure provided by statute for conferring the authority of the office of probation officer upon an individual. (The procedure for creating a pool of candidates through setting qualifications and examination is discussed separately under "Probation Officer Qualifications," in a following section of this paper).

The statutes of the various jurisdictions differ in procedures for appointment of probation officers generally along the lines of the five classes of jurisdictions identified previously in "A", above.

Statutes falling into Class 1 generally provide by statute for appointments by the head of the state department of corrections. Delaware, as an example of such a state, provides for appointment by its unified

Department of Corrections.

The Class 2 and Class 3 statutes provide for appointment by the state agency responsible for probation.

Among the statutes in Class 4, Ohio utilizes a dual appointment system. Both the state and county probation agencies appoint their respective officers. A different procedure is used in Massachusetts, where probation officers are appointed by the judges of the Superior Court and Chief Justice of the Municipal Courts, with the approval of the state Commissioner of Probation.

The statutes in Class 5 confer the power of appointment on the local courts, sometimes with the requirement of approval by the local executive body. In New Jersey, for example, the county judges appoint the chief probation officer. Additional probation officers are appointed by the court, with the chief probation officer empowered to appoint probation employees only as authorized by the county judges.[19] This may be compared to the federal probation system, in which the federal District Court judges appoint the Chief Probation Officer, who in turn selects probation officers to serve under him. The Chief Judge of the federal District Court, as the statutory source of appointment for all U.S. Probation Officers, must approve the selections made by the Chief Probation Officer.

A variation of the preceding procedure is found in the Nebraska statute, which provides for the Nebraska District Judges Association to appoint a probation administrator. The administrator in turn appoints

district probation officers, with the concurrence of the district court. (There are, however, certain situations in which the district court directly appoints its probation officers.)[20]

The Wyoming statute places the power to appoint in the county commission of each county, and the approval of the district judges is required. The American Bar Association, in Probation Standard 6.4 (1970), "Appointment of Personnel," recommends that for Class 5 jurisdictions, (i.e., local administration of probation by the courts), the authority to appoint a chief probation officer should be with the local judiciary, and not shared between judiciary and executive bodies. This Standard further provides that the chief probation officer should have the discretion to appoint additional officers and other personnel. An additional important preference is stated that

> "[C]onsideration should be given to the creation of an agency or committee to advise in recruiting and screening chief probation officers. Such a committee should consist of representatives of government, the judiciary, the bar, and the community."

C. Financing Probation

By Financing probation is meant the statutory source of public funds to be allocated and spent for the salaries and expenses of probation personnel, the operating costs of the probation system, the costs in operating special programs or services by the probation system, and for the construction of probation facilities. The separate procedures for determining the level of funding that is sufficient in a given jurisdiction is not discussed.

The classification scheme developed earlier is used here to describe the financing provisions of the various state and federal statutes.

States with statutes described previously as belonging to Class 1, 2, and 3, generally provide for financing probation through funds appropriated by the state legislatures.

The statutes of states included in Class 4 and 5 generally provide for a pattern of county funding of court-administered probation. Where the local courts are run by the state, as is the case with the circuit courts in Hawii, the statutes provide for financing through state funds. Further, in jurisdictions with concurrent state and local administration of probation, varying from county to county, statutes generally require each level of government to financially support its respective probation department.

FOOTNOTES

1. Alaska, Delaware, Maine, Rhode Island, and Vermont.

2. Advisory Commission on Intergovernmental Relations. Model State Department of Corrections Act. 1971.

3. National Advisory Commission on Criminal Justice Standards and Goals. Corrections, Standard 10-1, Organization of Probation. 1972.

4. Florida Statutes Annotated S 948.02; see generally, National Council on Crime and Delinquency, Probation and Parole Directory: United States and Canada, 50 (17th ed. 1976).

5. Wisconsin Statutes Annotated S 58.025; see State v. Schlueter 262 Wis. 602, 55 N.W. 2d 878 (1953) (interpreting statute).

6. 18 United States Code Annotated SS 3655, 3656.

7. Connecticut.

8. New York and Ohio.

9. Massachusetts.

10. New Jersey.

11. Ohio Revised Code Annotated S 2301.27 (Page)

12. Id. S 2301. 30E.

13. Id. S 5149.12.

14. Massachusetts General Statutes Annotated.

15. Arizona, Colorado, Hawaii, Illinois, Indiana, Oklahoma, Pennsylvania, Texas.

16. California.

17. In New York, for example, either the county probation department or the state Division of Probation administers probation in each county of the state.

18. New Jersey Statutes Annotated § 2A: 16805 (1953).

19. Nebraska, §§ 29-2209, 29-2251, 29-2253 (2)

II. PROBATION OFFICER QUALIFICATIONS

In all jurisdictions, persons applying for the position of probation officer are required to meet qualifications that are specified for a number of areas, including education, work experience and personal character. Most jurisdictions specify by statute or regulation, the qualifications to be met in these areas.

An examination of the issue of probation officers' qualifications is a key to evaluating the quality and effectiveness of probation services. Both the legal procedures for establishing qualifications, the body of law stating the specific qualifications, and the impact of officer qualifications on the probation system, will be examined.

A. Procedures for Setting Probation Officer Qualifications

The statutes which provide the procedures for setting the qualifications of probation officers fall into four categories. These categories differ in the source of law that establishes these qualifications.

The first category of statutes confers power on the state personnel board or merit system to specify the qualifications that applicants must meet in order to be considered for the position of probation officer. There are sixteen states in this group.[1]

The second category is comprised of thirteen states in which the statutes empower the state corrections department or probation agency to establish officer qualifications.[2]

The third category of statutes provides that both the state probation agency and state personnel board may specify qualifications. An example of this procedure is found in the Ohio statute, which provides that the

state adult probation authority may prescribe qualifications for probation officers, and that all positions in county probation departments are classified under the county civil service.[3] In each of the six states in this group,[4] there are various administrative arrangments to implement this statutory scheme.

The statutes in the fourth category confer the power to set qualifications with either the local courts or with the supreme court of the state.[5]

In the first and second categories of jurisdictions, the administrator of either the state civil service system or the state probation agency must adopt regulations stating specific qualifications for the position of probation officer. In five of the thirteen jurisdictions[6] in which the state probation agency administrator has the statutory authority to set qualifications, he also is required by statute to prepare and administer state-wide merit examinations. These examinations test the knowledge and abilities of applicants, and applicants who achieve satisfactory scores are placed on an eligible list. Applicants on the eligible list are subject to additional qualifications that the probation administrator may require by regulation.[7] Presumably, in the remaining seven jurisdictions of this category, merit examination is not required and the administrator may promulgate regulations setting qualification levels.

B. Specific Officer Qualifications

All of the jurisdictions discussed above provide for specific

qualifications for the position of probation officer. These qualifications, when enumerated by statute, are for the limited purpose of establishing minimum criteria for eligibility for this position. Only Oklahoma and Texas set out specific qualifications solely by statute.[8] In the other jurisdictions, additional selection criteria are established by administrative regulation. These criteria determine the qualifications of applicants for the position of probation officer in three major areas: education, previous work experience, and personal character.[9]

It has been observed that, "nation-wide, the educational standards set by statute or administrative regulation range from high school or less to graduate degrees plus prior experience."[10] In approximately fifteen states there is an educational requirement calling for a bachelor's degree from an accredited college.[11] In only two states is a master's degree required for eligibility for the position of probation officer.[12] The statutes of at least three states require, apart from any educational qualifications, one or more years of work experience in the area of probation, or related areas.

Less than ten states list the character of the applicant among the qualifications enumerated by statute. However, character is considered an essential qualification for the position of probation officer and standards are specified by the regulations in most states.

In some states in which the court has the power to set qualifications, persons with criminal records are not eligible to be probation officers. The opposite view is taken by the American Correctional Association's Standards,[13] which recommends that ex-offenders be accepted as probation officers.

C. Impact of Officer Qualifications on the Probation System

The specific qualifications required by a given jurisdiction have a direct impact on both the nature of the services provided to the probationer, and one the role played by the probation officer.

The setting of qualifications by the state personnel board or merit system, as opposed to the probation agency or the courts, has the effect of limiting the number of patronage type appointments made. Setting objective criteria, such as a satisfactory competitive examination score or a bachelor's degree from an accredited college, tends to provide for selection of probation officers more on the basis of their abilities and aptitutes relative to probation investigation, supervision, and caseload management.

The specific requirement of a college degree, especially with a concentration in the behavioral sciences, tends to assure that the probation officer will have two major tools to work with. First, the degree represents a minimum level of substantive knowledge about corrections, social sciences, and related areas. Second, it also indicates that the officer will possess the minimal communications skills needs to prepare presentence reports and to maintain probation records. The further requirement of probation - related work experience mainly represents that the officer has previously dealt with offenders in a treatment - oriented setting, and has in this way learned a certain amount of practical knowledge about the probation functions.

Additionally, the statutory provision in several states for in-service education for probation officers and employees allows for the

development of personnel who are educationally more highly qualified, and who can, for the reasons discussed above, more effectively meet the professional rehabilitative goals of the probation system.

The provision, by statute or regulation, for equal employment opportunities for minority groups, would include more persons from disadvantaged groups and inner city areas as probation officers. This would tend to enhance the prospects that such probation officers would be able to establish effective rapport with a greater number of probationers.

The inclusion of ex-offenders as persons considered to be qualified for the position of probation officer insures the commonality of backgrounds of the officer and client. Officers who are ex-offenders are in a unique position to help probationers, having developed the skills and character needed to become productive persons despite their prior criminal convictions.

FOOTNOTES

1. This procedure is consistent with the American Bar Association Probation Standards, (1970), which provide that the selection of probation officers be done according to a civil service, or merit, system. It should be noted that this procedure differs from the historical pattern (*see* footnote 5, *infra*) in which the appointing source also sets qualifications standards.

2. The Virginia statute, for example, the head of the State Division of Probation and Parole Services must establish rules and regulations such that all appointments are made upon the merits only.

3. *See* Ohio Revised Code Annotated § 2301.27 (Page). *cf.* California Penal Code § 1203.6 (West).

4. *I.e.*, Kentucky, Louisiana, Maryland, Minnesota, New Hampshire, Pennsylvania.

5. Historically, the determination of the character and qualifications of probation officers has been the traditional function of the appointing court. *See* McCourt v. City of Boston, 254 Mass. 100, 149 N.E. 601 (1916).

6. *E.g.*, Florida; Indiana.

7. Connecticut's statute varies this procedure. The Commission on Adult Probation prescribes qualifications which applicants must have to enter into the merit examination for probation officer; applicants who achieve satisfactory examination scores are then subject to additional qualifications for employment. *See* Connecticut General Statutes Annotated, § 54-104.

8. _See_ Texas Criminal Procedure Code annotated § 42.12.10 (only a person with a college degree and two years of full time paid employment in probation or a related area shall be eligible for appointment as probation officers; in counties with less than 50,000 persons, any person having completed at least two years of education at an accredited college is eligible for appointment);Oklahoma Statutes Annotated § 515 (qualifications listed are "good character" and bachelor's degree, including at least 24 credit hours in behavioral science).

9. It should be noted that the statutes of only two states - Massachusetts and Tennessee - include maximum and minimum age limits as part of probation officer qualifications.

10. _See_ G. Killinger, H. Kerper & P. Cromwell, _Probation and Parole in the Criminal Justice System_ 107 (1976).

11. It should be noted that Massachusetts specifically provides in its statute that absence of college degree may not itself be sufficient to disqualify a candidate for probation officer.

12. Vermont requires either a masters degree or 18 months of probation - related work experience in addition to a bachelor's degree; Delaware requires applicants to posses an M.S.W. (Master of Social Work) degree.

13. _See_ Manual of Standards for Adult Probation and Parole Field Services, (1977) sponsored by the American Correctional Association, which takes the view that the use of ex-offenders is important to effective probation services.

III. PROBATION OFFICER DUTIES

By duties is meant those things all probation officers may be called to do that is pre-specified by law, regardless of the source of the law statute, court rule, or administrative regulation. This concept of duties must be distinguished from both the concept of probation tasks and the concept of probation functions. Probation tasks are those things ordered by the court in detail to be performed relating to an individual case. There are two distinguishable core probation functions performed by the probation officer: presentence investigation and probation caseload management.

The legal sources specifying duties of probation officers which implement those core functions may be either statutory or by court rule or order. Approximately half of the states set out a number of specific probation officer duties by statute. The most widely used statutory provision specifies certain presentence and caseload management duties.[1]

In six jurisdictions the local court or the state supreme court establishes the general duties of probation officers through court rules of an administrative nature.[2] In the other jurisdictions, in which statutes do not enumerate all duties, the head of the state corrections department or probation agency may specify and enumerate the general duties of probation officers.[3]

In addition, probation officers are under the general duties to, first, make themselves available to the court to accomplish the core probation functions, and second, to keep records and inform the court of their probation work.[4]

A. Standard Probation Officer Duties

Most jurisdictions set out, regardless of legal sources, certain duties to implement the two core probation functions of presentence investigation and probation caseload management. Duties relative to presentence investigation

are: to provide presentence investigation of all defendants the court designates, and to prepare written reports to the court of factual information resulting from such investigations. The information presented by the probation officer in the presentence report is then used by the court to determine whether probation should be allowed, or if imprisonment is the more desirable sentence.

The duties comprising the caseload management functions are those regarding supervision of probationer conduct, on the one hand, and social services delivery and referral (see section "C", infra). The supervision duties are: to supervise persons placed on probation by keeping informed of their activities; to provide probationers with a written statement, and provide explanation of all of the conditions of probation imposed by the court for them to follow; to require probationers to report to the officer periodically; to maintain records of the work that the officer does in the field and at the office. Such a provision may be found in the Standard Probation and Parole Act, (1955).[5]

Duties implementing the second probation caseload management function, that of social service delivery and referral, cannot be categorized as standard, since they differ widely among jurisdictions. These particular caseload management duties are discussed below in section "C".

B. Particular Presentence Investigation Duties

In two states, Arkansas and Mississippi, the presentence function is seperate from the caseload management one, and the duties to conduct presentence investigation and make reports therefrom are assigned by statute to a seperate class of investigative personnel.

Another particular duty specified in the statutes of more than ten states requires the probation officer to supplement the factual information presented

in the presentence report with the recommendations to the court whether to grant or deny probation to the defendant.[6]

C. Particular Duties Relating to Probation Caseload Management: Supervision

In over ten jurisdictions, probation officers are under the statutory duty to supervise persons other than probationers, including parolees,[7] defendants released under pretrial division programs,[8] and defendants placed in alcohol[9] or drug abuse[10] treatment programs.[11]

The statutes of nearly every jurisdiction do not provide for an express officer duty to initiate revocation proceedings upon reasonable belief that the probationer has violated conditions of probation. Presumably there is an implied duty on the part of the probation officer to act responsibly when supervision of the probationer reveals circumstances calling for the initiation of proceedings to revoke probation.

Social Service Delivery and Referral

The second dimension of probation caseload management involves the probation officer in assisting the probationer by providing him or directing him to those social services the probationer needs to lead a law-abiding and constructive life.

Particular duties advancing this objective are not commonly required by statutory source. In California, the statute articulates the duty of the probation officer to provide services to the probationer in the community.

Although, as it appears from the above discussion, no statutes presently enacted require a comprehensive set of duties implementing the service delivery and referral sub-function, the view advanced by many experts in probation is reflected in the Standard Probation and Parole Act, (1955). The Act would require

probation officers to "coordinate their activities with that of other social welfare agencies". The agencies intended by the Act include those dealing with the needs of probationers (and other persons placed under the supervision of probation officers) in areas such as physical and mental health, employment, education, and income assistance.

D. Impacts of Probation Officer Duties on Core Probation Functions

State and Federal statutes, for the most part, articulate only duties relating to the presentence and supervision functions. The weight of modern professional judgement reflected in probation standards, emphasizes planning and goals designed to accomplish the social service delivery and referral function of probation. There is a basic distinction between this function and the historical one of probationer conduct: of recording it, checking on it, and confining it through various sanctions, such as warning or even revocation.

The delivery of social services to meet the various living needs of the probationer involves an affirmative effort by the probation officer to ascertain the nature of such needs, and to provide expert assistance or to locate an agency outside of the probation officer that can provide needed services. It appears that present probation statutes must be done in order to direct the probation officer to expand his activities beyond the officer - client centered, on-to-one relationship, to those involving a multi-agency effort seeking to realize the goals proposed by leading professional authorities. These goals are reflected in American Bar Association Probation Standard 6.2 (i), (1970), which recommends that "in appropriate cases, supervision should be supplemented by group counseling and therapy programs ... To complement supervision, helping

services should be obtained from community facilities in appropriate cases and, where necessary, probation personnel should actively intervene with such facilities on behalf of their probationers."

This view is also advanced by the recently published standards adopted by the American Correctional Association in its Manual of Standards for Adult Probation and Parole Field Services, (1977). In Standard 3128, it is recommended that community resources be developed to provide services to offenders, and that field staff, actively support community efforts on behalf of offenders.

There is a need to bring the statutes regarding probation offiers duties up to date with these recommended standards. This should be done for three major reasons. First, present statutes obstruct the realization of these modern preferred goals. Secondly, a statutory approach to service delivery and referral would acknowledge its importance and strengthen its position in the individual probation services. Thirdly, statutes specifying duties relative to service delivery and referral would regulate the discretion of probation officers in applying this method, and would establish guidelines for the effective performance of these duties.

FOOTNOTES

1. See, e.g., Kentucky Revised Statutes, Title 439, Section 480; Revised Nevada Statutes, Title 16. Section 109-6; South Carolina Statutes Annotated. Title 55, Section 578.
2. In some jurisdictions, the court may also order a state agency other than the probation department, such as the Department of Social Services (Iowa) or Division of Community Services (Oklahoma) to perform duties concurrently with the probation officers, such as preparing presentence reports.
3. See, e.g., McKinney's Consolidated Laws of New York Annotated, Executive, Sections 243 and 257(4); United States Code Annotated, Title 18, Section 3655.
4. Even in the absence of a statutory duty, it has been the view of some jurisdictions that there is a general legal duty on the part of the probation officer to assist the court. See, e.g., People v. Chicago B. &. Q. R. Co. 273 Ill.110,112 N.E. 278 (1916).
5. See Standard Probation & Parole Act, (1955), Section 10 (National Council on Crime Delinquency).
6. See, e.g., Florida Statutes Annotated, Section 948.02.
7. In at least eight states, probation officers may supervise parolees as part of their total caseload: Alaska, Hawaii, Minnesota, Montana, Oklahoma, Vermont, Washington, and Wyoming.
8. An example of this is found in the Missouri statutes, which require the officer to supervise defendants released under the pre-trial diversion programs set up by the courts.
9. For example, the District of Columbia statutes impose upon the officers the duty to supervise all offenders who are chronic alcoholics undergoing treatment in local clinics.

10. For example, the New York statute requires probation officers to supervise patients in the narcotics treatment program of the state drug abuse control commission.

11. Closely related to this extension of the class of supervised persons is the New Hampshire statute which provides that probation officers must take temporary custody of (and in effect supervise), children, in order to enforce the visitation rights of seperated or divorced parents of such children.

IV VOLUNTEER PROBATION OFFICERS

Citizens who volunteered to supervise and assist persons sentenced to probation played a key role in the development of probation services in the United States. Recently, there has been a marked increase in the number of volunteer probation officers used, and a like increase of reports of the beneficial results achieved through their activities.

Although there are only eight state and federal statutes specifically authorizing volunteer services with regard to adult probation,[1] the use of volunteer probation officers may also be made without specific statutory authority by local courts, community organizations, or groups of concerned citizens, which take the initiative in proposing and implementing such programs.[2] These programs tend to precede the enactment of state legislation, and some thirty states are currently considering legislation on this subject.[3] The scope of this section is largely limited to the present statutes regarding volunteer probation officers, and the implications that their use has on the ability of probation services to contribute to the offender's rehabilitation.

A. Statutory Provisions Regarding Volunteer Probation Officers

Of the seven states which provide by statute for the appointment of volunteer probation officers, five of these states place this authority with the agency responsible for the appointment of salaried officers. In New Hampshire, for example, the director of the state probation board has the power to appoint, subject to regulation by the five board members, volunteer "counselors". The Nebraska statute, by comparison, permits appointment on a local level according to the needs of the probation

officers.[5]

The statutes of the other two states, Arkansas and Maryland, are different in their appointment procedures. In Arkansas, the County Probation Advisory Board has responsibility for the selection of volunteer personnel and is regulated by the court.[6] Maryland is the only state having a statute authorizing the establishment of a community program. This is accomplished by the State Division of Parole and Probation, which set up a volunteer citizen program entitled "Guide".[7]

In the federal system, the appointment of volunteer officers is expressly provided for by statute, which states that "all such probation officers shall serve without compensation except that in case it shall appear to the court that the needs of the service require that there should be salaried probation officers, such court may appoint such officer".[8] The volunteers appointed are included in the citizen sponsor program which counsels and supervises probationers and parolees, and maintains close liaison with federal officers.[9]

The qualifications of volunteer officers are not specified in any of the statutes, beyond general requirements such as "good moral character".[10] Qualifications are more likely to be adopted by agency regulation or by court rule.[11]

The specific duties of volunteer officers are not enumerated by any of the statutes, but are stated in terms of activities which are allowed and which the supervising officer may request to be done. The Wyoming statute, for example, authorizes the volunteer, acting under the superivision

of the state probation and parole officer, to provide assistance with "vocational and technical education; ... the reintegration of offenders into society; ... in programs relating to the social, moral and psychological needs of" probationers.[12] Additionally, the power of the volunteer officer to arrest is expressly denied by statute.[13]

The duties of volunteers in a given state generally appear to be more completely set out by the officer who supervises such volunteers. In these states, the volunteer is directly accountable to the professional officer, who may in turn be required to provide training and guidance to the former.[14]

There is a general absence in the statutes of provisions for the financing of programs for the selection and training of volunteer officers. The Wyoming statute allows, at the discretion of the probation officer, reimbursement for expenses incurred by volunteers in the performance of their duties.[15]

The Manual of Standards for Adult Probation and Parole Field Services contains the recommendation that each probation department should develop and state specific policy and procedures regarding the "selection, term of service and training, and definition of tasks, responsibilities and authority" of volunteer officers,[16] but offers no detailed guidelines for doing this.

B. Implications for the Probation System

The benefits of volunteer programs are several. One important purpose is using volunteers is to make it possible to place more offenders on probation. The experience in Royal Oak, Michigan suggests the further

goals of providing intensive services to offenders who are in need of this, and of maintaining or expanding the number of offenders afforded services.

Another benefit of volunteers os to provide the offender with a link to the community in which he serves his term. This linkage makes probation a more useful sentencing alternative than imprisonment, because it allows active supervision and personal guidance toward a constructive life.[17]

The use of volunteers also has large implications for the role and duties of regular probation officers. Generally, since volunteers can be trained to substitute for paid officers in nearly every aspect of probation services, the volunteer is able to free the officer for more specialized and professional tasks.[18]

The issues of conflict between the use of volunteer officers and professionalization of the role of the probation officer do not appear to be significant. Volunteers generally bring skills, sometimes highly specialized, to the probation task. They can be trained to meet the recommended standards for probation services where there is a commitment to do so by the agency involved. A volunteer program should at least be viewed as an investment in human resources which returns far greater benefits than the costs for training and supervision of personnel. The program at Royal Oak found that its costs were only about one-sixth of the value of volunteer services provided.[19]

There is a trend toward using personnel specialized in training and organizing volunteers. Both the American Correctional Association and The National Advisory Commission on Criminal Justice Standards and Goals, stress in their standards the importance of providing for professional staff to perform the specific task of training and supervising volunteers.

Florida has led the other states in institutionalizing volunteer services on a state-wide level, with Washington and a few other states following. The statutes of most states do not adequately provide for volunteer probation programs, and the general experience has been that only the success of local programs already well established brings the subject to the attention of the state legislature. Comprehensive legislation, however, should be the state's goal because it can increase the scope and effectiveness of the volunteer effort in the probation system.

FOOTNOTES

1. The statutes of Arkansas, Maryland, Massachusetts, Nebraska, New Hampshire, New York, Wyoming and the federal system, as well as the District of Columbia, authorize the appointment of volunteer probation officers.

2. Missouri's volunteer program was originally funded by the American Bar Association's National Volunteer Parole Aide Program. _See_ American Bar Association Commission on Correctional Facilities and Services, _Volunteer Program Devleopment and Structure: A Missouri Profile_. 1975, pp. 2-9

3. Conversation with Judge Keith Leenhouts, National Council on Crime and Delinquency Volunteers in Probation, 200 Washington Square Plaza, Royal Oak, Michigan 48067.

4. New Hampshire Revised Statutes Annotated Section 504:19.

5. Revised Statutes of Nebraska Section 29-2256.

6. Arkansas Statutes Annotated Section 43-2334.

7. Annotated Code of Maryland, Article 27 Section 131A.

8. 18 United States Code Section 3654.

9. Federal Judicial Center. _An Introduction to the Federal Probation System_. Washington, D.C.:FJC, 1976, pp 47-48.

10. Wyoming Statutes Section 7.338.1

11. For example, the qualifications for volunteers in the New Jersey program are specified by state supreme court rule.

12. Wyoming Statutes Section 7.338.1

13. _Id_. Section 7.338.2

14. _See, e.g._, Annotated Laws of Massachusetts Chapter 276, Section 99c.

15. Wyoming Statutes Section 7.

16. American Correctional Association. _Manual of Standards for Adult Probation and Parole Field Services_, Washington, D.C. : ACA, 1977 Standard 3040

17. National Advisory Commission on Criminal Justice Standards and Goals, _Corrections_, 1973, p. 230.

18. Ibid.

19. See generally, Keith Leenhouts, "Royal Oak's Experience with Professionals and Volunteers in Probation", Federal Probation, 1970, vol. 34, p. 40; Joseph Ellenbogen and Beverly DiGregorio, "Volunteers in Probation Exploring New Dimensions", Judicature, 1975, vol. 58, p. 283.

20. National Advisory Commission on Criminal Justice Standards and Goals, Community Crime Prevention, 1973, p. 15.

V. DEFINITION OF PROBATION

A complete examination of the term "probation" would involve two broad approaches. The first would be to describe probation as a form of legal disposition electively used by the courts in criminal cases, prior to or instead of a sentence of imprisonment.

The second approach would focus on the direct result of this dispostion, which is to allow the defendant to remain in the community. In this way, "probation may be thought of as the application of modern, scientific casework to specially selected offenders who are placed by the courts under the personal supervision of a probation officer...and given treatment aimed at their complete and permanent social rehabilitation."[1] In order to implement a program of treatment, the probation officer seeks to provide directly or through referral to specialized social service agencies, assistance to the probationer.

The scope of this section is limited to defining probation as a legal disposition. The interrelated definition of probation as an alternative sanction to imprisonment which allows treatment of the offender is discussed in the section entitled, "Probation Officer Duties."

A. Definition of Probation as a Legal Disposition

There are two major alternative mechanisms described in state and federal statutes used by courts to reach the disposition of probation. Under the first, sentence is pronounced but the requirement that the defendant serve the sentence is deferred, and the defendant is placed on probation. The sentence need not be served if the probation term is served successfully. This procedure is sometimes known as suspension of execution of sentence.

A second procedure is that the defendant is placed on probation with the understanding that he may be returned to court for later sentencing as a consequence of violating probation conditions. This is sometimes called suspension of imposition of sentence.[2]

The legal consequences of each alternative differ upon revocation. In cases where sentence is imposed and execution suspended, such suspended sentence, generally, cannot be set aside, and a greater one imposed upon the subsequent revocation of probation.[3] Other consequences of this distinction are discussed in "C". below.

The state and federal statutes may be divided into three classes based on the procedural mechanism used. The first class, containing thirteen states, provides for the suspension of execution of sentence, accompanied by placing the defendant on probation.[4]

The second class is comprised of a nearly equal number of states, and provides that probation may be pronounced alone. The statutes within this class are further seen to take two different forms. In the first, probation is considered a disposition made in place of or prior to sentencing.[5] For example, the Pennsylvania statute provides that the court may, when certain criteria are present, decline sentencing the defendant to imprisonment, and "instead of imposing such sentence, to place the person on probation..."[6] From this language it may be implied that suspension is a condition precedent to probation.

By comparison, the statutes of four states embody a different concept of probation as an independent sentence.[7] The New York statute, for example, follows this approach by setting out a system of non-imprisonment

sentences which includes probation,[8] conditional discharge (where supervision is inappropriate)[9] and unconditional discharge.[10] The relation between these sentences is discussed below, in section "B".

In comparing the Pennsylvania and New York probation statutes, it is clear that they are identical in legal effect.[11] The advantages of the latter system as seen by the American Bar Association in its Standards Relating to Probation, is the contribution it makes to increased clarity of the concept of probation and increased understanding of when probation should be applied as an alternative non-imprisonment disposition.[12]

The third and most numerous class contains statutes which allow the court to use either of the two mechanisms described above in reaching the probation disposition. The courts in these twenty-five jurisdictions may, therefore, suspend either the imposition or the execution of sentence.[13]

B. Elements of Probation as a Legal Disposition

In addition to starting the sentencing procedure which is to be followed in imposing probation as a legal disposition, the statutes of a large majority of states describe the elements comprising this disposition. (The Standard Probation and Parole Act, 1955, is different from these statutes in that it defines probation in terms of its elements as "a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court, without imprisonment, subject to conditions imposed by the court and subject to the supervision of the probation service."[14]

The first element, release of the probationer, is self-explanatory, and appears in the statute of nearly every state. It does not follow from this element that probation and imprisonment are mutually exclusive sanctions; in fact, a large majority of states provide for the combination of the two. This subject is discussed in a separate section entitled "Mixed Sentences."

The second element, conditions, is the factor distinguishing probation from other non-imprisonment dispositions, particularly that of unconditional discharge. Unconditional discharge consists of the release of a defendant without sanction and without conditions being imposed by the court. An examination of the validity and use of specific conditions of probation is made in the section of this paper entitled "Conditions of Probation."

The third element, supervision by the probation department, is the major distinguishing factor between probation and conditional discharge. The New York statutes, discussed above, expressly provides separately for the disposition of conditional release without supervision, called conditional discharge. Similarly, the Georgia statute differentiates between suspension of execution of sentence and probation. Simple suspension of sentence does not amount to probation in the absence of a specific order for supervision.[15]

The American Bar Association Standards Relating to Probation, 1970, take a different direction by including conditional discharge under the term "probation."[16] In this way, the Standards seek to create a generic class of non-imprisonment dispositions with or without supervision, and to establish this class as a viable sentencing alternative to imprisonment.

C. Implications of Defining Probation as a Legal Disposition

Several important implications flow from the procedure and elements used in statutes to define the term "probation." A primary purpose of any definition of this term is to communicate meaning to persons involved in the probation process, to enable them to understand it as an area of sentencing. This is seen to have a direct impact on the choice of probation as a non-imprisonment sentencing alternative.

As discussed previously, the statutes of four states define probation, as does the relevant provision of the American Bar Association Standards Relating to Probation, as an independent sentence. By doing this, there is a better chance that the potential of probation as a disposition and as a treatment program may be more fully understood by the sentencing court. This is important because in order to develop a more coherent and rational system of non-imprionment sentencing through legislation and judicial practice, clarity of definition must be increased.

The court is also better able to communicate to the probation service the kind and extent of support indicated for each disposition. One aspect of this is that it should be made clear in the statute when and by what procedure the court may order probation without supervision. For example, one judge may be consistent in expressly ordering that no supervision be made, while another may omit this order. In the latter case, the probation officer may needlessly open a case on the defendant in question because a reading of the statutory definition discloses the requirement that a disposition of probation contain supervision as a necessary element. This practice does not promote the rational allocation of caseload management resources.

Another significant impact of the definition of probation as a legal disposition involves the authority of the court to impose additional sanctions. Specifically, when the procedure of suspension of execution of sentence is used, the court may not alter the suspended sentence unless such action is expressly allowed by statute.[17] In this way, the probationer is protected from sentencing to a longer term of imprisonment as an outcome of revocation. The proper procedure is that upon conviction for an offense which resulted in revocation, the court may impose a term of imprisonment

which presumably is added to the original suspended sentence.

A closely related issue arises when the procedure for imposing probation requires postponement of sentencing, and upon revocation, the court will sentence the defendant for the first time. At this point, the court will have a body of information about the offender that is considerably more expanded than at the time of the original conviction. Specifially, there will be increased information obtained by the probation officer supervising the offender, and this information may largely relate to not only the circumstances surrounding the offense which led to the revocation, but, also, to the character, habits, and lifestyle of the offender.

By comparison, under the procedure involving the imposition of sentence prior to probation, the court faces the sentencing decision with only the information gained from the presentence report and demeanor of the offender in court. Equally important, this decision must be made closer in time to the circumstances of the crime committed by the defendant.

These differences in the information available to the court at sentencing might, in theory, correlate with variations in the length of sentences imposed for similar offenses. When sentencing occurs prior to probation, the court may be inclined to place more weight on the particular circumstances of the crime, and less on the general character and lifestyle of the defendant. Conversely, when sentence is imposed upon revocation, after a period of surveillance by the probation officer, and more distant in time from the original crime, the court may tend to draw inferences from the probationer's conduct and adjustment during the term and prior to revocation in reaching an appropriate sentence. These hypotheses, however, are beyond the scope of this discussion. Analysis is properly made through studies of how sentencing information, as well as perception and other psychological factors, relate to judicial decision-making.

FOOTNOTES

1. Lewis, Diana, "What is Probation?" in R. Carter and L. Wilkins, Probation and Parole: Selected Readings 51 (1970); cf. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 1973, p. 312.

2. An additional mechanism is to impose probation without adjudication of guilt, with the consent of the defendant. For example, the Florida statute provides for probation in certain cases in which adjudication is withheld. This procedure is more accurately a form of pre-trial diversion than a disposition of probation, and is not included in the scope of this paper. It is only noted here that the statutes of approximately twelve states provide for probation without adjudication: Colorado, Florida, Georgia, Indiana, Iowa, Maryland, Massachusetts, Michigan, Oklahoma, Rhode Island, Virginia and Washington. Further, there is authority holding that the consent of the defendant is required for probation without conviction. See, e.g., Skinker v. State, 239 Md. 234, 210 A. 2nd 716 (1965).

3. See Roberts v. United States, 320 M.S. 264, 64 S..Ct. 113, 88 L. Ed. 41 (1943).

4. These thirteen states are: Alabama, Connecticut, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Nevada, North Dakota, Oklahoma, Tennessee and Vermont.

5. These eight states in this group are Arizona, Arkansas, Florida, Hawaii, Pennsylvania, South Dakota, Texas and Wyoming.

6. Purdon's Pennsylvania Statutes Annotated tit. 61, §331.25.

7. See Delaware Code tit. 11, §4302(13); Smith-Hurd Illinois Annotated Statutes §102-18; Nebraska Revised Statutes §29-2246; McKinney's Consolidated Laws of of New York, Penal Law §65.00.

8. McKinney's Consolidated Laws of New York, Penal Law §65.00 (McKinney).

9. Id. §65.05; see also Iowa Code Annotated §204.409; Kentucky Revised Statutes §533.020(2).

10. New York Penal Law §65.20.

11. It is obvious that no court would attach significance to this distinction in determining whether the underlying conviction represented a final judgment for purposes of appeal.

12. See American Bar Association, Standards Relating to Probation, 1970, Section 1.1(b), pp. 23-25.

13. These jurisdictions are: Alaska, California, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Utah, Virginia, Washington, West Virginia, Wisconsin, District of Columbia, and the federal system.

14. National Council on Crime and Delinquency, Standard Probation and Parole Act, 1955, Section 2(a), "Definitions."

15. Similarly, the Florida Statute provides that a misdemeanant placed on probation is not to be under supervision "unless the court affirmatively and specifically orders such supervision after a finding that it is necessary." Florida Statutes Annotated §948.01(3).

16. See American Bar Association, Standards Relating to Probation, 1970, Section 1.1(b), pp. 23-25.

17. But cf. General Laws of Rhode Island §12-19-15, which allows the court to enforce a suspended sentence of imprisonment at any time prior to termination of probation, even though the original period of the sentence has expired.

VI Criteria For Probation

A study of the criteria used by the sentencing judge to decide on the imposition of probation is significant in determining whether the function of the probation system is being utilized wisely by the courts. For purposes of this paper, the purpose of this system which is of singular importance is the rehabilitation of offenders through appropriate modes of supervision, counselling and treatment within the community environment. A primary sentencing consideration, therefore, and one against which the statutory criteria described in this paper may be compared, is the degree to which the defendant is susceptible to the treatment method.

Another sentencing consideration relative to the grant of probation, apart from the rehabilitative ideal, is one comprised of the general judicial concerns for the safety of the community and the prevention of further criminal activity. The potential of the defendant for harm to others is the primary question here. It may be seen that the statutes of the various jurisdictions assign differing weight to considerations of crime prevention, as opposed to those of rehabilitation.

The state and federal statutes may be divided into three general classes to reflect the presence and type of probation criteria used. Criteria in the first class are of an exclusionary nature, such that probation is not allowed for certain offenses and defendants. This is the most numerous class of state and federal statutes.

The second class is comprised of statutes which lack exclusionary criteria, and certain of which provide a number of express guidelines which the judge may consult in exercising discretion to grant probation. This class represents the second most widely used type of provision.

A significant minority of states, under the third class, provide guidelines in connection with an affirmative judicial duty to make probation available unless the statutory guidelines oppose this disposition. The model legislation and standards generally recommend this approach, as will be discussed.

Class 1

The most widely used provision found in the statutes of a majority of states contains a number of exclusionary criteria which the trial court must follow in considering probation. The bulk of these statutes enumerate only a few exclusions, generally for offenses in which life imprisonment, capital punishment, or a mandatory sentence applies. The federal probation statute, for example, allows the court to grant probation in cases involving "any offense not punishable by death or life imprisonment .. [and where] the ends of justice and the best interest of the public as well as the defendant will be served."[1] Similarly, the New Jersey statute provides for probation where the "best interests of the public and the defendant"[2] will be served, except where a mandatory penalty fixed by statute applies.[3]

This provision has been broadly interpreted by the appellate courts of the various states in this class to require probation to be ordered where the facts of a given case indicate that the defendant comes within the legislative intent of the statute to allow probation in the interests of rehabilitation, as opposed to punishment, of offenders.[4]

Other exclusionary criteria are based on prior offenses committed by the defendant. The West Virginia statute, for example, allows probation to "all persons who have not been previously convicted of a felony within five years from the date of the felony for which they are charged."[5]

A group of at least four states within this class set out numerous specific felony offenses which preclude probation, "[e]xcept in unusual cases where the best interests of justice would be served if the prison is granted probation".[6]

Class 2

This class of statutes, in contrast to the above, is without exclusionary criteria, and may allow open discretion to the sentencing court. This result obtains in, for example, Arizona, Montana, Missouri, and Washington statutes, where no criteria at all are present.[7]

Secondly, and of greater significance to the development of probation law, are those statutes which, while lacking exclusionary provisions, contain certain guidelines which may be followed by the court in deciding on probation as a disposition. These guidelines may be phrased in broad language, which in effect may not differ substantially from those statutes which are entirely silent with regard to criteria. The New Mexico provision, for example, states that the court "shall order the defendant to be place on probation if the defendant is in need of supervision, guidance or direction that is feasible for the probation service to furnish."[8] Similarly, the Georgia statute provides that probation may be granted in the discretion of the court if it appears "that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by the law."

The Connecticut statute, although containing an exclusionary provision, is more appropriately placed in this class because of guidelines it contains regarding the application of probation. The statute reads:

"(a) The court may sentence a person to a period of probation upon conviction of any crime, other than a class A felony, if it is of the <u>opinion</u> that:
(1) Present or extended institutional confinement of the defendant is not necessary for the protection of the public;
(2) the defendant is in need of guidance, training of assistance which, in his case, can be effectively administered through probation supervision; and
(3) such disposition is not inconsistent with the ends of justice.[9]

The Maine statute is somewhat more specific in providing that a person may be granted probation unless any of the following criteria apply:

(a) The conviction is for criminal homicide in the first degree or criminal homicide in the 2nd degree;

(b) The statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to the imprisonment and required to pay the fine authorized therein;

(c) The court finds that there is an undue risk that during the period of probation the convicted person would commit another crime; or

(d) The court finds that such a sentence would diminish the gravity of the crime for which he was convicted.

<u>Class 3</u>

The statutes of a significant minority of states provide for the automatic imposition of probation as the general rule. Only unless specific criteria against probation applies, the court is required to grant probation as a matter of law. The Kentucky statute represents this form of provision, which states, in part, that

> [b]efore imposition of a sentence of imprisonment the court shall consider the possibility of probation or conditional discharge After due consideration of the nature and circumstances of the crime and the history, character and condition of the defendant, probation or conditional discharge <u>should be granted</u> unless the court is of the opinion that imprisonment is necessary for protection of the public because (of the applicability of specific criteria in opposition to probation).[12]

The contra-probation criteria following this provision are identical to those used in the Maine tatute set out above. The major difference between the two is that the express language of the Kentucky statute is mandatory as opposed to.the discretionary language used in the Maine Statute. Although statutes containing discretionary language have, in certain cases, been broadly interpreted to mandate probation, the use of mandatory language clarified the intent of the legislation beyond question.

The relevant provision in the American Bar Association, Standards Relating to Probation, 1970, is also explicit in requiring probation as an automatic disposition. The Standard recommends that

> [p]robation should be the sentence unless the sentencing court finds that:
> (i) confinement is necessary to protect the public from further criminal activity by the offender; or
> (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
> (iii) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.

By comparison, the relevant Model Penal Codes provision is consistent with the Standard in expressing the preference for non-imprisonment alteration, specifically suspended sentence or probation, and also allows the court a similar set of channels in which its discretion to sentence to imprisonment could be exercised.[14]

A completely different form of mandatory probation is provided by the Texas Statute. Under this system, the defendant in a felony case may file a motion requesting probation prior to trial, and "in all eligible cases, probation shall be granted by the court if the jury recommends it in their verdict."[15] Although the jury may not make this recommendation if the defendant has a prior felony conviction, the court has authority to allow probation independent of such recommendation or prior felony conviction.

There is an absence of criteria or policy preferences in the Texas Statute which would inform jurors, or a provision which would allow the court to so inform them, of the situations in which the defendant's motion for probation should be favorably returned. Apparently, the community's sense of justice is the substitute here for any attempt towards a coherent and informed sentencing system.

Implications for the Probation System of Criteria for Probation

From the preceding description of the statutory systems enacted in the various jurisdictions, it may be seen that there are relatively few statutes developing a system of criteria for probation along the lines of the Kentucky provision and A.B.A. Standard.

Of those provisions, an observation may be made regarding the criteria or guidelines which they contain, and which are presumably referred to by the sentencing judge. These criteria appear to reflect two major viewpoints regarding the use of probation as a disposition. First is that of perceiving probation as the treatment method of choice in a detectable (through presentence activities) range of individual defendants. Secondly, probation is viewed as possibly having harmful effects on the community. This view is based on the premise that a certain proportion of convicted criminals will, if released under even ideal probation supervision, repeat similar if not worse offenses, and perhaps even harm innocent members of the community as a result.

The implications for the probation system following from these criteria are varied and complex. The benefit derived from the adoption of criteria is obvious - more persons are considered in a fairer manner for a disposition which may help them to live constructive, or at least law-abiding lives.

Significantly, the initial major point of impact of criteria on the probation system is at the presentence investigation state. More highly sophisticated methods of information gathering and analysis are called for if the two basic criteria described above are to be used effectively. The development of sentencing information for the purposes of determining whether to allow probation as a disposition becomes, under the rehabilitation criterion, directed more towards determining whether the defendant is in need of, and susceptible to, treatment by professional social services.

This determination is more complex than the traditional inquiry into whether the defendant will be a danger to the community if released on probation. (It may be, in fact, too complex for the information handling methods utilized in some probation agencies (e.g., where probation officers do not have sufficient knowledge of how to conduct interviews with defendants to develop information for rehabilitative sentencing). In some cases in which the eventual revocation of probation stems from the violation of conditions of treatment, the rehabilitation criterior will have failed its purpose because of an inadequate information basis in these cases.

A third criterion for probation which is not expressed in the statutes has been termed "the availability and quality of other sentencing dispositions,"[16] namely imprisonment.

Perhaps, then, an equally influential and effective criterion for probation is the extent to which imprisonment has the potential for harming the defendant further, (and in this way eventually harming society). It is not unheard of for sentencing judges to remark on the gap between the reality of prisons and the rehabilitative goals they are supposed to be pursuing.[16] Given this climate of opinion, judicial and private, it may be that the preference of diversion from prison operates as a <u>de facto</u> criterion for probation in a

number of jurisdictions. A direct impact of this third criterion may be to vary the use of probation depending on the quality of prison conditions in the probation district in question.

FOOTNOTES

1. 18 United States Code §3651; see also Delaware Code Annotated tit. 11, 4201(9c) (except class A felonies); North Carolina Statutes §15-197; Minnesota Statutes Annotated §609.135.

2. New Jersey Statutes Annotated §2A: 16801; The Alaska statute uses similar language.

3. Id. §39:5-7.

4. See, e.g., New Jersey v Ward 57 N.J. 75, 270 A.2d 1 (1970); People v Harpole, 97 Ill. App. 2d 28, 239 N.E. 2d 971 (1968); People v McAndrew, 96 Ill. App. 2d 441, 239 N.E. 2d 314 (1968).

5. West Virginia Code Annotated §62-12-2; see also Massachusetts General Laws Annotated ch. 279, §1; Nevada Revised Statutes §176.300; Tennessee Code Annotated §40-2901.

6. West's California Penal Code §1203 (d) (Excludes probation where conviction for arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, trainwrecking, kidnapping, escape from state prison, use of a deadly weapon, other than a firearm, upon a human being, willful infliction of great bodily injury or torture, or two previous convictions in state for felonies). See also, Massachusetts General Laws Annotated ch. 279.§11 Nevada Revised Statutes §176.300: Tennessee Code Annotated §40-2901.

7. See, e.g., Alaska Statutes §12.55.080, for specific language to this effect.

8. New Mexico Statutes Annotated 40A-20-17.

9. Connecticut Revised Statutes §53a-29.

10. Code of Georgia Annotated §27-2709.

11. Maine Revised Statutes §1201.

12. Kentucky Revised Statutes §533.010(2).

13. American Bar Association, Standards Relations to Probation, 1970, sec. 3.1(a).

14. American Law Institute Model Penal Code, 1963, sec.7.01, "Criteria for Withholding Sentence of Imprisonment and for Placing Defendant on Probation"; see also National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 1968, Standard 5.2- "Sentencing the Nondangerous Offender." (criteria for withholding disposition of imprisonment).

15. Vernon's Annotated Texas Code of Criminal Procedure Art. 42.12, §3a.

16. *See* George Killinger, Hazel Kerper and Paul Cromwell, *Probation and Parole in the Criminal Justice System*, 1976, p.46.

17. *Id.* at pp. 47-48, nn. 37-38.

VII. LIMITS ON THE TERM OF PROBATION

The statutes of a majority of jurisdictions included in this study provide for limiting the period of time (i.e., term) for which a sentence of probation may be imposed. The statutory methods for accomplishing this limiting function are varied, and basically seek to control the discretion of the sentencing judge in imposing probation, and to help define the legal status of the probationer.

Since many jurisdictions follow the procedure of suspending a sentence of imprisonment in order to place the defendant on probation, the absence of statutory limits on the term of probation would make it "difficult to determine when the offender was free of the sentence."[1] This would result in placing the probationer "in a kind of legal limbo, subject at any time to being called back and sentenced" to a term of imprisonment for the offense.[2]

The statutory methods for establishing a range of probation time may be described using four broad classes. The first class is the most prevalent, and consists of a legislatively fixed time period beyond which probation may not be required. The second class sets the maximum term of probation coterminous with the maximum terms of imprisonment which may be imposed. Thirdly, there is a class of statutes stating both maximum and required minimum periods which judges must follow in imposing probation. The fourth class contains statutes which confer wide discretion on the sentencing judge to set the term of probation or to extend the term once it is set.

The legal consequences of sentencing beyond the statutory maximum generally is that the higher court reviewing the sentence on appeal will find it to have been unauthorized, and will require the trial court to resentence the defendant to a permissible term.[3]

Class 1

The American Bar Association Standards Relating to Probation, in Standard 1.1(d), states the most widely used statutory provision for limiting the term of probation:

> The court should specify at the time of sentencing the length of any term during which the defendant is to be supervised and during which the court will retain power to revoke the sentence for the violation of specified conditions. Neither supervision nor the power to revoke should be permitted to extend beyond a legislatively fixed time, which should in no event exceed two years for a misdemeanor or five years for a felony.[4]

The Standard contains two elements. The first requirement stated is that the court specify the length of the term of probation at the time of sentencing. This is expressly stated in the statutes of a majority of the states, but it is apparent that specification of the period of probation is an implied requirement even where the statute is silent, in all jurisdictions.

The requirement stated by the Standard that is adopted by the statutes in the present class is that of "legislatively fixed time" limits on the period of probation, depending on whether the offense is a felony or a misdemeanor. The statutes in this class generally provide that the sentencing court may not impose a term of probation greater than a legislatively fixed period with such period varying for the type of offense considered. The formula recommended by the A.B.A. Standard of five years maximum term for a felony, and two years maximum for a misdemeanor, is one

used in five states.[5] Similar provisions distinguishing between felony and misdemeanor crimes appear in the statutes of four states.[6]

The federal probation statute sets a five year flat limit on all probation terms,[7] and this provision is found in the statutes of six states.[8] A further distinction within this group is that at least five of these jurisdictions specify that the court has the discretion to extend the term of probation past the time originally set at sentencing, but within the statutory five-year limit. The judicial power to extend probation beyond the limit must be made express,[9] however, and may not be implied from the language of the statutes in this class.

An important legal question arises when a court imposes multiple sentences of probation, which may be based on convictions for multiple crimes or for multiple counts relating to a single criminal act. The general rule is that the aggregate period of probation for all the terms imposed may not exceed the maximum stated by the statutes in the present class.[10] This rule represents a legal interpretation of the statutes under discussion, and is not derived from their express language.

The procedure used by statutes in this class, of differentiating between felonies, misdemeanors, and other types of offenses, is presently most highly detailed in the statutes of Connecticut, Maine, and New York.

The Connecticut statute places misdemeanor offenses in several classes, and establishes maximum terms for each class.[11] Similarly, the Proposed Indiana Penal Code would classify both felony and misdemeanor offenses in more detail than under the present statute.[12]

In New York, the periods of probation are made determinate for several classes of offenses. All felonies are divided into Class A - 111, for which "the period of probation shall be life," and felonies other than Class A - 111, for which "the period of probation shall be five years." All misdemeanors are divided into Class A, for which the period "shall be three years," Class B for which the period generally "shall be one year," and "unclassified misdemeanor[s], [for which] the period of probation shall be three years if the authorized sentence of imprisonment is in excess of three months, otherwise ... [it] shall be one year."[13] In this way, the New York statute makes the term of probation uniform for all offenses within a given class.

Class 2

The second most widely used alternative is for the statute to set the maximum period of probation equal to the maximum term of imprisonment provided by statute for the particular offense considered. This latter term may be stated in the statute defining the elements of the particular offense, or these may be a separate schedule of maximum penalties stated elsewhere in the statutes of a given jurisdiction.

For example, Pennsylvania provides that probation may not exceed the statutory maximum period of imprisonment for which sentence might be imposed for the offense in question.[14] At least three other statutes similarly apply this provision limit to all offenses.[15] Closely related is the provision, found in three states, which differentiates

between the term of probation for a felony which is limited by the maximum term of imprisonment, and a misdemeanor which is limited by a term of years stated in the statutes.[16]

It is more common within this class to provide a separate limit for felony and non-felony offenses. For example, California statute establishes the maximum period of probation for felonies as "such period of time not exceeding the maximum possible term of such [felony] sentence."[17]

Misdemeanors are limited to three years, "provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period ... may be for a longer period than three years, but ... not to exceed the maximum time for which sentence of imprisonment might be pronounced." When the court grants probation in the case of a misdemeanor carrying less than a three year maximum sentence, by simply suspending sentence, and does not specify the length of the term, the term is automatically limited to the maximum period of imprisonment, (in this case, less than three years).[18] This is because the court must affirmatively exercise its power to require a term of probation greater than the maximum period of imprisonment.

Similar to California are six states which limit the period of probation for all offenses to five years,[19] or to one year,[20] and further provide that the total period not exceed the maximum sentence of imprisonment the court could have imposed. In this way, extensions of the term of probation made by the court may not exceed, in total, the applicable maximum sentence of imprisonment. Significantly, the

power of the court to exceed this total, as in cases of nonsupport of spouses or children, must be expressly stated in the statute.[21]

The statutory formula previously described is endorsed by the National Advisory Commission on Criminal Justice Standards and Goals in Corrections Standard 5.4, which provides as follows:

> A sentence to probation should be for a specific term not exceeding the maximum sentence authorized by law, except that probation for misdemeanants may be for a period not exceeding one year.[22]

Closely related is the provision in the Standard Probation and Parole Act[23] setting the limit of all terms of probation at five years, with the total period, including extensions by the court of up to five years, not to exceed the maximum term under law for the offense.[24]

Class 3

There are eight states setting out both maximum and minimum terms of probation by statute, which the sentencing court must follow. At present, half of the states in this class differentiate between felony and non-felony offenses,[25] and half do not.[26]

Included in the former group is Wisconsin, which establishes by statute the following maximum and minimum probation periods: for felony offenses, the period is not to exceed the statutory term of imprisonment, or three years, "whichever is greater;" the period must be at least one year; for misdemeanor offenses, the period is not to exceed two years and must be at least six months in duration.[27] Additionally, the statute expressly provides that the period of probation may be made consecutive to a sentence on a different charge, and in this

way allows the total period to exceed the statutory maximum period.[28]

By comparison, the Texas statute limits the period for a felony to ten years or the maximum term of confinement, and requires a period at least as great as the minimum sentence prescribed by statute for the offense. Misdemeanors also may not exceed the maximum confinement term, but no statutory minimum is established.[29]

Class 4

In ten jurisdictions, the court has complete discretion under the applicable statute to set the period of probation.[30] In Utah, for example, probation may be set "for such period of time as the court shall determine."[31]

Similarly, the recently amended Virginia statute provides for defendants to be placed on probation under the supervision of a probation officer "for such time and under such conditions of probation as the court shall determine."[32] A second statute allows the court to increase (or decrease) the period of probation, upon proper notice and hearing to the defendant.[33]

The Iowa statute differentiates between probation with and without supervision. When the person is supervised by the chief parole officer, the period is determined by the parole; otherwise, the statute states that probation is not to exceed five years for a felony and two years for a misdemeanor.[34] The statute also provides guidelines for minimum periods of not less than two years for a felony or 1 year for other crimes; the court may reduce these terms, however.[35]

Massachusetts is currently considering revision of its present statute, which allows probation "for such time and upon such conditions as [the court] deems proper ...,"[36] to the type of provision previously discussed under Class 2.[37]

The Florida statute is also included in the present class because it authorizes the court to specify a period of probation other than the periods stated in the statute (i.e., not to exceed two years for a felony, or six months for a misdemeanor).[38]

Implications of Statutory Limits on the Probation Period

Statutes which prescribe limits on probation have impacts on the practices of the sentencing court, and the probation agency as well as on the probationer who must serve the term imposed.

The sentencing discretion of the court is limited in two general ways. First, through removing the court's authority to impose terms greater than a specified period, large components of discretion are removed. Secondly, by grouping various offenses in broad classes with corresponding limits, as under the Connecticut statute discussed above, the court's discretion is even more narrowly channeled, and uniformity of sentence may be developed. This result is in line with the current movement in certain states towards determinate sentences of imprisonment.

The exact legal relationship between the determinate sentencing systems of states such as California, Indiana, Maine, and Minnesota, and statutory limits on probation, is presently unclear. In Maine, for example, probation and other non-imprisonment dispositions are available sentencing alternatives, but whether and how the court is influenced in their use by flat sentencing requirements has not been determined.[39] Another open issue has been noted involving the Indiana determinate sentencing statute, which does not allow probation in cases where there is a previous felony conviction. Apparently,

the court has discretion whether to consider the defendant's prior record in sentencing, a factor that has an impact on the use of probation in these cases which as yet has not been fully examined.[40]

The policy of limiting sentencing discretion underlying the statutes under discussion must be viewed against the rehabilitative and treatment goals of probation. Specifically, a major consideration of the probation agency is its ability to take into account various individual differences among probationers, in an attempt to provide an effective treatment program. A prerequisite to success in this is adequate time in which to help the probationer, utilizing the professional skills of probation and social service agencies. A period that runs only a few months is generally viewed as useless from the point of view of treatment.[41] Conversely, there is authority for the position that periods which are excessively long have little value in the achievement of positive results by the probationer, and that the beneficial return from probation becomes less than the costs and problems of supervision after as few as two or three years.[42] Since the effectiveness of probation appears to diminish as excessively long or short periods are approached, a mid-range maximum, and perhaps even a six or twelve month minimum, seems indicated. The exact limits should be set by the legislature in consultation with expert opinions in the probation and corrections fields, and not in adherence to traditional formulations reached prior to the availability and examination of expert professional opinion.

Additionally, there are implications of maximum term statutes on the administration of probation which center on two related matters. First, a statutory time limit helps inform the probation administrator of prospective caseload turnover, and aids in planning the allocation of agency resources. Secondly, a shorter probation period in appropriate cases can substantially aid in reducing caseload congestion without compromising the basic rehabilitative task of probation.

FOOTNOTES

1. G. Killinger, H. Kerper and P. Cromwell, Probation and Parole in the Criminal Justice System, 1976, p. 84.

2. Id.

3. See, e.g., People v. Phillips, 53 App. Div. 2nd 798, 385 N.Y.S. 2nd 385 (App. Div. 1976); see also, 31 Op. Att'y. Gen., Wis: 204 (1942) (probation period outside statutory limit is extrajudicial and hence void).

4. American Bar Association, Standards Relating to Probation, 1970, Standard 1.1(d).

5. The five states are Alabama, Hawaii, Kentucky, Michigan and Nebraska.

6. Arkansas, Illinois, New Hampshire (one year maximum for misdemeanors); Maryland (three year maximum for misdemeanors).

7. 18 United States Code Annotated, sec. 3651.

8. The six states are Mississippi, Nevada, Ohio, Oklahoma, South Carolina and West Virginia.

9. See, e.g., Florida Statutes Annotated, sec. 948.04 (court may specify term other than statutory periods).

10. See 1962-63 Ops. Att'y. Gen., So. Carolina 143, No. 1575; Op. Att'y. Gen., Missouri, No. 19 (1971).

11. Connecticut General Statutes Annotated, sec. 53a-29(d); see also, Maine Revised Statutes Annotated, tit. 17A, sec. 1202.

12. Compare Burns Indiana Statutes Annotated Code, secs. 35-50-2-2(b), 35-50-3-1(b) with Proposed Indiana Penal Code, sec. 35-19.1-6-1. Cf. Proposed Massachusetts Criminal Code, ch. 264, sec. 22(a); Proposed Federal Criminal Code, sec. 3102.

13. New York Penal Law, sec. 65.00 (McKinney 1974).

14. Purdon's Pennsylvania Statutes Annotated, tit. 61, sec. 331.25.

15. The three states are Arizona, Washington and Wyoming.

16. Idaho, Utah (two year maximum stated for misdemeanor); Minnesota (one year).

17. West's Annotated California Penal Code, sec. 1203.1, 1203a.

18. People v. Rye, 140 Cal. App. 2d Supp. 962, 965, 296 P. 2d 126,129 (App. Dep't. Super. Ct. 1956) (interpreting statute).

19. Alaska, Georgia, Kansas and New Mexico.

20. Delaware and Rhode Island.

21. See, e.g., North Dakota, Century Code, sec. 12-53-12 (in nonsupport cases, probation supervision may continue for as long as the probationer has responsibility to support spouse or child).

22. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 1973, Standard 5.4, "Probation," p. 158.

23. National Council on Crime and Delinquency, Standard Probation and Parole Act, 1955, sec. 16, "Period of Probation or Supervision of Sentence; Termination."

24. Id.

25. Indiana, Missouri, Texas and Wisconsin.

26. Louisiana, New Jersey, Oregon and Tennessee.

27. Wisconsin Statutes Annotated, sec. 57.

28. Id. See also, State ex. rel. Vanderhei v. Murphy, 246 Wis. 168, 16 N.W. 2d 413 (1944) (court has power to extend period during the original term of probation).

29. Vernon's Texas Codes Annotated, secs. 42.12, 42.13.

30. These ten jurisdictions are: Colorado, District of Columbia, Florida, Iowa, Massachusetts, Montana, South Dakota, Utah, Vermont and Virginia.

31. Utah Code Annotated, sec. 77-35-17.

32. Code of Virginia, sec. 53-272; see Smith v. Commonwealth, 217 Va. 329,331, 228 S.E. 2d 557, 559 (1976) (statute applied).

33. Code of Virginia, sec. 19.2-304.

34. Iowa Code Annotated, sec. 789A.2.

35. Ibid.

36. Massachusetts General Laws Annotated, ch. 279, sec. 1A.

37. See text at note 12, supra.

38. Florida Statutes Annotated, sec. 948.04.

39. See Council of State Governments, Definite Sentencing: An Examination of Proposals in Four States, March 1976, p. 26.

40. See M.G. Neithercutt, "Parole Legislation", Federal Probation, vol May 1977, p. 22-23.

41. See G. Killinger, H. Kerper, and P. Cromwell, Probation and Parole in the Criminal Justice System, 1976, p. 85.

42. R. Carter and T. Wilkins, Probation and Parole: Selected Readings, 1970, p. 170.

43. Id., p. 173.

VIII. MIXED SENTENCES

Broadly, a mixed probation sentence is one in which probation is combined with one or more corrective techniques. A perusal of state statutes will readily uncover examples of such authorized combinations. For example, probation in combination with a fine, probation in combination with restriction and probation in combination with imprisonment are all authorized by the California Penal Code, §1203.1. Then too, certain states subscribing to the latter combination authorize a continuous period of probation while other states authorize alternating periods of probation release and incarceration. Since fines are almost universally in use, and the subject of restitution is treated in the "Conditions of Probation" section of this paper, the mixed sentence discussed herein is one which authorizes probation along with or subsequent to some form of incarceration.

The Standards Relating to Sentencing Alternatives and Procedures, American Bar Association, 1968, addresses the concept of partial confinement as "a range of sentencing alternatives which provide an intermediate sanction between supervised probation on the one hand and commitment to a total custody institution on the other and which permit the development of an individualized treatment program for each offender." This contemplates:

- Periodic confinement to provide educational or rehabilitative services
- Work release with confinement nights and weekends
- Confinement for a short fixed term, followed by automatic release under supervision.

The Standards state further: "[n]either supervision, the power to revoke, nor the maximum length of time during which the offender should be subject to such a sentence should be permitted to extend beyond a legislatively fixed time, which should in no event exceed two years for a misdemeanor or five years for a felony ... A sentence involving partial confinement is to be

preferred to a sentence of total confinement in the absence of affirmative reasons to the contrary."

More than two-thirds of the states, and the federal statute, authorize some period of confinement as a condition of probation. In many cases, the authorized confinement period has a maximum, and the confinement may be served consistently or alternating with periods of release.

There are fewer than 10 states which explicitly authorize a determination of probation and release thereto after a sentence of confinement has been pronounced and within a specified period of time; such a procedure has been referred to as shock probation because the defendant is first incarcerated without knowing if he will be awarded probation later. Meanwhile he experiences the trauma of confinement and uncertainty that hopefully will cause him to be so relieved upon his release that he will return to a law-abiding life. This is in contrast to the first-mentioned procedure where the defendant knows at the time of sentencing the exact length of confinement facing him.

This process is well described by Friday, Petersen and Allen in their article entitled "Shock Probation: A New Approach to Crime Control." Among other things, this article lists some advantages and disadvantages of shock probation. Advantages include the opportunity to evaluate the needs of the offender and train him while he is incarcerated, yet to "shock" or "jolt" him prior to his release in a way which will discourage his return to crime. Disadvantages listed are more numerous and they include: no advantage from the incarceration; disruption of normal therapeutic efforts; hardening of attitudes; inconsistency with probation philosophy.

Additional arguments against shock probation include the probability that an employed defendant will lose his job upon his initial incarceration, and that he and his family may ultimately become public charges as a consequence.

Contrary to popular belief, the procedure known as shock probation is not new in law and has been and is now available in many jurisdictions not having specific enabling probation statutes. This is because in many jurisdictions the court retains the power to modify its sentence without a specified period of time after pronouncement (120 days in the Federal jurisdiction). A defendant is therefore free to petition for a modification of his sentence which, presumably, if granted, could include probation. The uniqueness is, therefore, not so much in law as in policy. In a state that does not profess to use shock probation, a sentence of incarceration means that the court has already decided that probation should not be granted and so any petition to modify the sentence is an uphill struggle. In a "shock probation state," a sentence of incarceration means nothing as to the court's final disposition of the case.

Two states, Mississippi and Nevada, contain provisions specifically prohibiting probation after a sentence of confinement.

Since the statutory authorization for combined probation and incarceration or financial sanctions is often presented as the two latter being conditions of probation, these are discussed in the section following, entitled "Conditions of Probation".

IX. CONDITIONS OF PROBATION

A. Conditions of Probation Required by Statute

Model legislation is generally in agreement that in any particular case, conditions of probation should be left to the sound discretion of the court and should not be the subject of statutory requirement.[1] An exception to this is found in the American Bar Association, Standards Relating to Probation,[2] which suggests that leading a law abiding life be a statutory condition.

Federal and state probation statutes are largely in agreement with the model legislation in that conditions set out are usually suggestive rather than required. Ten states[3] have some statute-required conditions, West Virginia being the only state wherein the required conditions are extensive. Whereas most state statutes include a list of suggested conditions which the court may elect to adopt, a few[4] provide no such listing. The model legislation recommends that judges and not probation officers should set conditions. This concern appears to be shared by all states. Of special interest are seven jurisdictions[5] which provide for their institutional probation authority to adopt probation rules applicable in the absence of court-imposed conditions.

B. Prohibited Conditions

Neither the model probation legislation, nor the state nor federal codes identify any condition as being prohibited. The American Law Institute Model Penal Code, 1962[6] does, however, bar any condition that imposes an unreasonable burden on the probationer, and the National Advisory Commission on Criminal Justice Standards and Goals, Standards on Probation and Parole, 1973[7] discourages the mechanical imposition of uniform conditions on all defendants. The lack of legislation in this area does not mean, however,

that a probationer has no recourse against harassing and oppressive conditions. The fundamental rights guaranteed by the state and federal constitutions as well as the various civil rights acts protect the probationer from judicial excesses. Federal decisions have held,[8] and the Model Penal Code recommends, that the trial court is limited to setting conditions "reasonably related to the rehabilitation of the defendant and not unduly restricted of his liberty or incompatible with his freedom of conscience."[9]

Under prevailing law, the courts have been reluctant to apply constitutional limitations to conditions of probation under the theory that probation is an act of grace and not a right.[10] Nevertheless, constitutional rights related to probation conditions have been upheld. In State v. White,[11] a condition requiring that the probationer submit to being searched at any time was stricken as unreasonable (in contrast, see U.S. v. Consuelo-Gonzalez[12]). The case Springer v. U.S.[13] is interesting in that it held as "cruel and unusual punishment" the condition that a probationer convicted of draft evasion must donate blood to the Red Cross.

C. Modification of Conditions

Neither the model legislation nor the various codes of jurisdictions place any limitation on the power of a court to modify conditions of probation at any time. The wisdom of this anticipates the changing circumstances that may accompany an extended probation period and the need for the court to adjust probation terms accordingly.

D. Specific Conditions

Condition of Treatment

Many jurisdictions specifically authorize medical, psychiatric, drug or alcohol treatment as a condition of probation as needed, and even where not

specifically authorized, it is well within the sound discretion of the court to so order. Nebraska stands alone in requiring drug treatment as a mandatory condition in drug-related cases.

Financial Conditions

The Standards Relating to Probation previously mentioned asserts that conditions requiring payments of fines, restitution, etc., should be within the probationer's financial capability, and that the probationer should not be required to pay the costs of probation. The Model Penal Code and the Standards on Probation and Parole previously mentioned include the posting of bond and the elimination of any requirement that imposes an unreasonable burden. In contrast, the National Council on Crime and Delinquency, Standard Probation and Parole Act, 1955[14] contains no reference at all to financial conditions.

Fines are specifically authorized by 33 states and restitution as a condition is authorized by 24 states; both are authorized by the Federal jurisdiction. Jurisdictions whose statutes are silent on these two conditions may impose a condition of restitution, but the legality of imposing a fine is questionable. The condition that the probationer support his legal dependents is expressly mentioned only by 4 states[15] and the U.S. Codes, but the Court's inherent power to set this condition is well settled. Though concern about unreasonableness of conditions is ameliorated in the model legislation by provisions that eliminate conditions which imposed unreasonable burdens, the states have not generally picked up on this. Two states, Alabama and Delaware, have authorized the condition of a performance bond as recommended in the aforementioned Model Penal Code and Standards on Probation and Parole.

Williams v. Illinois[16] and Tate v. Short,[17] Supreme Court cases, held it a violation of the equal protection clause of the Fourteenth Amendment to

the U.S. Constitution, to hold an indigent defendant in jail in order that he work off a monetary obligation of the sentence. On the other hand, reasonable financial conditions such as making restitution, have been upheld.[18]

Contribution by the probationer to the cost of his probation as a condition thereof, is specifically recommended against in the aforementioned Standards Relating to Probation. Despite this, two states[19] expressly provided for such contribution, 24 other states[20] provide for the assessment of court costs and still six other states[21] provide for the assessment of costs in arresting probation violators.

The question raised concerning the various forms of financial conditions of probation is whether such conditions are helpful to the rehabilitation process, or whether the added financial pressures caused by such conditions are counterproductive and encourage morally weak individuals to return to crime. It is noteworthy that the aforementioned Standards Relating to Probation selects only the contribution condition as unwise. Whereas it might be argued that supporting one's dependents and making restitution is a moral obligation and necessary for the probationer's self respect, and whereas a fine may be justified as a necessary punitive device to impress the probationer with the seriousness of his transgression, the assessment of costs smacks of indignity of building one's own stocks and hiring one's own jailer to administer the lashes. Not only is such a condition unwise in that it places a price on probation, but it wrests from the people their right to be in full control by paying for their own probation system.

Finally, the imposition of financial conditions tends to work against the financially disabled defendant. It is not difficult to imagine an inability to pay money being confused with an unwillingness, and it could come to pass that indigent defendants would not be considered for probation by judges who had special trust in the merits of financial conditions.

Condition of Public Service

Statutory authorization for requiring public service work as a condition of probation is scarce. Florida law contains such a provision but other states do not follow suit.

Although the Florida statute does not specifically say, we must assume that the public service labors mentioned are intended to be performed without compensation, this may present the probationer with an unreasonable -- even an unconstitutional burden, for he (as does everyone) has normal living expenses which he must meet, and cannot afford to work without compensation.

E. Notification of Conditions

It has been established, largely under case law, that the probationer has the right to explicit notice of the conditions of his probation.[22] Failure to do so will invalidate a subsequent attempt to revoke probation based on the noncompliance with such conditions.[23]

FOOTNOTES

1. Malone v. United States, 502 F.2d. 554 (9th Cir. 1974), cert. den. 95 S. Ct. 809, 419 U.S. 1124.

2. American Bar Association, Standards Relating to Probation, 1970, sec. 3.2(b).

3. Arkansas, California, Illinois, Louisiana, Massachusetts, Nevada, Ohio, West Virginia and Nebraska.

4. Ohio, Rhode Island, South Dakota, Tennessee and Utah.

5. Kansas, Kentucky, Missouri, Montana, New Mexico, North Dakota and Puerto Rico.

6. American Law Institute, Model Penal Code, 1962, sec. 301.2(2).

7. National Advisory Commission on Criminal Justice Standards and Goals, Standards on Probation and Parole, 1973, standard 5.4.

8. See, e.g., United States v. Pastore, 537 F.2d. 675 (2d Cir. 1976); United States v. Atlantic Richfield Co., 465 F.2d. 58 (7th Cir. 1972).

9. See Model Penal Code, supra note 6.

10. See 67 Columbia Law Rev. 181 et. seq. (1967).

11. 264 N.C. 600, 142 S.E. ad. 153 (1965).

12. 521 F.2d. 259 (9th Cir. 1975).

13. 148 F.2d. 411 (9th Cir. 1945).

14. National Council on Crime and Delinquency, Standard Probation and Parole Act, 1955.

15. Arkansas, Delaware, Georgia and Kansas.

16. 399 U.S. 235, (1968).

17. 401 U.S. 395, (1969).

18. United States v. Savage, 440 F.2d. 1237 (5th Cir. 1971).

19. Mississippi and Missouri.

20. United States, Wisconsin, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Washington, Hawaii, Illinois, Indiana, Pennsylvania, Texas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio and Oregon.

21. Iowa, Kentucky, West Virginia, New Jersey, Ohio and Virginia.

22. Hollandsworth v. United States, 34 F.2d. 423 (4th Cir. 1929).

23. See, e.g., Barnhill v. United States, 279 F.2d. 105 (5th Cir. 1960), cert. den. 364 U.S. 824, 515 S. Ct. 60, 5 L.Ed. 2d. 53; Longknife v. United States, 381 F.2d. 17 (9th Cir. 1967), cert. den. 390 U.S. 926, 88 S. Ct. 859, 19 L.Ed. 2d. 987.

X. REVOCATION PROCEDURES

A study of procedures for the revocation of probation is significant in at least two respects. First, from the point of view of the probationer, the direct impact of revocation may be imprisonment, which leads to the disruption not only of the probationer's life but of the rehabilitative efforts of the probation agency. The harshness of this possible sanction is a salient reason warranting procedures for revocation which help to safeguard against the arbitrary or misinformed actions of probation agencies or courts.

A second important aspect of procedural safeguards for revocation is the role these procedures play in requiring the trial court and probation agency to provide a reviewable record for purposes of appeal, which in turn assures that there is a check by the appellate court on the discretionary content of decisions to revoke probation.

The major safeguards discussed in this paper may be divided into three broad areas: (1) the procedures for initiating the revocation of probation, (2) the minimum due process procedures for the determination of grounds for revocation - notice and hearing; (3) the substantive legal grounds which may justify the revocation. In addition, certain implications which these legal areas have for the probation system will be discussed later in this paper.

A. Procedures for Initiation of Revocation

All jurisdictions included in this paper[1] provide that the authority to revoke probation lies with the sentencing court. For example, the federal probation statute provides that this authority remains with the court having jurisdiction to try the offense.[2] It is to the attention

of this court that information regarding the violation of conditions by the probationer must be brought by the probation officer.

This information generally may be communicated in one of two ways. First, under a large majority of statutes, the probation officer has the general power to arrest for violations of probation,[3] with the arrest serving to notify the court of the probationer's alleged conduct. A second procedure which is less frequently specified by statute, but which may be established by court rule or probation agency regulation, is for the officer to make a report to the court, sometimes known as a petition and from which the court may find a factual basis for initiation of revocation proceedings, usually by scheduling revocation proceedings, and providing notice thereof to the probationer.

An example of a provision, used by only a small minority of jurisdictions, which combines these initiation procedures and clearly illustrates their operation, is contained in the Nebraska Statute. A two step process is set out which must be followed in order to result in commencement of a revocation hearing. First, the probation officer who reasonably suspects a violation of condition has or will be incurred must either (a) report this to the sentencing court;[4] or (b) when the officer reasonably believes the probationer in question will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer[5] must arrest him, with or without a warrant, and the probationer is then detained. The officer, immediately after the arrest, must notify the county attorney.

The second step depends on whether the officer has acted by report or arrest. If by arrest, the county attorney must either "(a) [o]rder the probationer's release from confinement; (b) [f]ile with the sentencing court a motion or information to revoke the probation." [6] If the

officer has followed the report procedure, the county attorney has discretion whether to file a revocation motion with the court.[7]

The New York Statute is also highly detailed, and provides for informing the court through either arrest or report made by the probation officer. The latter provision is termed "declaration of delinquency," and states that:

> [i]f at any time during the period of a sentence of probation or of conditional discharge the court has reasonable cause to believe that the defendant has violated a condition of the sentence, it may declare the defendant delinquent and file a written declaration of delinquency. Upon such filing the court must promptly take reasonable and appropriate action to cause the defendant to appear before it for the purpose of enabling the court to make a final determination with respect to the alleged delinquency.[8]

Following arrest, all jurisdictions provide for the appearance of the probationer before a court or magistrate. This procedure may constitute a preliminary appearance for purposes of determining probable cause, as in New York,[9] or it may combine the additional function of a hearing on revocation of probation.

Ohio follows the latter procedure, stating that:

> [w]hen a defendant on probation is brought before the judge or magistrate...[after arrest], such judge or magistrate <u>shall immediately inquire into the conduct of the defendant</u>, and <u>may terminate the probation and impose any sentence</u> which might originally have been imposed or continue the probation and remand the defendant to the custody of the probation authority, at any time during the probationary period.

B. <u>Revocation Procedures</u>

1. <u>Judicial Application of Due Process Standards to Revocation</u>

This section briefly examines the movement of legal authority towards the application by courts of principles of constitutional due process to probation revocation, and the definition of these principles

in terms of specific standards which must be met in revocation proceedings.

By "principles of constitutional due process" we mean ways of thinking about restraints on government action in dealing with individuals. Some of these principles are of particular concern with regard to actions taken by government, state or federal, to deprive the individual of certain legal rights or benefits, or to impose on the individual certain legal duties or hardships. They include principles of fairness of treatment of the individual by the government, notice to the individual of the subject of the governmental action, the requirement of an impartial, truth-seeking hearing to determine the rights and loss of rights of the individual, and the right to assistance of counsel.

An important early case suggesting that principles of due process might apply to probation revocation is Burns v United States, decided by the Supreme Court in 1932.[11] There the Court went slightly beyond the traditional view of probation as a matter of grace and privilege to observe "that the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice."

The Court eventually held in Mempa v Rhay,[12] that due process applied to probation revocation, despite the earlier grace-privilege characterization. To implement this holding, the court further required not only notice and hearing, but the appointment of counsel for indigent probationers.

The holding of the Court, however was stated in such a way as to limit its future application to revocation proceedings of the particular type presented in the facts of the case. This procedure combined revocation with sentencing in the same hearing.[13] Later state cases varied in interpreting the right to counsel holdings of Mempa, based on whether it was seen to apply only in probation revocation proceedings involving deferred sentencing,[14] or in all revocation proceedings.[15]

Five years later, the Court held, in the landmark case of Morrisey v. Brewer,[16] that due process applied to parole revocation. The Court reasoned that such revocation involved the loss of liberty of the parolee calling for protection from arbitrary government action. To implement this holding, the Court stated that the "minimum requirements of due process" of a parole revocation proceeding included the elements of:

> "(a) written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation or] parole."[17]

The court in People v Vickers, a state case following Morrisey, and involving probation instead of parole, began with the premise that for purposes of due process, probation and parole proceedings are identical. The Court reasoned that both require the same level of standards of minimal due process safeguards. The Court specifically held that a summary termination of probationary status in the case of an absconding probationer comports with due process requirements if he is accorded a hearing which conforms to Morrissey standards after being taken into custody.[18] The Vickers court further held that an additional procedural element, although not stated in Morrisey, is the right to retained (i.e., private) or court-appointed counsel at probation revocation proceedings.[19]

In Gagnon v Scarpelli,[20] the Supreme Court addressed, among other issues,[21] whether there is a due process right to appointed counsel at the probation revocation hearing. As mentioned above, the Court in Morrissey left open the question of counsel in its discussion of

the procedural elements required for revocation of probation comporting with due process.

The Court's analysis of the need for counsel at revocation proceedings found that in some cases of revocation proceedings "the probationer's or parolee's version of a disputed issued can fairly be represented only by a trained advocate. But due process is not so rigid as to require that the significant interests in informality, flexibility, and economy must always be sacrificed."[22] The Court concluded that the right to counsel at revocation proceedings could be determined on a case by case basis by the appellate courts.[23] This determination is influenced by the fact that the probationer (or parolee) requests for counsel for the purpose of presenting his claim that he has not committed the alleged violation of conditions, or that even if violation is matter of public records or is uncontested, there are substantial reasons which justified the violation and make revocation inappropriate, and that the reasons are difficult to present. An additional factor to be considered is whether the probationer appears to be capable of speaking effectively for himself.

Significantly, cases subsequent to Gagnon v Scarpelli have gone further in holding that counsel is required in a broader range of circumstances, such as where the state statute allows for retained counsel at revocation.[24]

2. The Statutory Matrix of Revocation Procedures

In one of the relatively few areas of probation which the Court has spoken on, procedural dure process, it has established a set of specific procedural elements designed to safeguard the individual rights of probationer. In this way the Morrisey and Gagnon decisions may be seen to hold essentially the constitutional due process mandates that pro-bation and parole revocation proceedings must contain, regardless of statute, the following elements: notice of charges; for charges;

formal hearing, a qualified right to counsel; record of the grounds for decisions; and the right to appeal from the decision to revoke.

The American Bar Association Standards Relating to Probation, 1970, recommend that revocation be accompanied by procedure similar to the elements required by Morrisey and Gagnon decisions. The relevant section states:

> 5.4 Nature of revocation proceedings.
> (a) The court should not revoke probation without an open court proceeding attended by the following incidents:
> (i) a prior written notice of the alleged violation;
> (ii) representation by retained or appointed counsel; and
> (iii) where the violation is contested, establishment of the violation by the government by a preponderance of the evidence.
> Sentence should be imposed following a revocation by counsel to the same procedures as are applicable to original sentencing proceedings.
> (b) The government is entitled to be represented by counsel in a contested revocation proceeding.
> (c) As in the case of all other proceedings, in open court, a record of the revocation proceeding should be made and preserved in such manner that it can be transcribed as needed.
> (d) An order revoking probation should be appealable after the offender has been resentenced.[25]

The statutes of at least six states closely follow the complete examination of procedural elements set out in the Morrisey and Gagnon decisions and under the A.B.A. Probation Standards.[26] A larger number of states, however, expressly set out by statute a lesser number of these elements. The statutes of at least eleven jurisdictions enumerate the requirement of notice and hearing and may or may not specify counsel.[27] The federal probation statute states, for example, that the court may not revoke unless it holds a "hearing at which the defendant shall be present and apprised of the grounds on which" revocation is alleged.[28]

A summary or informal hearing is all that appears in the statutes of approximately eight states, while the statutes of approximately four states[29] make notice and hearing optional, or fail altogether to mention these or any other procedural elements. The limited specification of

procedure under these statutes present legal problems to the extent that the appellate court decisions of these states have failed to imply the Morrisey and Gagnon requirements from these statutes. An example of this sort of judicial interpretation is found in the section on notice, below.

3. Right to Notice

The majority of states have statutes specifically requiring that the defendant be informed of the grounds for revocation of probation. For example, before probation may be revoked in North Carolina, the officer must tell the defendant that he intends to request the court to revoke the probation, and he must set forth in writing the grounds for his actions. Similarly, the Kentucky and Nebraska statutes require that the defendant be given written notice of the grounds of revocation.

In statutes such as that of New York, the procedure is more detailed. There, the court must file a statement outlining the conditions violated, and a "reasonable description of the time, place and manner in which the violation occurred." At the revocation hearing, the defendant is entitled to be advised of the contents of the statement, and be furnished with a copy thereof.

Despite requirements of the Mempa and Gagnon decisions, notice is denied according to the language of statutes of at least four states: Alabama, Georgia, Iowa and Minnesota.

In Iowa, however, the statute must be read in light of the state appellate decisions subsequent to these due process holdings. Although the statute states that "[a] suspension of sentence by the court as herein provided may be revoked at any time, without notice, by the court or judge, and the defendant committed in obedience to such judgement,"[30] the Iowa court in Horstman v. State,[31] held that it is no longer permissible to revoke probation or parole without notice.

The Minnesota statute is unique in that notification is not required until immediately after the probation is revoked and the defendant is taken into custody. After such proceedings, if the defendant challenges the grounds for revocation, he is entitled to a summary hearing with representation by counsel.

4. Right to Hearing

The majority of the states and the federal statute expressly require a hearing on the issue of revocation. The Nebraska statute is representative of statutes providing for hearing the procedure stated requires "a hearing upon proper notice where the violation of probation is established by clear and convincing evidence." Further, "the probationer shall have the right to hear and controvert evidence against him, to offer evidence in his defense, and to be represented by counsel."[32]

Similar provisions for hearing are found in, for example, the statutes of Hawaii, Illinois, Indiana and the federal probation system.[33]

This type of provision is generally interpreted to allow the state to establish the violation at the hearing through evidence which would be inadmissible in a criminal trial.[34]

Substantially less explicit provisions are found in the statutes of a minority of states, for example, Pennsylvania and Texas. The Pennsylvania law merely states that a probationer who has been arrested for the alleged violation of conditions, "shall be brought before the court which released him or her on probation, which court whereupon pronounces sentence upon such defendant."[35]

The Texas statute requires the probationer to be brought before the court for a hearing without a jury, but no procedure for the hearing is specified.[36]

A minority of statutes lack the requirement for a revocation hearing. In those states, such as Washington, this element is required as a matter of federal or state constitutional law, as described in the preceeding section.[37]

5. Right to Counsel

The statutory provisions for right to counsel at revocation proceedings vary among the states, although these provisions may be divided into two general classes. In the first, the statute provides for counsel as a mandatory procedural element of revocation, and does not specify circumstances in which counsel may not be required. The Hawaii statute, for example, states the unqualified "right to be represented by counsel."[38]

The statutes in the other class generally either do not provide for counsel, as in the case of Missouri, or state express criteria for appointment which follow those established under the Gagnon v. Scarpelli decision. These criteria have been discussed previously in section "B,1." (It should be noted that the practice of many of the courts in states without a statutory provisions is to routinely appoint counsel rather than inquire into the circumstances of every probationer in order to apply the Gagnon criteria).

6. Right to Appeal

The order of revocation made by the court may be appealed by the probationer under statutes specifying this right.[39] For example, the statutes of Georgia, Illinois, New York, Tennessee, and Texas, among others, provide for the right to appeal from the revocation of probation.

A minority of states specifically deny the right to review by an

appellate court. The Missouri statute, for example, states that the action of any court in granting, denying, revoking, altering, extending or terminating any order placing a defendant upon probation or parole is not subject to review by any appellate court.[40]

Provisions such as this one have been avoided by some state courts, which have allowed limited review of revocation orders on appeal or by writ of *habeas corpus*.

C. *Consequences of Revocation*

Where a hearing has been held and the determination made that a violation of probation conditions has occured, the court in a majority of jurisdictions is provided with a number of dispositions in addition to revocation. These commonly found alternatives are:

(1) continuation of the term;

(2) extension of the term;

(3) modification of the conditions of probation.

ABA Standard 5.1(b) recommends such a system of possible alternatives to revocation. The Commentary to this Standard, in explaining the rationale underlying this system, states: "the fact that a violation of condition is a *permissible* basis for revocation does not support the idea that revocation should necessarily or automatically follow the establishment of a violation."[41]

A primary distinction made largely through case law is that between violations which are themselves new criminal offenses, and so-called "technical violations," which do not involve new crimes. It is the majority view of the courts of the various jurisdictions that either form of violation generally constitutes sufficient grounds for revocation.[42] The limitation on revocation in every case is that it must not be arbitrary or based on conditions which are so unreasonably indefinite in their terms as to preclude notice to the probationer of their content.[43]

A significant body of case law supports the view that technical violations are notalways sufficient to justify revocation. For example, in Swan v. State,[44] the court held that if the probationer's conduct which is alleged to be in violation of conditions is seen to be reasonable, or does not amount to a serious criminal offense, revocation may be inappropriate and subject to reversal by the reviewing court.

One of the statutory grounds for revocation which appears more controversial than others is the failure of the probationer to follow the course of medical, psychiatric, drug addiction, or other professional treatment prescribed as conditions of probation. This provision appears in the statutes of ten states.[45] The language of the Indiana statute is representative of these provisions: "Failure of an individual placed on probation and under the medical supervision of the department to observe the requirements set down by the department shall be considered a probation violation. Such failure shall be reported by the department to the probation officer in charge of the individual and treated in accordance with probation regulations."[46] The Massachusetts statute is even more vague in describing the circumstances constituting violation. It provides that if the probationer "does not cooperate with the administrator or the probation officer, or does not conduct himself in accordance with the order or conditions of his probation, the...court...may consider such conduct as a breach of probation."[47]

These statutes, which establish a form of technical violation, appear questionable under the case law mentioned earlier.requiring that grounds for revocation be clearly stated to afford notice to the probationer and protection from arbitrary revocation.

D. Implications for the Probation System of Revocation Procedural Safeguards

By requiring under law the full panoply of procedural due process elements -- notice, hearing, right to counsel, right to appeal -- the truth-seeking function of the revocation proceeding may generally be performed so that, at a minimum, probationers who are innocent of the violations charged will not have their probation revoked or extended because of misinformed or arbitrary action by the state.

In addition to preventing harm to the individual probationer from this form of injustice, another significant effect of procedural safeguards appears to be that they function as a brake on the removal of probationers from the programs of treatment and counselling delivered by the probation system. This follows from the deliberative nature of these procedures: they require not only the adherence to certain forms, but also demand that the court treat each probationer as an individual who required not only a fair hearing but an outcome which is reasoned and appropriate to the circumstances.[48]

Significantly, even when the question of guilt has been fairly and accurately established, the disposition which appears most advisable to the court will not be obvious. Through the thoughtful presentation and testing, by counsel, of evidence which bears on the question of, for example, whether the probationer has derived benefit from a treatment program, the court may be able to decide on an alternative outcome to revocation which will allow the probationer to continue with treatment.

An important method to implement this deliberative process is the requirement that there be a record made of the revocation proceedings which must contain the ground and reasons for the court's findings on the questions of guilt and, in cases where guilt is determined, the appropriate disposition of the probationer's case.

This record may be seen to perform two major functions. First, a record for review by the appellate court is made, in case the probationer who has been revoked or who otherwise disagrees with the outcome of the hearing decides to appeal. Secondly, the record is available for use by the case officer and the court during the entire period the probationer remains within the probation system. Since a probationer may have more than one revocation proceeding initiated and conducted during this time, a documentary history of the facts and determinations of earlier proceedings may be kept for use by the officer to better provide him with supervision and treatment, as well as for use in subsequent revocation proceedings.

FOOTNOTES

1. These are the fifty states, District of Columbia and the federal system.

2. 18 United States Code § 3651.

3. See, e.g,. Idaho Code § 20.222; Smith-Hurd Illinois Annotated Statutes ch. 38, § 117.3a; Maine Revised Statutes title 34, § 1632; McKinney's New York Penal Law § 410.50 (4); Page's Ohio Revised Code Annotated § 2951.08 Oregon Revised Statutes § 144.350.

4. Revised Statutes of Nebraska § 2266(1).

5. Id. § 2266(2)

6. Id. § 2266(3)

7. Id. § 2266(4)

8. McKinney's New York Penal Law § 410.30.

9. Id.

10. Page's Ohio Revised Code Annotated § 2951.09.

11. 287 U.S. 216 (1932); see also United States v Maisel, 26 F.2d 275 (S.D. Texas 1928); but see Escoe v Zerbst, 295 U.S. 490 (1975) (probation viewed as matter of grace, clemency or privilege).

12. 389 U.S. 128 (1967); cf. Ex parte Levi, 39 Cal. 2d 41, 244 P 2d 403 (1952).

13. Id.

14. See, e.g., State v Allen, 235 A.2d 529 (Me. 1967). Skidgell v State, 264 A.2d 8 (Me. 1970).

15. See, e.g., State v. Seymour, 98 N.J. Super. 526, 237 A.2d 900 (1968); Herrington v. State, 207 So.2d 323 (Fla. 1968). Lester v Foster, 207 Ga. 596, 63 S.E.2d 402 (1951).

16. 408 U.S. 471 (1972)

17. Id. at 489; see also text at note 25, infra.

18. People v Vickers, 25 Cal App. 3d 1080, 102 Cal. Cptr. 418 (1972); see also People v Nelson, 25 App. 3d 1075, 102 Cal. Rptr. 416 (1972); People v Sweeden, 116 Cal. App. 2d 891, 254 p. 2d 899 (1953).

19. Id.

20. 411 U.S. 778 (1973)

21. The court held, early in the Gagnon opinion, that the revocation hearing requirements specified in Morrisey applied equally to probation revocation proceedings.

22. Id.

23. The Gagnon Court also distinguished the right to counsel rule announced in the earlier landmark decision, Gideon v. Wainwright, 372 U.S. 335 (1963).

24. See Lane v. Attorney General, 477 F.2d 847 (5th Cir. 1973); see also Cottle v. Wainwright, 477 F.2d 269 (5th Cir. 1973).

25. See e.g., Arkansas Statutes Annotated § 41-1209.

26. Arkansas, Kansas, Maine, New York, North Carolina, and Vermont.

27. California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Indiana, Kentucky, Nebraska, Tennessee and Wyoming are examples of states using this provision.

28. 18 United States Code § 3651.

29. Alabama, Georgia, Iowa, Washington.

30. Iowa Revised Code § 247.26

31. 210 N.W. 2d 427 (Iowa 1973); but see Cole v. Holliday, 171 N.W. 2d 603 (Iowa 1969).

32. Nebraska Statutes § 29-2267.

33. Hawaii Penal Code § 706-627; Smith-Hurd Illinois Statutes ch. 38, § 117-3; Indiana Code § 9-2211(d); 18 United States Code § 3651 et. seq.

34. See, e.g., State v. Kartman, 192 Neb. 803, 224 N.W. 2d 753 (1971).

35. Purdon's Pennsylvania Statutes Annotated § 1084.

36. Vernon's Annotated Texas Statutes, Code of Criminal Procedure, Art. 42.13, § 8.

37. See, e.g., Revised Code of Washington Annotated § 9.95.220.

38. Hawaii Penal Code § 706-627; see also Indiana Code § 9-2211(d).

39. See, e.g., Vernon's Annotated Texas Code of Criminal Procedure Art. 42.12, § 8.

40. Vernon's Annotated Missouri Statutes § 549.141; see also California Penal Code Annotated § 1203.2.

41. See American Bar Association, Standards Relating to Probation, 1970, Sec., 5.1(b), p. 58; cf. American Law Institute, Model Penal Code, 1962 § 301.3(2).

42. See, e.g., People v. King 267 Cal, App. 2d 814, 73 Cal. Rptr. 440 (1968), cert. den. 396 U.S. 1028, 90 S.Ct. 576, 24 L. Ed.2d 524 (1970).

43. See, e.g., In re Solis. 274 Cal.App.2d 344, 78 Cal. Rptr. 919 (1969); People v. Root, 192 Cal.App.2d 158, 13 Cal. Rptr. 209 (1969).

44. 200 Md. 420, 90 A.2d 690 (1952).

45. These states are Alabama, Arkansas, Connecticut, Illinois, Indiana, Massachusetts, North Carolina, Ohio, Pennsylvania, and Wyoming.

46. Indiana Code §16-13-6.1-18; see also Ohio Revised Code §2951.01 (Page).

47. Massachusetts General Laws Annotated §49.

48. See "The Rights of the Probationer: A Legal Limbo," 28 University of Pittsburgh Law Review 643, 660 (1967) (noting that "as the courts come to realize that probation is a tool for rehabilitation and not a form of punishment, the probationer is acquiring a stature more congruent with the model which he is to emulate -- the law abiding citizen.")

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discussion which follows is limited to the manner in which the court's choice of extension, as an alternative to discharge at the end of term, is governed by statute.

Thirdly, the court could decide to discharge the probationer which, as previsouly mentioned, has the effects of relieving the probationer of continued liability for the original conviction and of providing the opportunity for restoration of statutory civil rights. This latter consequence is examined in depth in section XII.

As between discharge and extension, the court's decision in nearly every state and federal jurisdiction will be governed by statute. The first impact of statutes on the outcome of the termination of the term of probation is a general one, and occurs whenever the statute regulating probation expresses a maximum term of probation. Whenever the probationer has served this period, the court may not extend it, and is instead required to discharge him.

A more complex situation is presented when the probationer has served out his term in less time than the statutory maximum, and the court must decide what to do at the end of the imposed term. The availability of extension as an option, and the procedures which the court follows in deciding whether to discharge at the end of the term, are matters governed by state and federal statute.

These statutes may be grouped into two broad classes, depending on the type and extent of instructions given to the court regarding this decision. The first class of statutes provides for mandatory discharge at the end of the term; the second class allows the court some degree of discretion, depending on the provisions of the particular statute, as discussed below:

Class 1

The statutes in this class provide that when the term of probation is uninterrupted by revocation, and the period of probation imposed by the court expires, the court must discharge the probationer. In this way, the exercise of the power to extend, which may be provided for by separate statutory provision, is clearly incompatible with the requirement of discharge.

An example of this is found in the Illinois statute, which states that "/u/pon the expiration or termination of the period of probation...the court shall enter an order discharging the offender."[1] No discretion is allowed the court to extend, once the end of the term is reached without interruption by revocation procedures.

Similarly, the Missouri statute provides that "/w/hen a defendant has completed the term of probation prescribed by the court, if the original order of probation has not been amended, modified, extended, or revoked by the court, he shall automatically be absolutely discharged from the probation."[2]

The present class of statutes expressly requires discharge, and extension is a permissible outcome only when procedures outlined by statute for requesting extension (or revocation) by the court have, by affirmative action, been initiated by the probation officer during the term.

The American Bar Association, in Standards Relating to Probation, 1970,[3] recommends that probation should automatically terminate upon the successful completion of the term set by the court at the time of sentencing. It is unclear from this provision, however, which conduct, short of revocation proceedings, precludes a finding by the court of "successful completion." Since

presumably this finding is the prerequisite for discharge, the absence of criteria or guidelines in this provision means that it does not appreciably differ in effect from statutes containing language allowing the court broad discretion to extend or discharge. These statutes comprise the second class of statutes regulating probation which are discussed below.

The majority of statutes allow the court, at the end of the term, discretion whether to terminate or extend. This class consists of two groups of statutes differing in the degree to which guidelines for the exercise of this discretion are specified. One group of statutes provides for the probation officer to report on the conduct of the probationer during the term, and that the court may decide based on this information.[4]

The second group of statutes typically provides for discharge when "it is the judgment of the court that the person on probation has satisfactorily met the conditions of his probation."[5] The criteria used in determining whether there is satisfactory completion is unspecified, and apparently includes the testimony or records of the probation service which indicate the quality of the probationer's conduct.

A related group of statutes generally provides that "/u/pon fulfillment of the terms and conditions of probation, the court shall discharge" the probationer.[6] It is not completely clear from this language whether the statute is intended to operate only at the end of the term, or may be applied at any time during the term (and in the absence of revocation proceedings).

B. Early Discharge

In many cases when it appears that a probationer serving his term would derive no further benefits from continued supervision and treatment services, the interests of society and the probationer may be better served by termination of probation prior to the end of the term imposed by the court.

For this purpose the statutes of virtually every jurisdiction provide the court with the option of early discharge. Presumably, these statutes not only govern, but enable, the exercise of this option, since it is not clear whether the authority for early discharge may be implied in law.[7]

The state and federal statutes providing for early discharge may be grouped into two wide classes. The first class of statutes sets out criteria or procedures which, in varying degrees of specificity, govern the use of early discharge. The second class described below lacks such statutory guidelines, and leaves open the circumstances in which early discharge may be granted.

Class I

The statutes belonging to this class contain either substantive guidelines or procedural forms for the exercise of judicial discretion to terminate probation prior to the end of the term.

There are twenty-four states which regulate the use of early discharge through statutory criteria.[8] For example, Ohio provides that "[w]hen the ends of justice will be served, and the good conduct of the...[probationer] so warrants it, the judge...may terminate the period of probation."[9] Similarly, the West Virginia statute allows discharge when "the probationer has satisfactorily complied with all the conditions of his probation, and it appears to the court that it is no longer necessary to continue his supervision, the court may discharge him."[10]

A smaller group of statutes within this class establish procedures to be followed by the court and probation agency relating to early termination. Virginia, for example, requires that the court may increase or decrease the period of probation, but only after a hearing.[11]

The statutes of at least four states provide that the probation officer may petition the court for early discharge of the probationer.[12] Similarly, two states require the report of the probation officer before discharge may be ordered.[13]

Class 2

In approximately eighteen jurisdictions, the statute allows for early termination without stating guidelines or procedures for the court to follow in deciding when to take this action.[14]

Neither the Model Penal Code[15] nor the Standard Probation and Parole Act[16] contain criteria for early termination. The American Bar Association, in its Standards Relating to Probation, recommends that termination should be allowed when the probationer displays "good adjustment... [such] that further supervision ... is no longer necessary."[17]

Although both Class 1 and Class 2 above allow the court discretionary use of early termination, a separate group of statutes establishes a mandatory procedure under which the court must review the probationer's case to determine whether there should be early discharge. This determination, however, remains discretionary to the extent of the statutes discussed above.

The North Carolina statute illustrates this procedure. It imposes on the probation officer the duty to bring the probationers before the court after three years of the term have been served, and that the "court shall review the probationer's case file and determine whether he should be released from probation.[18] At least five other jurisdictions have similar provisions,[19] with some describing the time required to establish the right to review in terms of a given fraction of the total period imposed (e.g., one third of term, in Texas statute).

C. Impact of Discharge Provisions on the Delivery and Administration of Probation Service

The direct legal consequence of discharge is that it may lead to the restoration of civil rights of the probationer. In view of the importance of this, the procedures for obtaining an order of discharge should not be lengthy and technical to the extent that undereducated or less sophisticated probationers, who cannot afford legal assistance, are unable to comprehend and follow the required steps. Probably, the clearest procedure is to provide for automatic discharge upon expiration of the term imposed by the court.

In a similar way, the degree of restrictiveness placed on procedure for early discharge determines to a large extent the flexibility of probation as a rehabilitative device.

For example, the trial court generally has only the information contained in the presentence report to draw on at sentencing. After a period of probation is served, it may come to light that the probationer has made a satisfactory adjustment to his home or community in a shorter time than the sentencing information had indicated. Continuation of supervision of a person who has begun to lead a constructive and law-abiding life may present a number of problems. One of the problems which is foreseeable involved with unnecessary continuation is the effect it may have of undercutting the probationer's attempts to acheive a measure of self-worth, and to disassociate from persons representing, and sanctions threatened by, the corrections system. By providing a certain and simple means of early discharge, the probation system can attain the flexibility needed to provide a more individualized treatment of probation.

A closely related impact of less restrictive early discharge provisions is to provide the probationer with the incentive to conform his behavior to

the conditions imposed by the court and to the requirements of the law. When early discharge is essentially a reward which may be achieved through the certain conduct, such as compliance with conditions, then a new model of probation-directed rehabilitation may be implemented. The relationship between the probationer and officer may then be seen to more clearly resemble a performance contract in which the probationer agrees to follow conditions, obey the law, and cooperate with the professional workers who attempt to help him develop as a person. The probation officer, in return, is able to provide, through the early discharge provision, a means for positive reinforcement of this behavior, after a given period of probation is served.

One procedure implementing this model is to provide for periodic (e.g., annual) review of the probationer's case to determine the applicability of early discharge. Notification to the probationer at the commencement of the term, and fair and reasonable exercise of early discharge as an outcome of favorable review, would appear to contribute to the positive reinforcement model of probation sanctions. In the absence of statute, the court should have a policy of periodic review of probation terms, with a view towards selection of probationers for discharge.

Availability and systematic use of early discharge provisions also has impacts on the administration of probation. For one thing, early termination tends to reduce caseload sizes, and at the same time, tends to increase the proportion of probationers requiring relatively intensive supervision. This indicates the need for the reallocation of resources to more effectively support the application of early discharge as a rehabilitative device, as discussed earlier. The reduction in caseload size through the appropriate use of early discharge allows a more favorable officer-client ratio without significantly

increasing the risk of harm to society. With careful administrative planning and direction, this could lead to the development of more specialized types of caseloads, and the increase generally of effectiveness in the delivery of professional services.

A further complication arising from the application of early termination by means of a system of periodic review by the court is that specialized administrative procedure is indicated to implement this system. The probation agency would assume an expanded investigatory and supervisory role in order to provide the reviewing court with meaningful recommendations relative to early discharge.

FOOTNOTES

1. Smith-Hurd Illinois Annotated Statutes, sec. 1005-6-2(d).

2. Vernan's Annotated Missouri Statutes, sec. 549.111(1); see also Alaska Statutes, sec. 12.55.085(d); Florida Statutes Annotated, sec. 948.04(2) (provides that the Florida Probation and Parole Commission may discharge the probationer prior to end of term, with notice given to court; this is a unique feature of the statute); Kentucky Revised Statutes, sec. 533.020(3).

3. American Bar Association, Standards Relating to Probation, 1970, sec. 4.1, Satisfactory Completion of Probation Term, p. 52.

4. See, e.g., West Virginia Code, sec. 62-12-11.

5. See, e.g., General Statutes of North Carolina, sec. 15-200; North Dakota Century Code, sec. 12-53-12; Purdon's Pennsylvania Statutes Annotated, sec. 1056; Code of Laws of South Carolina, sec. 55-594.

6. Annotated Code of Maryland, tit. 27, sec. 641(c); see also Code of Virginia, sec. 18.2-250.

7. In at least two states, Michigan and Montana, the statute does not expressly provide for the early termination of probation.

8. These states are: Alabama, Alaska, Arizona, California, Connecticut, Florida, Georgia, Idaho, Illinois, Maine, Missouri, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, and Wisconsin.

9. Ohio Revised Code Annotated, sec. 2951.09 (Page); see also Arizona Revised Statutes Annotated, sec. 13-1657(d); North Dakota Century Code, sec. 12-53-17; Washington Revised Code Annotated, sec. 9.95.230.

10. West Virginia Code, sec. 62-12-11; see also North Carolina General Statutes, sec. 15-200; Wisconsin Statutes Annotated, sec. 57.03(2).

11. Code of Virginia, sec. 19.2-304; see also Connecticut General Statutes Annotated, sec. 54-113.

12. These states are: California, Colorado, Nebraska and New Hampshire.

13. I.e., Michigan and New Jersey. See, e.g., New Jersey Statutes Annotated, sec. 2A.168-4.

14. These jurisdictions are: Arkansas, Delaware, District of Columbia, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, New Mexico, Oklahoma, Rhode Island, Tennessee, Virginia, Wyoming and the federal system.

15. American Law Institute, Model Penal Code, 1962.

16. National Council on Crime and Delinquency, Standard Probation and Parole Act, 1973.

17. American Bar Association, Standards Relating to Probation, 1970, sec. 4.2, "Early Termination", p. 53.

18. General Statutes of North Carolina, sec. 15-205.1.

19. California, New York, Texas, Wisconsin, and the federal probation system utilize similar statutory provisions.

XII. RESTORATION OF CIVIL RIGHTS AND REMOVAL OF DISABILITIES

A. Loss of Civil Rights Upon Conviction

All but five states and the Federal government[1] have enacted legislation with specific provisions depriving the convicted offender of various rights and privileges upon conviction.[2] Specific deprivations may be contingent on only certain crimes. A suspended judgment or sentence may limit the application of deprivations.

The disabilities may be grouped in several categories. The right to vote and retain public office is always lost upon imprisonment, but not necessarily when sentence is suspended.[3] Other civil rights which may be lost include the right to sue, execute and enforce legal instruments such as contracts, as well as the right to serve as a witness or juror.

Of the "collateral" disabilities, other than loss of civil rights, which may flow from conviction, the most important are the ones of of licensing, bonding and employment opportunity. The fact of conviction may bar persons from certain professions or occupations as such; it may also be the worst private discrimination against them.

Domestic rights lost serve to destroy the family, but are usually only applied to the imprisoned offender. Conviction may be grounds for divorce or for putting children up for adoption; but usually only apply upon imprisonment. Loss of property rights and insurance, pensions and workman's compensation benefits may also follow conviction.

A major variation and source of confusion in the statutes concerns whether the disabilities are contingent upon conviction or on the particular sentence. Most statutes are applicable only when the offender has been "convicted" of a crime.[4] The confusion lies in determining when the offender acquires the status of a convicted person. Some statutes, although a minority, distinguish

the consequences of a conviction leading to probation and leading to imprisonment. Idaho[5] provides an example of such a state:

> A sentence of imprisonment in a state prison for any time less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trust, authority or power during such imprisonment: provided that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation.

In addition, some courts have held that a suspended sentence or probation does not have the effect of deprivation of rights even if the statute provides for their loss upon conviction.[6]

In general, however, where a statute provides otherwise, a person convicted and sentenced to probation will lose the same rights and privileges as those who are convicted of a similar offense but receiving a different disposition.

B. Restoration of Civil Rights and Removal of Disabilities

The mechanisms for the restoration of lost civil rights and the elimination of the collateral consequences can differ greatly in method and clarity. The provisions for restoration of rights must first state at what point the rights can be restored and whether it is a discretionary or mandatory procedure. The particular mechanism for removing the disabilities varies in that it may be discretionary or mandatory and involve expungement, sealing of records or secondary reports invalidating the original conviction.

One category of states restores some of all civil rights, although without necessarily affecting collateral consequences, automatically upon completion of sentence and discharge from probation.[7] An example will be Oregon[8] which states :

> Any person convicted of a felony prior to August 9, 1961, and subsequently discharged from probation, parole or imprisonment prior to or after August 9, 1961, is hereby restored to his political rights.

Wisconsin[9] (57.078) provides an example of a general statute with more impact:[10]

> "Every person who is convicted of crime obtains a restoration of his civil rights by serving out his term of imprisonment, or otherwise satisfying his sentence."

Some states speak to the particular disposition whose completion shall require restoration of rights. Idaho[11] deals with the sentence which "has been imposed, but suspended" and states, "The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights."

In some cases, the restoration of rights is dependent on circumstances of the case. Nevada, for example, provides for restoration after an "honorable discharge" from probation.

<u>Relief from Collateral Consequences of Conviction</u>

In addition to determining the terms for the restoration of forfeited civil and political rights, the statutes of the various jurisdictions govern the question of what relief, if any, a probationer who has completed the term of probation may receive from other convictions-related disabilities, particularly those affecting licensing and employment opportunity. The mechanisms vary, and so does the nature of the relief available. Overall, however, such relief is available to the general class of probationers only through the exercise of judicial discretion, and not (as is true of the restoration of civil and political rights in some jurisdictions) automatically.

In some jurisdictions, such as Nebraska,[12] the court discharging a probationer is directed by statute to evaluate the issue of relief from disabilities, when petitioned by the probationer.

The statute states that upon completion and discharge from probation, the court issues an order releasing the probationer which restores the offender's civil rights. Nebraska goes even one step further by allowing the court to petition to set aside and nullify the conviction:

(4) the court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. Such order shall:

(a) Nullify the conviction; and
(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction the same as though a pardon had been issued.

This statute also provides for the mandatory restoration of civil rights upon discharge:

the sentencing court shall issue an order releasing the offender from probation and such order shall in all felony cases restore the offender's civil rights the same as though a pardon had been issued.

The statute specifies the effects of the removal of disabilities in language similar to that of the proposed Federal Criminal Code.[13]

In New York[14] a certificate of relief from various disabilities, including both the loss of civil rights and collateral consequences of conviction, may be granted at the court's discretion to an eligible offender. In so doing, the court may act on its own motion or on a probationer's or former probationer's request. A recent case describes the certificate's effect as:

The granting of a certificate of relief from disabilities in no way eradicates or expunges the underlying conviction. It does prevent the mandatory forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election.[15]

North Carolina[16] legislation provides an example of a state in which the offender (if not over 21 years of age at the time of offense) may apply for an order to expunge all records resulting in restoration "to the status he occupied before arrest". This case would result in a more thorough removal of disabilities and collateral consequences than would the certificate found in New York. Kansas[17] follows the second example, allowing the offender to petition for complete expungement, and where there is a record of conviction he must,

"exhibit good moral character" for five years following his discharge as a condition. This statute is not limited to probationers and has the effect of restoring their non-offender status. Oregon permits those convicted of a misdemeanor, class "C" felony or violation of a municipal ordinance to petition the court to set aside the conviction after three years of good conduct.

Probation and Deferral of Judgment

A final judicially-controlled mechanism which can effect the rights and privileges of probationers is provided for by those statutes which allow "probation without judgment" or "probation without verdict" for selected consenting defendants. Typically, the probationer has been committed to a term of supervision without a finding of guilt, or upon a plea of guilty which is made subject to subsequent withdrawal in the event that probation is successfully completed. The Michigan [18] statute's language is typical:

> Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions.

Maryland[19] permits a wider use of deferred judgment, thereby providing many probationers with a mechanism for survival of rights. In such a scheme, the successful probationer's rights are not restored, but preserved. Both during the probation period and subsequently, there are no conviction-linked disabilities because no conviction has occurred. In such cases, there may still be a need to deal with the arrest record even though the disposition has precluded the existence of other debilitating records. The Maryland statute states:

> Any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation. Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose.

There are some instances in which expungement of the arrest record does not immediately follow dismissal of the charges. Illinois law[20] permits discretionary expungement three years after discharge.

The use of deferred judgment is entirely discretionary with the court. Texas[21] also allows a more general use of deferred judgment as a form of probation. North Dakota,[22] another state permitting general use of this disposition, exemplifies this form of discretion:

> The court may in its discretion set aside the verdict of guilty; and in either case, the court may dismiss the information or indictment against such defendant, who shall then be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted.

The procedure of deferred judgment is used most frequently in specifically stated cases such as for a first offense, misdemeanor or minor drug offense. Illinois, New Jersey, Georgia and South Dakota[23] are examples of the approximately fifteen states making up this category.

Removal of disabilities and restoration of rights through this process does not necessarily eliminate all collateral consequences of the sentence. Unless a statute otherwise provides, the conviction can be considered in subsequent criminal action and will preclude the repeated use of a deferred judgment on one offender.[24] Some statutes eliminate all collateral consequences by specifically addressing them as does Arkansas:[25]

> A defendant so discharged may state in any application for employment, license, civil right, or privilege or in any appearance as a witness that he has not been convicted of the offense.

Nature of Relief Available to Restore Rights and Remove Disabilities

The particular mechanism provided by the state and extent to which it can eliminate legal and social collateral consequences of conviction is not always specified by the statute. There are many different approaches possible including complete expungement of all records, sealing of records, issuing of

second reports or notes from court contradicting the conviction, or deferring judgment and thereby preventing the compilation of a record.

Expungement

Expungement has already been discussed summarily in relation to petitions and automatic restoration which indicates that it can follow from the use of various mechanisms to ameliorate disabilities. Approximately half the states either prohibit the expungement of records or have no statutory provisions on the subject.[26] However, in states granting automatic restoration of rights upon completion of the sentence or dismissal of charges, the expungement of records may be available; where this is so, the probationer is, in effect, eligible to have the former conviction (or other judicial action leading to probation) nullified. In many states, expungement is possible only after the passing of a specified amount of time and a showing of good conduct. Utah, Kansas and Connecticut[27] follow this approach.

The importance of expungement as a form of relief lies in its extensive rehabilitative effect. Tennessee[28] offers an explanation of the expungement procedure and effects:

> (b) Upon the dismissal of such person and discharge of the proceedings...such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the court)...all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section...The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The phrase, "restore such person, in the contemplation of the law, to the status...before...arrest", means there is an elimination of legal collateral

consequences. A Utah statute[29] outlines a hearing procedure for the granting of expungement and is among the few which delineates the results of the procedures.

Although some statutes do refer to expungement specifically, the actual procedures and their consequences are not always clear. The following sections deal with variations of expungement.

Sealing of Records

Few states refer to this particular mechanism for removal of disabilities, although it may be used but not included in statutory law. In Massachusetts and North Dakota,[30] the sealing of a record has the same effect as annulling the conviction. The result is a return of the status prior to conviction and removal of legal and social collateral consequences.[31] Massachusetts[32] lays out these consequences:

> Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing sentence in subsequent criminal proceedings.

The records are not actually removed or destroyed, but sealed for the purpose of any investigation. Massachusetts states that the commissioner of probation may "report that no such record exists" to those who inquire (exceptions are given). North Dakota precludes nonpublic records retained by the division of criminal investigation from the sealing process.

North Dakota provides for mandatory sealing upon discharge; however, the more detailed statute of Massachusetts requires application for sealing only after the passing of ten years without subsequent convictions, and disqualifies some classes of offenders.

North Dakota law[33] has a limited form of this procedure in that upon dismissal of the indictment and release from probation, the clerk of the court "shall file all papers". The records are subject to examination by authorized court personnel or others with court's permission. The statute releases the offender from "all penalties and disabilities resulting from the offense or crime" and is stated in language similar to many other jurisdictions which do not specify the mechanism for restoration of rights.

Judicial Certificates Following Discharge

A few states, notably Alaska, New York and California[34] make use of judicial certificates which document the individual's release from penalties and disabilities. The certificate may be issued or denied at the discretion of the court and usually specifies the rights restored. New York's statute[35] implies that the court may control which disabilities are removed:

> 5. Any court that has issued a certificate of relief from disabilities may at any time issue a new certificate to enlarge the relief previously granted...

But the New York certificate does not negate the fact of conviction; it merely provides reflief from particular direct and collateral consequences of conviction.

Alaska law[36] states:

> (c) Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect.

This may imply that the certificate would act as a secondary report filed in contradiction to the original conviction record. Such a procedure is not actually expungement since the original records remain available with only the certificate to nullify the conviction.

Executive Clemency

In jurisdictions where no provision is made by statute for the provision of judicial or administrative relief from forfeitures of civil rights

or the collateral consequences of conviction, the probationer, like other convicted persons, must rely upon executive clemency. All states, and the federal government, recognize a discretionary executive pardoning power, and a pardon, where granted, will permit the pardoned person to avoid the full range of conviction-related disabilities. In some jurisdictions, statutes further describe a role for the judiciary with respect to the probationer seeking relief by way of executive clemency.

New Mexico,[37] for example, provides that after completion of the period of suspension, the offender is entitled to a certificate which he can present to the governor so as to be considered for a pardon. Iowa[38] requires in felony cases that the court forward to the governor a recommendation for or against restoration of citizenship rights. In general, the pardon only supplements statutes and does not play the major role in removal of disabilities. The extent of aid provided by the pardon is also unclear.

C. Implications of Civil Disabilities and Rights Statutes for the Probation System

The effectiveness of statutes restoring civil rights and removing disabilities directly affects the successful rehabilitation of the probationer. Significantly, these statutes generally do not provide for affirmative action to aid the probationer who is attempting to overcome the broad range of social and employment disabilities posed by a conviction.

For example, a certificate of rehabilitation generally only restores political rights and will not prohibit a prospective employer or a licensing agency from considering the conviction when making their decision. Affirmative action legislation supplementing expungement and other statutes appear needed in order to substantially reduce such disabilities under existing types of statutes.

An attempt to address these problems is made by those states which allow the ex-probationer to make a sworn statement that he has never been convicted, upon the expungement of his record following dismissal of the charges. The National Council on Crime and Delinquency Act[39] supports this approach: In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person may be questioned about previous criminal record only in language such as the following: "Have you ever been arrested for or convicted of a crime which has not been annulled by a court?" It is the view of the NCCD that the Act would produce wider and more uniform use of the power to expunge, while allowing for the flexibility of discretion in individual cases.[40]

Even if the statute effectively eliminates the legal collateral consequences of conviction, the social consequences remain in the form of the public stigma attached to persons convicted of crimes. Actual destruction of the criminal record,[41] as well as the legal right on the part of ex-offenders to claim the absence of a criminal conviction may substantially reduce these negative effects. One approach to this problem, in the absence of affirmative action legislation, is creation of better public awareness of the problems encountered by ex-offenders in readjusting to community life and reestablishing themselves as self-supporting individuals. Programs advocating employment of ex-offenders should be encouraged in those jurisdictions which do not permit annulment of the conviction.

Some jurisdictions have taken the approach of a statutory policy of not excluding those with criminal records from employment. New Jersey[42] provides for discretionary employment with concern for the

welfare of society. Florida and Washington also have statutes which only permit denial of employment and occupational licenses of those convicted of offenses "closely related to the job or license being sought."[43] Hawaii law[44] provides the farthest reaching legislation in this area. As well as removing public and licensed employment restrictions based on criminal record, Hawaii has also prohibited discrimination in private employment. Executive orders can also be used to encourage employment of ex-offenders. The New York City Commission on Human Rights has declared the denial of employment on account of a criminal conviction to be unlawful, discriminatory practice.[45] Discretion must remain in this issue, however, for cases in which the offense may have been related to the type of employment.

An indirect social consequence is the loss of "good moral character" which may be included as a qualification in certain applications for positions or licenses. A few states provide for restoration of good moral character upon a showing of the individual's rehabilitation and good conduct. The certificates issued in New York, California and Alaska[46] serve as proof of good conduct. Recovery of this status should be available for all those who qualify.

A major fault of most civil rights and disabilities legislation is that the procedure for expunging the conviction, restoring rights or removing disabilities may depend on the affirmative action of the offender. He may not avail himself of this right to petition due to ignorance of the right or legal procedure for application, or fear of embarrassment by the investigation. Most offenders will not initiate the procedures which will restore his good character or free him of disabilities.[47]

The purpose of probation is undoubtedly hindered by disabilities and loss of civil rights. The automatic removal of rights is contradictory

to attempts to individualize sentences. The civil disabilities only serve to reinforce society's notion that all offenders are outcasts to be mistrusted. The knowledge of the stigmatizing effect of conviction only discourages the ex-offender from participating in society and striving for job opportunities. He is cut off from a "full socialization into the law-abiding community."[48]

There must be uniformity among the laws of the states in the treatment of disabilities and civil rights so as to aid in the rehabilitation of offenders. The ABA standards on probation for methods "by which the collateral effects of a criminal record can be avoided or mitigated following the successful completion of a term on probation and during its service."[49] (Standard 4.3) The disabilities and restrictions should be limited to those required to protect the public. The NCCD adovcates annullment of conviction and restoration of all civil rights "when in the opinion of the court the order would assist in rehabilitation and be consistent with the public welfare." Only those disabilities directly related to the criminal offense should remain in effect. A more generous restoration of rights and removal of disabilities would better enable the probationer to fulfill the treatment goals of probation.

FOOTNOTES

1. American Bar Association, Standards Relating to Probation, 1970, p.45.

2. Thirteen states apply various par-s of the doctrine of civil death or general loss of rights. See general loss of rights. See generally, Neil Cohen and Dean Rivken. "Civil Disabilities: The Forgotten Punishment." Federal Probation, vol. ___ 1971, p.19.

3. See, e.g., Ramirez v. Brown, 107 Cal. Rptr. 137, 507 P.2d 1345 (1973). (denial of the right to vote held unconstitutional.)

4. Cohen & Rivken, op. cit. p.19.

5. Idaho Code § 18-310

6. See, e.g., People v. Fabian, 192 N.Y. 443, 85 N.E. 672 (1908).

7. See George Killinger, Hazel Kerper and Paul Cromwell, Probation and Parole in the Criminal Justice System, (St. Paul, Minn; West Publishing Co., 1976), p.291 n.10 for a list of thirteen such states.

8. Oregon Revised Statutes § 137.260.

9. West's Wisconsin Statutes Annotated § 57.078.

10. In general, statutes which were all inclusive of convicted offenders would not have been picked up by this study.

11. Idaho Code 19-2604.

12. Revised Statutes of Nebraska § 29-2264.

13. Prepared by the National Commission on Reform of Federal Criminal Laws, 1971.

14. New York Corrections Law § 702 (McKinney).

15. Da Grossa v. Goodman, 339 N.Y.S. 2d 502, 72 Misc.2d 806 (1972).

16. General Statutes of North Carolina § 90-96.

17. Kansas Statutes § 21-4617.

18. Michigan Statutes Annotated § 18.1070(47).

19. Annotated Code of Maryland Art. 27, § 292.

20. Smith-Hurd Illinois Annotated Statutes § 1005-6-3.1.

21. Texas Codes Annotated Art. 42.12.

22. North Dakota Century Code § 12-53-18.

23. Smith-Hurd Illinois Annotated Statutes § 1410; New Jersey Statutes Annotated § 24-21-27; Georgia Code Annotated § 27-2727; South Dakota Compiled Laws Annotated § 23-57-4.

24. Killinger, et. al., op. cit. p. 293.

25. Arkansas Statutes Annotated § 41-1210.

26. See generally, W.A. Goldberg, Adult Probation in the United States, 1974.

27. Utah Code Annotated § 77-35-17.5; Kansas Statutes § 21-4617; Connecticut General Statutes Annotated P.A. 74-52.

28. Tennessee Code Annotated § 40-2909.

29. Utah Code Annotated § 77-35-17.5.

30. Annotated Laws of Massachusetts ch. 276, §§ 100A, 100c; North Dakota Century Code § 23-57-4.1.

31. Social consequences such that the ex-offender may deny his conviction to prospective employers without fear of committing perjury.

32. Annotated Laws of Massachusetts ch. 276, § 100.A.

33. North Dakota Century Code § 12-53-18.

34. Alaska Statutes § 12.55.085; New York Corrections Law § 702 (McKinney); West's Annotated California Code § 1203.4.

35. New York Correction Law § 702 (McKinney).

36. Alaska Statutes § 12.55.085.

37. New Mexico Statutes Annotated § 40A-29-211-214).

38. Iowa Code Annotated § 247.20.

39. Model Act to Authorize Courts to Annul a Record of Conviction, National Council on Crime and Delinquency, 1962.

40. National Council on Crime and Delinquency, "Annulment of a Conviction of Crime: A Model Act," Crime &Delinquency, 1963, vol. 8, p.99.

41. It may further be noted that simple expurgement, by itself, may not sufficiently protect the probationer from misuse of such information, since these records remain accessible to a wide range of government and private inquiry.

42. New Jersey Statutes Annotated § 11-10-6.

43. An Introduction to the Federal Probation System, Washington, D.C.: The Federal Judicial Center, 1975, p. g-1.

44. 15 Criminal Law Reporter 2548 (Sept. 25, 1974).

45. Killinger et al, op. cit., p. 309.

46. Alaska Statutes § 12.55.085; New York Corrections Law § 702 (McKinney); West's Annotated California Code § 1203.4.

47. "Criminal's Loss of Civil Rights," University of Florida Bar Review, 1963, Vol. 16, p. 337.

48. Cohen & Rivkin, op. cit., p. 25.

49. American Bar Association, Standards Relating to Probation, 1970, Sec. 4.3.

XIII PRESENTENCE INVESTIGATION AND REPORT

Presentence Investigation and Report

The presentence investigation and report serve two major purposes. The first is to provide information to identify defendants who do not pose unreasonable risks to the community. Secondly, there is the purpose of gathering information relevant to the issue of treatment by probation and social service agency professionals, in order to help the defendant live a constructive, or at least law-abiding, life outside of the agency's supervision.

This paper also examines the contents of the probation report, especially in view of the modern practice of trial courts taking the contents of the presentence report as the substantial basis for sentencing decisions. The major components of the report are:

(1) the information derived from public records regarding the defendant, such as prior arrest and conviction records;

(2) the personal history, obtained through interviews with the defendant and with persons associated with the defendant;

(3) the medical history of the defendant, especially psychiatric evaluations and treatment records.

The actual practice of the court and probation agency in ordering and conducting presentence investigations are outside the scope of this section.[1] For example, while a proper report may involve at least three or four weeks of preparation, the caseload of an agency may impinge upon this, with a resulting movement in practice to shorter and less detailed reports.

Another example has been the expanded use of the presentence report, notably relating to plea bargaining. The court's acceptance of a guilty plea may be made conditional on the contents of the report (e.g., the presence of a prior criminal record). Practices such as these are also outside the coverage of the present section.

Three important legal issues which impact on the use and effectiveness of the presentence report are discussed in this section. The first issue is whether

the statute determines when a presentence report is required and when it is discretionary with the sentencing court. Secondly, the statutory designation of the information content of the report is discussed. Thirdly, the question of whether and how the report is required to be disclosed to the defendant under statute is examined in light of case law. As will be noted, there is a trend towards a limited right on the part of a defendant to the disclosure of his presentence report, with the result that partial disclosure may be made to the defense attorney. The implications of the preceding legal issue on the effective delivery and comprehensive development of probation services is discussed in the last part of this section.

A. The Presentence Report as a Legal Requirement or Judicial Option

The threshhold question in this subject is whether a presentence investigation and report are required to be ordered by the trial judge, or whether this decision is discretionary. This question is governed by the state and federal probation statutes. The statutes may be divided into three broad classes reflecting differences in the provisions which regulate the use of the presentence report in felony cases.

The first class is comprised of statutes with provision for a mandatory presentence report in all or most felony cases. The second requires a report only where the defendant is under consideration for probation in a felony case. The statutes which provide for judicial discretion in ordering a report are discussed under the third class. It should be noted that presentence reports are generally mandatory in felony cases; this is not the situation in misdemeanor cases. In the statutes discussed below, the mandatory nature of the report in misdemeanor cases is based on characteristics of the defendant or the length of imprisonment, and only in New York and a few other states does the statute expressly provide for a report in all misdemeanor cases.

It should be noted at this point that while the approach of the majority of jurisdictions is to require the presentence report in most felony cases, there is no such uniformity of provisions with regard to misdemeanor cases. Only New York and a few other states expressly require the report in misdemeanor as well as felony cases; although the length of imprisonment or age of the defendant may have the result, in the majority of statutes, of requiring the report in certain misdemeanor cases.

Class 1

Nearly half of the state and federal statutes expressly require the preparation of a presentence report for all or most felony cases and cases involving greater than one year imprisonment.[2] An example of this class is the Indiana statute, which states that "/no/ defendant convicted of a felony shall be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court."[3] Similarly, the Kentucky provision requires that /no/ court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of such investigation."[4]

An alternative provision used in the statutes of this class is to specify the types of cases in which the report is mandatory. This approach is taken by the American Bar Association, in both its Standards Relating to Probation,[5] and Standards Relating to Sentencing Alternatives and Procedures.[6] The Standards recommend that statutes require the presentence investigation and report

> "in every case where incarceration for one year or more is a possible disposition, where the defendant is less than /21/ years old, or where the defendant is a first offender, unless the court specifically orders to the contrary in a particular case."[7]

The Maryland statute follows this language, and Connecticut, Rhode Island and some ten other states adopt the one year imprisonment term criterion. Similarly, the Model Sentencing Act recommends, and Delaware adopts, six months as the minimum possible term of imprisonment calling for a mandatory report.[8]

Another statutory factor which triggers the requirement for a report is the age of the defendant. For example, Hawaii follows the A.B.A. Standards and requires a report in cases (felony or misdemeanor) where the defendant is less than twenty-one years old; Florida sets this age at eighteen. The fact that the defendant is a first offender is a factor which makes a report mandatory under the statutes of Connecticut and several other states.

The appellate courts of the various jurisdictions have held that under these statutes it is an abuse of discretion by the sentencing court to refuse to order a presentence report, and that a sentence pronounced without one is invalid.[9]

There is further authority that where circumstances indicate the need for additional presentence information, in order to comply with the intent and purpose of this class of statutes, further reasonable inquiry must be made, and failure to do so is an abuse of judicial discretion.[10] For example, that where circumstances indicate the need for presentence psychiatric examination (i.e., history of mental disturbance and record of recidivism), and where there are available examination facilities, denial by the trial court of defense motion for examination is an abuse of discretion under these circumstances, and the sentence imposed may be reversed.[11] This view should be contrasted to that taken by the courts in the jurisdictions discussed under Class 3, below.

Class 2

At least nine states require a presentence report in felony cases prior to placing a defendant on probation.[12] For example, the New Hampshire statute

requires that no defendant may be placed on probation until the report of the probation officer's investigation is "presented and considered by the court."[13] This class of provisions allows the court discretion only in felony cases in which probation is not being considered as a disposition.

Class 3

The presentence report is discretionary with the trial court in approximately sixteen jurisdictions.[14] The New Mexico statute is typical in providing that "/u/pon the order of any...court, the /probation/ director shall prepare a presentence report which shall include such information as the court may request."[15]

The case law with regard to these provisions has been to allow the trial court broad discretion where the statute does not specifically express that the report is mandatory or where the statute is silent, as well as where the statute, as in the present class, actually allows the court discretion. In such cases, it has been held that the absence of an investigation or report is not an abuse of judicial discretion, nor a violation of due process.[16]

B. Content of Presentence Report

The statutes of at least forty jurisdictions specify to some extent the information areas which the presentence report must address. The American Bar Association Standards Relating to Probation[17] recommend that the report contain, in part, descriptions of: circumstances surrounding the offense in question; prior criminal record; educational background; employment background; social and family history; medical and psychological reports; specific recommendations as to sentence if requested by the court.

This Standard represents a high degree of specificity, and only five states reach a comparable degree of detail.[18] The South Dakota statute, for example, states that:

> /t/he report of the presentence investigation shall contain any information developed as to the offense, any prior criminal record of the defendant and such information about his personal and family history and background, his education and training, condition of health, religious affiliation, military service, employment records, habits, interests, associations and characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in suspending sentence or in the correctional treatment of the defendant and such other information as may be required by the court or as may be deemed pertinent and helpful by the board.[19]

The remainder of the statutes which regulate the content of the presentence report are significantly less detailed in their provisions. These states generally utilize a standard formula which requires the report to include information regarding the defendant's prior criminal record, employment, age and the circumstances of the offense for which the defendant is to be sentenced, as the items which must be included in the report.[20] It should be noted that the agency regulations and court rules of these states may provide more highly detailed instructions regarding the content of presentence reports, but an examination of this subject is beyond the scope of the present paper.[21]

The statutes of at least fifteen jurisdictions provide for court-ordered physical and mental examination, as recommended by the American Bar Association Standards.[22] The Arkansas statute, for example, provides that the court may order the physical or psychiatric examination and observation of the defendant for a period not to exceed thirty days.[23] It is significant to note that this type of statute may authorize the detention for observation of a defendant for up to 120 days, as does, for example, the Kansas provision.

Another important element of the presentence report that is required by statute in at least nine jurisdictions is the recommendation of the investigating probation officer regarding the defendant's sentence.[24]

C. Disclosure of Presentence Report

The disclosure of presentence reports is largely controlled by the case law of the various jurisdictions and, to a lesser extent, by statute. The state and federal law on this subject may be divided into two classes, depending on whether disclosure is mandatory or discretionary with the court, and to what extent disclosure of the report is required. Also discussed is the closely related subject of the defendant's legal right to challenge or supplement the information contained in the presentence report.

Class 1

The statutes of at least fifteen states require disclosure in full, either as a routine matter or upon request by the defendant.[25] The Wisconsin statute is typical of this class in providing that "the judge shall disclose the contents of the report to the defendant's attorney and to the district attorney. When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant."[26]

A similar degree of disclosure apparently obtains in Oklahoma, where a different procedure is followed. The statute provides for the trial judge to "advise the defendant or his counsel and the district attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination."[27]

The California statute considers the presentence report to be a public record, and the full "report shall be made available to the court and the prosecuting and defense attorneys . . . and shall be filed with the clerk of the court as a [public] record in the case."[28] This provision represents the maximum degree of disclosure which may be required.

The courts of the various jurisdictions included in this class have developed a body of law providing for disclosure of the presentence report to the defendant or defendant's attorney. A leading case in this regard is State v. Kune, in which the New Jersey Supreme Court required disclosure as a matter of fairness, independently of statute.[29] Similarly, in Driver v. State, the Maryland court found that presentence information "which has not been received from the defendant himself or has not been given in his presence should be called to the accused's attention or to the attention of his counsel so that he may be afforded an opportunity to refute or discredit it."[30]

This disclosure approach has been recommended in the American Bar Associations Standards Relating to Probation and Standards Relating to Sentencing Alternatives and Procedure, in the American Law Institute Model Penal Code, and in the National Council on Crime and Delinquency Model Sentencing Act.

Other statutes within this class recognize the right to only a limited form of disclosure. Massachusetts, for example, provides for the mandatory disclosure of that part of the presentence report "relative to the defendant's prior criminal record."[31] Another restriction on disclosure is to require the defendant to make a showing of actual need for the information contained in the report.

Class 2

The law in a majority of the states is that disclosure of presentence reports is within the discretion of the trial judge. This is largely based on principles of confidentiality of reports established by case law, and to a lesser extent, by statute.

The rule stated expressly in statutes of this class is that the report is confidential unless ordered to be disclosed by the court.[32] Although a provision of this type does not appear in at least four states, it may be implied from this that the trial court has discretion in deciding on disclosure, in the absence of a contrary statute.[33]

The appellate courts in the states belonging to this class have consistently held that the defendant has no right to disclosure, both as a matter of state law, absent a statute of the Class 1 type, and as a question of constitutional due process. Although the United States Supreme Court has not ruled directly on the issue of disclosure, a case ruling on a related issue, Williams v. New York,[34] has often been cited by courts holding that non-disclosure of the presentence report does not violate due process under the federal and state constitutions.[35]

It may be more accurately said that the Court, in Williams, held that the defendant may be denied the opportunity to cross-examine (i.e., extensively question) the informants and reports used by the trial court for purposes of sentencing without violation of due process. The Court's reasoning was that confidentiality of information sources is required to assure the availability of sentencing information relied on by the courts. The Williams decision must be viewed in the light of a case decided one year earlier by the Court, Townsend v. Burke, holding that a defendant without counsel during sentencing proceedings may be deprived constitutional due process.[36] The implication flowing from Townsend is that in order to render effective assistance to the defendant, the attorney must have complete knowledge of the information before the sentencing court and that disclosure is necessary to implement the basic constitutional rights of counsel and due process.[37]

Since the Supreme Court has not, to date, taken a case to consider the issue of disclosure of the presentence report, the majority rule of law is based on the decisions of other federal and state courts, which have generally denied the right of disclosure to the defendant.[38]

Closely related to presentence report disclosure are the statutory provisions of at least ten states which allow the defendant to present information to the court in order to mitigate the sentence, and to controvert the information contained in the present report. For example, the Colorado statute establishes the report on the part of the defendant to "present any information in mitigation of punishment" to the sentencing court.[39] A more specific procedure is provided by the Virginia statute, which includes the right to cross-examine witnesses and challenge the contents of the presentence report prior to sentencing.[40]

These statutes, however, generally represent the development of the common law right of the defendant to address the court, historically called allocution. As a result, this area, as is disclosure of presentence reports, is governed primarily by the case law of the different jurisdictions.[41]

D. Implications of Disclosure of the Presentence Report on the Probation System

While the law regarding presentence reports has many implications for the operation and effectiveness of the probation system, the issue of disclosure of reports to the defendant is one that has recently been subject to intense controversy.

The statutory requirement of full disclosure has at least three significant impacts on probation. First, the availability of probation as a sentencing disposition is in many jurisdictions restricted by the presence in the report of a prior criminal record, a history of mental disturbance, or a negative recommendation by the probationer officer, among other items. The veracity of this information may be checked by the defendant's attorney, but only if it is

available. Speaking to this issue, Justice William O. Douglas once observed that while "[i]n many areas we can rely on the sound exercise of discretion by the trial judge; but how can a judge know whether or not a presentence report calls for a reply by the defendant? Its faults may not appear on the face of the document...."[42]

The risk of misinformation in the report generally appears large enough to warrant providing the defendant with an opportunity to seek out, through counsel, errors in the record prior to sentencing. The impact of this would be to allow the sentencing court to accurately determine the defendant's eligibility for probation, and to prevent unnecessary terms of imprisonment.

A second implication of disclosure is that it allows the defendant to know, not only the factual information, but also the subjective impressions of the defendant that the investigating probation officer recorded and presumably will bring into any eventual casework relationship.

Critics of disclosure have pointed out that this knowledge on the part of the probationer is destructive of the relationship, for example, by reducing the level of trust and respect present. It may be noted that this problem is probably of equal significance in non-disclosure jurisdictions, and in the absence of further evidence, it cannot be said that disclosure of the officer's impressions significantly disrupts the treatment environment which the probation officer seeks to provide. Additionally, risk of harm to the casework relationship should be balanced with the advantages of allowing the defendant to correct inaccuracies in the report. As discussed previously, a major advantage is to minimize the risk that misinformation might operate to deny the defendant participation in the probation system in the first place.

A third positive impact of disclosure is that it may help reveal to the defendant the reasons underlying the sentencing court's decisions regarding grant of probation and imposition of conditions and supervision.

It follows that withholding the presentence report, and with it the reasons for the court's action in sanctioning the defendant, distorts the defendant's perception of the probation system, a result which appears inconsistent with the rehabilitative design of probation.

FOOTNOTES

1/ See generally, Pickman, "Pre-Sentence Reports: Utility or Futility", Fordham Urban Law Journal, 1973, vol. 2., p. 27.

2/ The jurisdictions in this class include: Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont and the federal system.

3/ Indiana Annotated Statutes § 9-2251; see also Michigan Statutes Annotated § 28.1144: Vermont Statutes Annotated tit. 28, § 1008.

4/ Kentucky Revised Statutes § 532.050.

5/ American Bar Association, Standards Relating to Probation, 1970, Section 2.1(b).

6/ American Bar Association, Standards Relating to Sentencing Alternatives and Procedures, 1968, Section 4.1(b); see also Maryland Code Annotated tit. 41, § 124.

7/ See, A.B.A. Standards, notes 4 and 5, supra.

8/ See, National Council on Crime and Delinquency, Model Sentencing Act, 1963, § 2, "When Investigation Made," Delaware Code Annotated tit. 11, sec. 4331(a).

9/ See State v. Culver, 23 N.J. 495, 129 A2d 715, cert. denied, 354 U.S. 255 (1957).

10/ See Glenn v. State, 322 N.E. 2d 106 (Ind. 1975).

11/ See Leach v. United States, 118 U.S. App. D.C. 197, 334 F.2d 945 (1964).

12/ California, Georgia, Idaho, New Hampshire, Ohio, South Carolina, Tennessee, West Virginia and Wyoming.

13/ New Hampshire Revised Statutes Annotated § 504:2, see also California Penal Code § 1203(d)(1); Idaho Code § 20-220; Ohio Revised Code Annotated § 2951.03 (Page); West Virginia Code Annotated § 62-12-7.

14/ Arkansas, District of Columbia, Kansas, Louisiana, Maine, Minnesota, Mississippi, Montana, New Mexico, North Dakota, South Dakota, Texas, Utah, Virginia, Washington and Wisconsin.

15/ New Mexico Statutes Annotated § 41-17-23.

16/ See, e.g., People v. Bailey, 328 Ill.App. 584, 66 N.E.2d 477 (1946); People v. Roveano, 130 Cal. App. 222, 19 P.2d 506 (1933); and People v. Sudduth, 14 Ill.2d 605, 153 N.E.2d 557 (1958).

17/ American Bar Association, Standards Relating to Probation, 1970.

18/ These states include Hawaii, Indiana, Iowa, Nebraska and South Dakota.

19/ South Dakota Compiled Laws Annotated § 23-48-18.

20/ These states include Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Mississippi, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wyoming and the federal system.

21/ The statutes of at least five states do not provide any of these jurisdictions: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, New York and West Virginia.

22/ See also American Bar Association, Standards Relating To Probation, 1970, Section 2.3(ii)(F).

23/ Arkansas Annotated Statutes § 41-804; see also West Virginia Code § 62-12-7a.

24/ Jurisdictions in which the probation officer's recommendation is mandatory include: California, Delaware, District of Columbia, Florida, Georgia, Nevada, New Hampshire, New Jersey, Oklahoma, and West Virginia.

25/ States included in this class are: Arkansas, California, Colorado, Connecticut, Hawaii, Indiana, Kansas, Kentucky, Maryland, Minnesota, New Jersey, New York, Oklahoma, Texas, Virginia and Wisconsin.

26/ West's Wisconsin Statutes Annotated, § 972.15(2). See also Vermont Rules of Criminal and Appellate Procedure, Rules 32(c)(3).

27/ Oklahoma Statutes tit. 22, § 982.

28/ West's California Penal Code § 1203(a); see also, Code of Virginia, § 53-278.1.

29/ 55 N.J. 128, 259, A.2d 895, 40 A.L.R. 3d 659, (1969); see also State v. Pohlabel, 61 N.J. Super. 242, 160 A2d 647 (App. Div. 1960).

30/ 201 Md. 25, 92 A2d, 570 (1950); see also State v. Fowler, 49 Mich. 234, 13 N.W. 530, 537 (1887); Kuhl v. District Court, 366 P.2d 347 (Mont. 1961); State v. Pope, 257 N.C. 326, 126 S.E.2d 126 (1962).

31/ Massachusetts General Laws Annotated ch. 279, § 4A.

32/ See, e.g., Delaware Code § 4322(a); Kentucky Revised Statutes § 439.510 New Mexico Statutes Annotated § 41-17-18; North Carolina General Statutes § 15-207.

33/ E.g., Idaho, Illinois, Pennsylvania and West Virginia.

34/ 337 U.S. 241 (1949).

35/ See, e.g., United States v. Durham, 181 F. Supp. 503 (D.D.C.), certiorari denied 364 U.S. 854 (1960) (denying disclosure). See also United States v. Schwenke, 221 F.2d 356 (1955); State v. Moore, 49 Del. 29, 108 A.2d 675 (1954); Smith v. United States, 223 F.2d 750 (1955); State v. Harmon, 147 Conn. 125, 157 A.2d 594 (1960).

36/ Townsend v. Burke, 334 U.S. 736 (1948).

37/ Id. at 741.

38/ See Rafeal Guzman, "Defendant's Access to Presentence Reports in Federal Criminal Courts," Iowa Law Review, 1966, vol. 52, pp. 161, 174.

39/ See Colorado Revised Statutes § 16-11-102(5). New York, North Dakota and Ohio have similar provisions.

40/ See Code of Virginia § 19.2-299. The Statutes of Arkansas, Hawaii, Indiana, Kentucky, Minnesota, New Hampshire and Oklahoma, among other states, also allow the defendant the opportunity to controvert the presentence report.

41/ See, e.g., United States v. Powell 487 F.2d 325 (4th Cir. 1973) (right to address court found).

42/ 39 F.R.D. 276, 278 (1966).

SECTION 4

BIBLIOGRAPHIES

PART I

BIBLIOGRAPHY OF LEGAL ARTICLES REGARDING ADULT PROBATION BY SUBJECT AREA

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A NOTE CONCERNING THE SELECTION CRITERIA USED IN COMPILING THE BIBLIOGRAPHY OF LEGAL ARTICLES

The following Bibliography of Legal Articles Regarding Adult Probation was compiled after a literature search had been made of the following research sources:

1. Index to Legal Periodicals, Volumes 1 to 16;

2. Criminal Justice Bibliography, Marvin Marcus (compiler) 2d ed, 1976;

3. Criminal Procedure Sourcebook, Volume Two, B. James George (ed.) 1976;

4. Modern Judicial Administration: A Selected and Annotated Bibliography. Ronald H. Fremlin (ed.) 1973;

5. The Administration of Justice in the Courts, Book Two: The Administration of Criminal Justice in the Courts. Fannie J. Klein (compiler) 1976.

Legal articles were selected to be listed on the Bibliography because generally they met one or more of the criteria stated in section "A", (below). From these articles several were chosen for reproduction and these copies included with the bibliography based on a further analysis under the criteria listed in section "B".

A. Criteria for Listing a Bibliography

1. The article discusses a given subject area pertaining to adult probation law, either by restating or analyzing statutes and judicial decisions which make up the body of law in this field.

2. The article provides a legal analysis of a given subject area of adult probation law not expressly covered by statute or judicial decision, and thus offers guidance in determining the law in these areas.

3. The article has been cited in previous legal articles or has been referred to in such articles as a basic treatment of the subject area involved.

4. The article suggests an interesting or innovative legal approach to issues or problems in probation law which are or have been the focus of study or debate.

B. Criteria for Including Copies of Legal Articles

1. The article meets one or more of the above criteria, and is written in a clear and interesting style, and contains numerous citations to important legal articles and cases, and so constitutes a basic work examining the probation law which should be read by persons seeking greater knowledge in this field.

2. The article appears to be essential for an understanding of the discussion of the corresponding subject area in the Technical Issue Paper. The article may or may not have been cited in that paper.

3. The article appears to be desirable for a more complete understanding of how the development of probation law affects various aspects of the probation system, such as administration and delivery of probation services.

PART II

LEADING CASES ON ISSUES IN ADULT PROBATION, BY SUBJECT AREA

Definition of Probation

Roberts v. United States, 320 U.S. 264, 88 L. Ed. 41, 64 S. Ct. 113 (1943). (Federal Probation Act confers power on court to choose to impose sentence either before probation granted or after it is revoked, and if former, court may not increase the term of imprisonment fixed by prior sentence).

Criteria for Probation

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Gillespie v. State, 355 P. 2d 451 (Okla. Crim. 1960). (Defendant is entitled to have application for probation considered on its merits).

People v. Hamby, 6 Ill. 2d 559, 129 N.E. 2d 746 (1955). (The Trial court's denial of probation is not subject to reversal due to absence of hearing and, evidence regarding instigation of sentence, and absence of presentence investigation).

People v. Wade, 53 Cal. 2d 322, 348 P. 2d 116, 1 Cal. Rptr. 683 (1959). (Court may not decide in advance of sentencing hearing that probation would not be considered).

Stiller v. State, 516 S.W. 2d 617 (Tenn. 1974). (Trial court has sole discretion to suspend sentence and grant probation, accused may appeal from denial of probation, state may seek appellate review where court's action is arbitrary, capricious, or a probable abuse of the court's discretion).

United States v. Murray, 275 U.S. 347, 72 L. Ed. 309, 48 S. Ct. 146 (1928). (Power to grant probation cannot be exercised after execution or service of a sentence is begun).

United States v. Wiley, 267 F. 2d 453 (7th Cir. 1960). (A judge cannot limit the effect of a probation statute through a uniform policy of refusing to consider granting probation unless the defendant pleads guilty).

Probation Officers' Qualifications

Bryant v. Commonwealth, 198 Va. 148, 93 S.E. 2d 130 (1956). (Where statute did not provide for probation of defendants under the supervision of any person except probation officer, the court lacks inherent power to order husband of defendant to supervise and assist in probation of his wife).

Conditions of Probation

Allen, Re, 71 Cal. 2d 388, 455 P. 2d 143, 78 Cal. Rptr. 207 (1969). (It is improper to impose as a condition of probation that the defendant reimburse the county for the expense of court-appointed counsel).

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Gonzales, Re, 43 Cal. App. 3d 616, 118 Cal. Rptr. 69 (1977) (Acceptance of probation on terms fixed by the Superior Court does not preclude defendant from challenging by means of habeas corpus proceedings, the validity of a condition of probation included in such terms).

People v. Baum, 251 Mich. 187, 231 N.W. 95, 70 A.L.R. 98 (1930). (Sentence banishing probationer from state held void as unauthorized by statute and contrary to established public policy of equality of states).

People v. Blakeman, 170 Cal. App. 2d 596, 339 P. 2d 202 (1959). (It is beyond the power of the court to impose banishment as a condition of probation, and the imposition of such a condition is a void and separable part of the order granting probation).

State ex rel. Baldwin v. Alsbury, 223 So. 2d 547 (Fla. 1969). (Court lacks power to indefinitely suspend sentence in return for petitioner's promise to remain outside jurisdiction).

State v. Cordon, 21 N.C. 394, 204 S.E. 2d 715, cert. denied, 285 N.E. 592, 206 S.E. 2d 864 (1974). (When a defendant consents to the terms of probation, he waives right to appeal issue of guilt or innocence, and commits self to abide by the stipulated conditions).

State v. Oyler, 92 Idaho 43, 436 P. 2d 709 (1968). (Conditions may not infringe on freedom of conscience of probationer).

United States v. Buechler, ________ F. 2d ________, (3rd Cir. 6/22/77). (Restitution is proper condition under federal probation statute [Federal Youth Corrections Act]).

United States v. Greenhaus, 85 F. 2d 116, 107 A.L.R. 630 (2d Cir. 1936). (Imprisonment held to be an unreasonable condition).

United States v. Stoehr, 196 F. 2d 276, 33 A.L.R. 2d 836, (3rd Cir.), cert. denied, 344 U.S. 826, 97 L. Ed. 643, 73 S. Ct. 28 (1952). (Restitution to the government is an approved condition of probation).

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Escoe v. Zerbst, 295 U.S. 490, 79 L. Ed. 1566, 55 S. Ct. 818 (1935). (There is no constitutional right to hearing before revocation of probation - not followed by recent court decisions).

Forbes v. Roebuck, 368 F. Supp. 817 (E.D. Ky. 1974). (A probationer has the right to be present at revocation hearing).

Gagnon v. Scarpelli, 411 U.S. 778, 36 L. Ed. 2d 656, 93 S. Ct. 1756 (1973). (Counsel should be provided in probation or parole revocation proceedings where, after being informed of right to request counsel, an indigent probationer or parolee makes such a request, based on a claim that he has not committed the alleged violation of conditions or that even if violation is matter of public records or is uncontested, there are substantial reasons which justified the violation and make revocation inappropriate, and that the reasons are difficult to present; in passing on a request for the appointment of counsel, an important factor is whether the probationer appears to be capable of speaking effectively for himself). (See Also, Morrisey v. Brewer, 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593). (1972)

Mempa v. Rhay, 389 U.S. 128, 19 L. Ed. 2d 336, 88 S. Ct. 254 (1967). (Probationer who is indigent has the right under constitutional due process to have counsel appointed at every criminal proceeding in which substantial rights - such as right of cross-examination and right to appeal - of defendant may be affected by presence of counsel).

People v. Seigal, 235 Cal. App. 2d 522, 45 Cal. Rptr 530 (1977). (When judgment has been pronounced and sentence suspended upon grant of probation, probation may be revoked without notice and hearing, and defendant ordered committed pursuant to judgment).

Russell v. Doulhitt, 261 Ind. 428, 304 N.E. 2d 793 (1973). (A probationer has right to appointed counsel at hearing in light of concept of fairness under due process).

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State v. Robaleski, 96 R.I. 296, 191 A. 2d 148 (1963). (A deferred sentence may not be imposed unless and until probationer has violated condition of probation).

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Whitehead v. United States, 155 F. 2d 460 (6th Cir.), cert. denied, 329 U.S. 747 (1946). (A new criminal offense by probationer is a violation of probation regardless of whether there is an express condition that probationer lead law-abiding life).

Presentence Activities

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PART III

BIBLIOGRAPHY OF MODEL STANDARDS AND LEGISLATION

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