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STANDARD PROBATION AND PAROLE ACT

Prepared by the Committee on the
Standard Probation and Parole Act
of the
National Probation and Parole Association

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NATIONAL PROBATION AND PAROLE ASSOCIATION

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Foreword

During the thirty-four years of its corporate existence the National Probation and Parole Association has provided technical advice to legislatures and other groups in drafting and reviewing bills and laws in the fields of probation and parole, and juvenile and domestic relations courts. The legislative service includes the publication of general surveys of pertinent laws, consultation with interested groups and individuals, and the publication of model legislation.

In the field of adult probation and parole the Association has previously published three model acts—the first, in 1939, for state supervision of probation; the second, in 1940, for adult probation (included as an appendix to *Adult Probation Laws of the United States,* by Gilbert Cosulich); and the third, also in 1940, for a state administered adult probation and parole system. The latter was most widely distributed and has been used extensively by legislatures considering probation and parole laws.

The accumulation of experience with legislation and administrative practice called for an up-to-date revision of the 1940 probation and parole act. Like the previous publication, the present revision is the product of a nationally representative committee working with the staff of the Association. It takes the place of all three model acts referred to above.

The present Standard Probation and Parole Act may serve as a plan for a combined probation and parole system, for separate probation and parole acts, or for separate administrations of probation and parole (in various forms), and it adds—what was not contained in the earlier acts—a model provision for conditional release. It is a complete revision, drawing not only on the earlier materials but on recent experience throughout the country, and introducing some provisions for which there is little or no precedent in this country.

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The whole correctional process must be considered in any state's efforts to deal with the crime problem. Concentration on probation or parole alone, or on the institutional facilities alone, would fall short of the balanced program needed. Nevertheless, it must be made clear that the proper development of probation and parole can make it possible for the correctional institutions to become, instead of mass custody centers, specialized and professionalized rehabilitation services for the relatively small number of offenders requiring institutional treatment. This is the background of the sentencing article, as well as of other parts of the act.

The Association does not take the position of recommending this precise bill for adoption in every state. The act clearly states the view of the committee and the experience of the Association that in one form or another the state must assume the widest responsibility for the probation and parole service to insure adequacy of the service and coverage throughout the state. What this form should be in a particular state must necessarily grow out of its existing legal structure and services, its legal precedents, and its correctional philosophy. Unquestionably, states will experiment with new forms of administration and law. The spirit of invention is neither superfluous nor outdated.

The revision committee generously devoted considerable time to its task, contributing to and reviewing discussion material and drafts. Most members of the committee attended a two-day working meeting prior to the drafting stage. Judge Thomas Herlihy, Jr., Joseph P. Murphy, James W. Phillips, and Dr. Walter M. Wallack served as a drafting committee. Sol Rubin, legal consultant of the Association, as the staff person working with the committee in a technical advisory capacity, made numerous and substantial contributions to the creative thinking that went into the act, which were supplemented during the later stages by Francis H. Hiller, retired staff member.

WILL C. TURNBLADH
Executive Director

February 1955

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AN ACT

TO PROVIDE FOR ADULT PROBATION, PAROLE, AND CONDITIONAL RELEASE, REGULATING SENTENCES FOR CRIMINAL OFFENDERS AND PROCEDURE IN CONSIDERATION OF EXECUTIVE CLEMENCY.

COMMENT

An act may include only part of what is included in the Standard Act. For example, it may provide for a statewide probation system of local service with supervision by a state commission, including or not including subsidy, or it may provide for a separate state-administered probation or parole system, or a system of parole from local institutions, etc. For any of these a revised preamble would be necessary.

Be it enacted by . . . . . .

ARTICLE I. CONSTRUCTION AND PURPOSE

§ 1. CONSTRUCTION AND PURPOSE OF ACT

This act shall be liberally construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs, and potentialities as revealed by a case study, and that such persons shall be dealt with in the community by a uniformly organized system of constructive rehabilitation, under probation supervision instead of in correctional institutions, or under parole supervision when a period of institutional treatment has been deemed essential, whenever it appears desirable in the light of the needs of public safety and their own welfare.

COMMENT ON SECTION 1

This section stresses two main elements in modern correctio (1) that rehabilitative work with offenders must have as its point departure their individual characteristics, both psychological sociological, and (2) that, in general terms, where it is feasible, tr ment in the community is preferable to institutional treatment. Fr a legal viewpoint, preference for treatment in the community is sistent with numerous rulings of the courts favoring the liberty individuals.

§ 2. DEFINITIONS

When used in this act, unless the context otherwise requires:

(a) "Probation" is a procedure under which a d fendant, found guilty of a crime upon verdict or pl is released by the court, without imprisonment, subje to conditions imposed by the court and subject to th supervision of the probation service.

(b) "Parole" is the release of a prisoner to the co munity by the parole board prior to the expiration of his term, subject to conditions imposed by the board and to its supervision. Where a court or other authority has filed a warrant against the prisoner, the board may release him on parole to answer the warrant of such court or authority.

COMMENT ON SECTION 2

The probation definition is constructed to exclude the practice of some courts of combining a period of imprisonment with probation to follow. Such a disposition is a contradiction in terms and in concept and is condemned. The purpose of probation is to avoid, where it i feasible, the impact of institutional life.

Parole contemplates release to the community. The term is not properly used for releases on warrants or "detainers." Nevertheless, authority is needed to release prior to expiration of term in the face of detainers. Some parole boards now deny parole when there is an outstanding detainer, sometimes on the ground that they feel they do not have authority to release. The practice should be to dispose of all detainers as early as possible. Using a detainer to deny parole to a

prisoner ready for it not only penalizes him unjustly but also delays the pending proceeding and confuses its meaning.

Prompt disposition of detainers should be provided for by separate statute. The California Penal Code, Section 1381, provides as follows:

> Whenever a defendant has been convicted, in any court of this state, of the commission of a felony or indictable misdemeanor and has been sentenced to and has entered upon a term of imprisonment in a State prison and at the time of the entry upon such term of imprisonment there is pending, in any court of this State, any other indictment, information, or complaint charging the defendant with the commission of any crime, it is hereby made mandatory upon the district attorney of the county in which such charge is pending to bring the same to trial within ninety days after such defendant shall have delivered to said district attorney written notice of the place of his imprisonment and his desire to be brought to trial upon said charge, unless a continuance beyond said ninety days is requested or consented to by the defendant, in open court, and such request or consent entered upon the minutes of the court, in which event the ninety-day period herein provided for shall commence to run anew from the date to which such consent or request continued the trial.
>
> In the event such action is not brought to trial within the ninety days as herein provided the court in which such charge is pending must, on motion or suggestion of the district attorney, or of the defendant or his counsel, or of the State Board of Prison Directors, or on its own motion, dismiss such charge.

Section 1381 makes the same provisions for time of trial and dismissal of a charge filed against a person after entry upon imprisonment.

ARTICLE II. STATE BOARD

§ 3. [STATE ADMINISTERED PROBATION AND PAROLE SYSTEM] STATE BOARD: APPOINTMENT, TERMS, COMPENSATION, REMOVAL

1 A state board of probation and parole, hereinafter re-
2 ferred to as "the board," of three members appointed b
3 the governor, is hereby created. The board shall admi
4 ister the state probation and parole system. It shall e
5 deavor to secure the effective application and improve-
6 ment of the probation and parole system and the laws
7 upon which it is based. Within ninety days after this act
8 becomes effective, the members of the board shall be
9 appointed from a list of nine persons whose names shall
10 be submitted to the governor by a panel of five persons,
11 constituted as follows: the chief justice of the stat
12 supreme court, the president of the state conference o
13 social work, the president of the state probation an
14 parole officers association, the president of the state b
15 association, and the president of the state prison associa
16 tion. When this act becomes effective the governor shal
17 advise these persons of their duties under this section an
18 shall as soon as practicable call a meeting of the membe
19 of the panel so designated. Their necessary expenses i
20 attending meetings and transacting business of the pane
21 shall be paid by the state. The persons whose names a
22 submitted by the panel shall be selected with reference to
23 their demonstrated knowledge and experience in correc
24 tional treatment or crime prevention.
25 The members of the board shall give full time to th
26 duties of their office and shall receive necessary travelin
27 expenses and $ . . . . . per annum compensation. Th
28 terms of office shall be six years and until their successo
29 are appointed and have qualified, except that the fi
30 three members shall be appointed for terms of two, four
31 and six years, respectively. Their successors shall be ap-
32 pointed in the same manner as provided in this section
33 for the board members first appointed, for terms of six

34 years, and a vacancy occurring before expiration of the
35 term of office shall be similarly filled for the unexpired
36 term. Three names shall be certified for each vacancy to
37 be filled. The organizations of the board and panel shall
38 be determined by their respective members.

39 The governor may not remove any member of the
40 board except for disability, inefficiency, neglect of duty,
41 or malfeasance in office. Before such removal he shall
42 give the member a written copy of the charges against him
43 and shall fix the time when he can be heard in his defense,
44 which shall not be less than ten days thereafter. Upon
45 removal the governor shall file in the office of the secre-
46 tary of state a complete statement of all charges made
47 against the member and the findings thereupon, with a
48 record of the proceedings.

COMMENT ON SECTION 3

Replacing board members whenever there is a new administration is, of course, disastrous. It sacrifices continuity of knowledge and experience and gives political factors prior consideration. Various devices to avoid this have been adopted. In Michigan the parole board members are appointed on the basis of competitive examination by the civil service commission. In Florida a qualifying examination for certification of parole authority members is required by law. The Standard Act adopts a merit system of selection of board members. Some members of the committee would prefer selection under the state merit system instead of by the panel recommended in this draft. Continuity of policy is also supported by providing for staggered terms of board members, which is the existing plan in most statutes. For this reason terms should not be under six years. One committee member suggests eight years, and tenure during good behavior upon reappointment.

Qualifications of board members are stated in only general terms. Under a merit system for the appointment of parole board members, detailed requirements can be specified. A statement of qualifications of parole board members adopted in 1950 by the Advisory Council on Parole of the NPPA reads as follows:

> 1. *Personal:* The parole board member must be of such integrity, intelligence, and good judgment as to command public confidence. Because of the importance of his quasi-judicial functions, he must possess the equivalent personal qualifications of

the highest judicial officer of the state. He must be forthri courageous, and independent so that all decisions derive from knowledge and experience and remain unfettered.

He shall be appointed without reference to creed, color, political affiliation.

2. *Education and Experience:* The parole board memb should possess an educational background broad enough to provid him with a knowledge of those professions related to and call upon to implement the administration of parole. Understanding o the law and awareness of those conditions which contribute to crime are effective in the prevention of crime and helpful in th treatment of the offender. This experience should be of such nature and extent as to provide the member with an intimate knowledge of situations and problems confronting the offender.

With this type of experience combined with appropriate academic training it can be inferred that the parole board member himself has benefited from advanced education and is equipped with a degree qualifying him for professional practice. (Such degree may be in social work, law, medicine, psychiatry, or education.)

As indicated in the above draft section, it is recommended that the number of parole board members be not less than three, and that wherever possible they serve full time and receive adequate salaries. Where the prison population is small, it may not be feasible for the entire board to serve full time. In that case the director may serve as a member of the board with the other two members paid on a per diem basis. Some highly successful experience with such per diem members demonstrates that outstanding persons holding other positions are available for part time service.

ALTERNATIVE § 3. [STATE SUPERVISION OF LOCAL PROBATION] STATE PROBATION COMMISSION: APPOINTMENT, DUTIES, TERMS, ANNUAL REPORT

1 There is hereby established a state probation com-
2 mission to be composed of five members who shall be
3 appointed by the governor and shall serve without salary
4 as members of the commission. The first appointment
5 shall be made within sixty days after this act takes effect
6 and shall be made in such manner that the term of one

7 member of the commission shall expire each year. Their
8 successors shall be appointed by the governor within
9 thirty days thereafter for terms of five years each. All
10 vacancies occurring among the members shall be filled
11 as soon as practicable thereafter by the governor for the
12 unexpired terms.

13 The commission shall exercise general supervision
14 over the administration of probation in all courts of the
15 state. It shall endeavor to secure the effective application
16 and improvement of the probation system and the laws
17 upon which it is based. The commission shall meet at
18 stated times to be fixed by it but not less often than once
19 every two months, and on call of its chairman, to consider
20 all matters relating to probation in the state.

21 At the close of each fiscal year the commission shall
22 submit to the governor and to the . . . . . a report
23 with statistical and other data of its work, including re-
24 search studies which it may make of probation, sentenc-
25 ing, or related functions, and a compilation and analysis
26 of dispositions by criminal courts throughout the state.

27 The commission shall keep informed of the work of
28 all probation officers; may inspect the work of any pro-
29 bation officer, and shall have access to all probation
30 offices and records; shall compile and publish annually a
31 list of the probation offices of the state; shall inform courts
32 and probation officers of legislation concerning probation
33 and of other developments in the field of probation work;
34 shall require reports of their work at regular intervals
35 from probation officers; shall prescribe the form of records
36 and reports to be used by probation officers; and shall
37 adopt general rules which shall regulate methods and pro-
38 cedure in the administration of probation, including
39 investigations, supervision, casework, record keeping, and
40 accounting, which rules shall have the force and effect of
41 law.

COMMENT ON ALTERNATIVE SECTION 3

Section 3 (preceding Alternative Section 3 above) is a plan for a combined state probation and parole system. This form of organization

of probation and parole service is, of course, not the only one to be recommended. Although parole organization and service is inherently statewide, parallel with the correctional institutions, which are statewide, probation service may be organized on either a state or a local basis, or it may be a combined state and local service. It is felt, however, that the best fulfillment of the potentialities of a probation service may be obtained only with the support of a suitable state organization. Accordingly, this Alternative Section 3 proposes a plan for a state probation commission. One other related alternative section is included in this act, Alternative Section 7, which relates to staff to be appointed. These two alternative sections provide for an effective plan of state support and supervision of local probation service, not only providing for a state administration with suitable authority, but permitting a state subsidy by which a dynamic and relatively uniform development, including proper standards and salaries, may be achieved.

A combined state probation and parole service is recommended for certain jurisdictions. Through the use of the appropriate sections, this Standard Act can also serve as a draft for separate probation and parole services provided completely by the state. A combination of state and local services, as provided in Alternative Section 3 and Alternative Section 7, may be more appropriate in other states.

The National Probation and Parole Association has for a long time advocated that there be an official state body to aid in the development of probation work. In 1930 the Association adopted the following resolution: "Whereas: the supervision of probation work by a state board, department, or bureau has demonstrated its value and effectiveness in the states where such departments or bureaus have been established, Resolved: that state probation departments or bureaus be urged in all states not having the same, in order that probation service may develop to its fullest extent and usefulness in all courts." In 1931, the National Commission on Law Observance and Enforcement, in its report on Penal Institutions, Probation, and Parole, recommended that "central supervision of probation should be provided for and measures looking to some sort of statewide standards should be encouraged." Discussing specific proposals for state assistance to probation, the commission urged that the state assist in paying the expenses of probation and that "in return for this it be clothed with definite powers to establish standards of probation service and to see that these standards are lived up to."

§ 4. Seal, Orders, Records, Annual Report

1 The board shall adopt an official seal of which the
2 courts shall take judicial notice. Decisions of the board
3 may be by majority vote. The orders of the board shall not
4 be reviewable except as to compliance with the terms of
5 this act.
6 The board shall keep a record of its acts and shall
7 notify each institution of its decisions relating to the
8 persons who are or have been confined therein. At the
9 close of each fiscal year the board shall submit to the
10 governor and to the . . . . . a report with statis-
11 tical and other data of its work, including research studies
12 which it may make of probation, sentencing, parole, or
13 related functions, and a compilation and analysis of dis-
14 positions by criminal courts throughout the state.

Comment on Section 4

Professor Tappan dissents from the provision in the first paragraph regarding review of the board's orders.

Paragraph 2 of this section calls for an annual report of all judicial criminal dispositions, and centralizes the responsibility in the board. Where there is not a combined probation and parole system but a separate state probation service and a separate parole service, the responsibility for this comprehensive annual report of judicial criminal dispositions would most appropriately be placed with the probation organization.

In most states information on the distribution of correctional dispositions within the state is not available to the judges, the legislature, the probation service, or anyone else. Yet to understand the character of the state's penology it is indispensable that the use of community treatment (probation, suspended sentence, fine without imprisonment) be evaluated not in isolation but in comparison with and relation to other dispositions, particularly commitments to penal institutions. This Standard Act, therefore, deems it indispensable to a well-functioning probation system that this information be available. In order that it may be reliably obtained a central state agency must have the responsibility and the authority to gather the information from the courts throughout the state. An illustration of such an organization in action is the Rhode Island Division of Probation and Parole, which keeps

complete criminal statistics by means of a card record of every criminal disposition, whether or not the defendant is referred to the probation department for supervision.

See Section 13, imposing a duty on courts disposing of criminal cases to transmit to the board statistical data as required by the board.

§ 5. Protection of Records

1 The presentence report, the preparole report, and the
2 supervision history, obtained in the discharge of official
3 duty by any member or employee of the board, shall be
4 privileged and shall not be disclosed directly or indirectly
5 to anyone other than the board, the judge, or others en-
6 titled under this act to receive such information, except
7 that the board or court may in its discretion permit the
8 inspection of the report or parts thereof by the defendant
9 or prisoner or his attorney, or other person having a proper
10 interest therein, whenever the best interest or welfare
11 of a particular defendant or prisoner makes such action
12 desirable or helpful.

Comment on Section 5

The information-gathering function of the probation and parole service is supported by this provision, which enables the staff to assure persons providing information that it will not be routinely disclosed. A policy of routine or mandatory disclosure would have to be interpreted to informants, and would have the effect of inhibiting considerable information that would otherwise be forthcoming. This policy also supports the relationship of the probation or parole officer to persons under investigation or supervision by avoiding disclosures which would be damaging to the individual or would be the subject of recrimination.

On the other hand, it is recognized that there are situations in which it would be desirable for the court to disclose a report or parts of it to the defendant or prisoner, or his attorney. The section authorizes the court in its discretion to make such disclosure or permit inspection. In the absence of statutory provision regulating disclosure, this is probably the law at present.

§ 6. Residence, Diagnostic, and Treatment Facilities

1 The board may establish and maintain residence
2 facilities for the housing of probationers or parolees, or
3 may contract for such housing in facilities approved by
4 it; it may establish and maintain diagnostic and treatment
5 facilities for persons referred during presentence investi-
6 gation or on probation or parole, or may contract for such
7 facilities. As a condition of probation or parole, a proba-
8 tioner or parolee may be placed in such residence, diag-
9 nostic, or treatment facility by order of the court or board.
10 Placement in a diagnostic or treatment facility shall not
11 exceed ninety days, but may be renewed for further
12 ninety-day periods on certificates presented to the court
13 by the director of such facility.

Comment on Section 6

An important requirement for successful probation and parole is satisfactory living conditions for those under supervision. In the American statutes implementation of this requirement has been limited to efforts to enforce conditions of release regulating living conditions for the probationer or parolee. Such efforts, however, are often ineffectual, and in many places there is a need for facilities maintained by state or local government.

The British Criminal Justice Act authorizes the secretary of state to approve premises "for the reception of persons who may be required to reside therein by a probation order or a supervision order, and such premises shall be known (a) if the persons so residing are employed outside the premises, or are awaiting employment, as 'approved probation hostels'; (b) in any other case, as 'approved probation homes.' The Secretary of State may make rules for the regulation, management, and inspection of approved probation hostels and of approved probation homes; and such rules may in particular provide that no person shall be appointed to be in charge of an approved hostel or home unless the Secretary of State has consented to his appointment."

The British provision is commented on in an article by Cicely M. Craven, entitled "Criminal Justice in England" (*Canadian Bar Review*, November, 1949), as follows:

> An offender may come from a home so vicious, overcrowded, or even hostile that there is no chance for him unless he can get

away from it or from his bad companions or neighbors. To meet this need there must be probation hostels where the probationer may lead a healthy normal life, going out to technical school, office, factory, or shop and paying his way. Hostels have been far too few because so little financial help is available from public funds. Voluntary effort may under the Criminal Justice Act be supplemented by grants from public funds for "enlarging, improving, or carrying on approved probation hostels or homes or for establishing, enlarging, or improving premises which . . . will be approved probation homes or hostels."

See also "The Probation Hostel in England," by John C. Spencer (*Focus,* November, 1952).

For an American experience see "Short Term Treatment of Youthful Offenders," by F. Lovell Bixby (*Focus,* March, 1951), describing a residence treatment project at Highfields, New Jersey.

The need for diagnostic facilities is undisputed. The section is permissive with respect to such facilities, as it is for residence facilities provided by the board, to take into account situations in which there are existing diagnostic facilities which may be utilized by the board.

ARTICLE III. EMPLOYEES

§ 7. [State Administered Probation and Parole System] Staff to Be Appointed

1 The board shall appoint a state director of probation
2 and parole, hereinafter referred to as the director, who
3 shall appoint, with the approval of the board, a sufficient
4 number of assistant directors, probation and parole
5 officers, and other employees required to administer the
6 provisions of this act. The director and all other employees
7 of the board shall be within the classified service of the
8 civil service or public personnel system.

Comment on Section 7

In an increasing number of states probation and parole officers must be selected through competitive examinations, and they have been so selected in several states where the law does not require it. It is preferable that the requirement be written into the statute, and that the examinations be conducted by the state merit system rather than by the appointing board itself. Qualifications are not written into this draft. It is desirable that these remain flexible, as they may be where the specifications are left to the merit system in cooperation with the board. Also, if the qualifications were incorporated in the statute, it would probably be necessary to scale them below the desirable standard.

Since the staff is under the state merit system, it is governed by the merit system provisions relating to tenure, retirement, etc.

While the maximum permissible caseload is affected by various factors, the board in its request for appropriations should include provision for a sufficient number of probation and parole officers so that no more than fifty probationers or parolees will be under the supervision of any officer giving all his time to supervisory work, and a smaller number in proportion to the time he is required to spend in making investigations.

Omitted from the present draft is the following provision in the 1940 act regarding political activities of employees:

> No member or employee of the board shall (1) use his office to influence elections, or to influence the political action of any person; (2) serve as a member of the campaign committee of any political party; (3) interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or with the election officers while they are performing their duties

as such; (4) be in any manner concerned in demanding, soliciting, or receiving any assessments, subscriptions, or contributions, whether voluntary or involuntary, to any political party. It shall be unlawful for any person to be in any manner concerned with demanding or soliciting such assessments, subscriptions, or contributions from any member or employee of the board.

It was considered by the committee that this provision was not essential, for the following reasons: some of these restrictions might be an unwarrantable impairment of political rights; it sets an unrealistic standard; in some cases the state merit system may have equivalent provisions; finally, this is a matter for administrative control and therefore should be regulated not by statute but by rules of the board.

ALTERNATIVE § 7. [STATE SUPERVISION OF LOCAL PROBATION] STAFF TO BE APPOINTED; SUBSIDY

The commission shall appoint a state director of probation, hereinafter referred to as the director, who shall be its chief executive officer and who shall receive a salary as fixed by the board; it may employ such other employees, within the limits appropriated for its use by the legislature, as may be necessary in the conduct of the business of the commission. The duties of the executive officer and other employees shall be designated by the commission. The legislature shall provide for the necessary and reasonable traveling expenses of the members of the commission and of the employees thereof. After approval by the commission, such salaries and expenses shall be paid in the same manner as are the salaries and expenses of other employees of the state. Suitable office accommodations shall be provided for the commission and its employees. The director and all other employees of the commission shall be within the classified service of the [civil service or public personnel system].

The judges of the court of . . . . . and of . . . . . shall jointly appoint a chief probation officer, who shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the courts. The chief probation officer

24 and other employees shall be within the classified service
25 of the [civil service or public personnel system], and
26 their appointment, salary, tenure, and all other conditions
27 of their employment shall be in accordance with the laws
28 and regulations governing that system. Their compensa-
29 tion shall be fixed by the [governing body of the locality],
30 and shall be paid out of the [locality served] treasury,
31 provided, however, that one-half [or other part] of such
32 compensation shall be reimbursed to [locality served] by
33 the commission.

COMMENT ON ALTERNATIVE SECTION 7

This alternative section has some provisions covered in several separate sections of the draft applicable to a combined probation and parole system. In the draft of an act for a separate probation system, the following sections of this draft could be omitted, having the equivalents in the alternative sections above: Section 9, Duties of the Director; Section 10, Duties of Probation and Parole Officers.

The second paragraph of the section permits any of various possible forms of organization of a local probation service, such as combined juvenile and adult probation service or service to one or more courts. Also, with respect to organization, the service may be separated from the control of the judges, with the chief probation officer appointed, for example, by an executive officer of the locality or by the state director.

§ 8. COMPENSATION OF EMPLOYEES

1 The employees of the board shall be paid such salaries
2 as the board shall determine within the total appropria-
3 tion therefor, and shall be reimbursed for their actual and
4 necessary traveling and other expenses. The salaries and
5 expenses provided for the board and its employees shall
6 be paid in the same manner as are those of other state
7 employees upon certification by the board to [the proper
8 fiscal authorities of the state].

COMMENT ON SECTION 8

The board should if possible establish a plan for definite annual increases in salary for each grade of employment within appropriate limits.

§ 9. Duties of the Director

1 The director shall be the executive officer of the board.
2 He shall be responsible for such investigations and super-
3 vision as may be requested by the board or the courts. He
4 shall, subject to the approval of the board, divide the state
5 into districts and assign probation and parole officers to
6 serve in the various districts and courts, and shall obtain
7 office quarters for staff in each district as may be neces-
8 sary. He shall assign the secretarial, bookkeeping, and ac-
9 counting work to clerical employees, including receipt and
10 disbursement of money. He shall direct the work of the
11 probation and parole officers and other employees as-
12 signed to him; shall formulate methods of investigation,
13 supervision, record keeping, and reports; shall conduct
14 training courses for the staff; and shall seek to cooperate
15 with all agencies, public and private, which are concerned
16 with the treatment or welfare of persons on probation or
17 parole.

Comment on Section 9

In addition to the duties enumerated in this section, it is desirable that the director be given the function of administering within the state the provisions of the interstate compact for the supervision of parolees and probationers. The interstate compact, in effect in all the states, now provides that the administrator under the compact is to be appointed by the governor. Any other provision in a probation and parole act would be in conflict. In practice, where there is a state director of probation and parole, he is usually designated as compact administrator by the governor, and this is the preferred designation. In some states, however, other officials are designated.

§ 10. Duties of Probation and Parole Officers

1 Probation and parole officers shall investigate all per-
2 sons referred to them for investigation by the director of
3 probation and parole or by any court in which they are
4 authorized to serve. They shall furnish to each person
5 released under their supervision a written statement of

6 the conditions of probation or parole and shall instruct
7 him regarding these conditions. They shall keep informed
8 of his conduct and condition and use all suitable methods
9 to aid and encourage him and to bring about improvement
10 in his conduct and condition. Probation and parole officers
11 shall keep detailed records of their work; shall supervise
12 the collection and disbursement of all monies in accord-
13 ance with the orders of the court; and shall make such
14 reports in writing and perform such other duties as may be
15 incidental to those above enumerated, as the court or the
16 director may require. They shall coordinate their work
17 with that of other social welfare agencies and shall file
18 identifying information regarding their cases with any
19 social service index or exchange operating in the area to
20 which they are assigned.

COMMENT ON SECTION 10

A statute cannot elaborate the essential duties of probation and parole officers. Basically the officers are in a specialized field of social casework and their performance is tested and guided by the professional standards in the correctional casework field. In their relationships to defendants and prisoners, the goal of the officers and of the service is not effective surveillance but constructive relationships. One particular application of this basis of supervision is referred to in the statute—the officer is not a collecting agent. He makes an investigation to guide the court in issuing its order, including the rate of payment, and is responsible for supervising the defendant. Collection of money, as such, should be a clerical function of the probation and parole department, with the officer, by virtue of his relationship to the individual being supervised, being called upon in the event a problem arises related to the payment of money. At all times, however, the probation officer should know the status of payments, whether for family support or any other condition; and in small departments, or in particular cases in any department, it may be necessary for him to collect the payments.

ARTICLE IV. SENTENCE

§ 11. Investigation

1 No defendant convicted of a crime the punishment for
2 which may include imprisonment for more than one year
3 shall be sentenced, or otherwise disposed of, before a
4 written report of investigation by a probation officer is
5 presented to and considered by the court. The court may,
6 in its discretion, order a presentence investigation for a
7 defendant convicted of any lesser crime or offense. When-
8 ever an investigation is required, the probation officer
9 shall promptly inquire into the circumstances of the
10 offense; the attitude of the complainant or victim, and of
11 the victim's immediate family, where possible, in cases of
12 homicide; and the criminal record, social history, and
13 present condition of the defendant. All local and state
14 police agencies shall furnish to the probation officer such
15 criminal records as the probation officer may request.
16 Where in the opinion of the court or the investigating au-
17 thority it is desirable, the investigation shall include a
18 physical and mental examination of the defendant. If a
19 defendant is committed to any institution the investi-
20 gating agency shall send a report of its investigation to
21 the institution at the time of commitment.

Comment on Section 11

An investigation prior to sentence is important in every serious case, whether classified as felony, misdemeanor, or high misdemeanor; it should not be restricted to cases in which probation or any other particular disposition is anticipated. Only on the basis of a presentence investigation (the content of which is also indicated in general terms in the section) can the judge be sufficiently informed to decide upon the best disposition. The California and Michigan statutes require a presentence investigation in every felony case; the Colorado statute requires it in any felony case in which the court has discretion as to the penalty. In several other states this goal is more or less attained in practice.

The presentence investigation has values in the correctional process following the sentence. For example, the section requires that a copy of the investigation report go to the institution to which the defendant

is committed. The report is of indispensable importance to the classification process and the institutional authorities generally, as well as to the parole board. In view of its critical importance and of the confidential nature of much of its contents, the report in the institution and in the parole board should be protected against inspection by prison inmates.

A statutory requirement for a presentence investigation in every case would go far beyond the capacity of probation service in many jurisdictions. Compare the federal rule, which calls for a presentence investigation in every case except where waived by the court. It was felt by a majority of the committee that for an ideal system the mandatory investigation in every case would be preferred; but so long as such an ideal is far in advance of the actual available service, its enactment followed by attempts to comply with the statute would result in a lowering of standards of investigation and supervision in order to meet the investigatory caseload. On the other hand there is need in all cases for some type of screening process which would afford a brief review to determine when a full presentence investigation is indicated.

At line 9 the word "promptly" is used for the time within which a presentence investigation shall be made. In a jurisdiction in which the experience is that substantial delays occur, it may be well for the court to require that reports be submitted within a stated period.

§ 12. Sentence and Modification; Civil Rights

1 Whenever any person has been found guilty of a
2 crime or offense upon verdict or plea, the court may ad-
3 judge as follows: (1) release the defendant on probation;
4 (2) suspend the imposition or the execution of sentence;
5 (3) impose a fine as provided by law for the offense; (4)
6 impose any combination of (1), (2), and (3); or (5)
7 commit the defendant to an institution with or without
8 a fine, as provided by law for the offense. In imposing a
9 fine the court may authorize its payment in installments.
10 In releasing a defendant on probation the court shall di-
11 rect that he be under the supervision of [the probation
12 agency; see Section 3 and Alternative Section 3].
13 In committing a defendant to an institution the court
14 shall not fix a maximum term of imprisonment, but the
15 maximum term provided by law for the offense for which
16 the prisoner was convicted and sentenced shall apply in

17 each case. The court may in its discretion fix a minimum
18 term of imprisonment, which shall in no case exceed one-
19 third of the maximum term provided by law for the
20 offense for which the defendant was convicted, or seven
21 years, whichever is less.
22 The court may modify a judgment within sixty days
23 after it is imposed. The court may reduce a minimum
24 term of imprisonment at any time before the expiration
25 thereof upon the recommendation of the board and when
26 the court is satisfied that the best interests of the public
27 and the welfare of the prisoner will be served by such
28 reduction. Such recommendation and order of reduction
29 shall be made in open court.
30 Dispositions other than commitment to an institution,
31 and such commitments which are revoked within sixty
32 days, shall not entail the loss by the defendant of any
33 civil rights.

COMMENT ON SECTION 12

This section covers the entire range of dispositions available to a criminal court (except the capital penalty). It is based on the realization that probation and suspended sentence are dispositions to be considered not in isolation from other correctional measures but in relation to them. Thus the preceding section authorizes a presentence investigation in any case, not merely in those cases in which probation is anticipated. The act (see Sections 1 and 2 on construction and purpose and the definition of probation) places emphasis on community treatment as a correctional method, but so long as there is not a diminution in the use of institutional treatment, the use of probation will necessarily be limited. The development of probation to its full potential involves providing supervision not only to individuals who would be released if there were no supervision but, more important, to individuals who, if there were no supervision, would be committed to correctional institutions.

Fines

The same purpose is inherent in the provision authorizing payment of fines in installments. The fine is essentially a disposition looking toward community treatment. However, in many cases where the defendant cannot pay immediately, he is committed despite the court's confidence that he could be released without danger. The authorization

of payment of a fine in installments, which may be combined with probation supervision, supports the disposition as a process of correction in the community. By avoiding commitment of an individual deemed not suitable for institutional treatment, it helps to ease the institutional problem with respect both to overcrowding and to rehabilitative processes. In England a most dramatic reduction in prison population was effected by the requirement, enacted in 1914, that time must be granted for payment of fines (except where special reasons make the granting of time inappropriate).

A body of precedents might be compiled regarding the proper and improper use of fines, but such an extensive discussion is beyond the scope of these comments. It is obvious, however, that a fine is especially inappropriate in cases of nonsupport and abandonment, in cases where the prisoner is without financial means and the intent of the court is to assist and encourage him, and in other cases where the principal effect of a fine would be to deprive the family more than the offender.

Where a fine is combined with probation, the collection of payments should remain primarily a clerical function, with the probation officer acting when a problem arises with respect to the ability of the defendant to pay or his attitude toward payment. (See Section 10, Duties of Probation and Parole Officers, on collections.)

Criteria for Granting Probation

The court's discretion to order probation should not be limited by statutory exceptions. The offense is only one of the factors to be considered in arriving at a disposition, and no particular offense should constitute an automatic bar to probation. In general the determination as to the granting or denial of probation should be based on the likelihood of the defendant's remaining law-abiding under probation supervision, and on the comparative prospects for rehabilitating him in the community with the facilities available in it, or in the institution.

Under this section sentencing is in the hands of the judge. In several jurisdictions the jury still controls the sentence. Jury sentencing is to be condemned, since juries cannot utilize a presentence investigation as a guide, and they make compromises between finding and sentence. In other jurisdictions some judges are less inclined to grant probation following a jury trial than after trial by the judge or a plea of guilty.

It is improper to deny probation to a defendant who has insisted on a jury trial, since the practice is in effect a denial of free right to a jury trial. Trial by jury or court, or acceptance of a plea of guilty, should not be one of the criteria for granting probation.

Fixing the Sentence

The 1940 draft prescribed the statutory maximum in all cases and no minimum sentences, with complete discretion in the board to parole at any time. The committee divided evenly on the retention of this provision. The question was therefore referred to the Legislative Committee of the Board of Trustees, which concluded that the Standard Act should incorporate some sentencing method which would give both the court and the parole board appropriate roles in the treatment process. A means should exist for both court and board to give joint consideration to the time of release in individual cases in which it is needed.

The committee discussions around the second paragraph of Section 12 clearly establish that the debates about the form of the sentence—indeterminate, definite, and the variations possible in each form—are continuing, with no more, and perhaps less agreement than at some times in the past. Whether this represents opinion in flux, or changing penology, or both, the form of sentence is the only major area in which essential unanimity did not come out of committee deliberations. No doubt the subject is one for continued study.

Comments of several committee members follow.

Professor Tappan takes the position that a minimum should be set. He writes:

> I know of no sound criminological argument for sentences with only a maximum. Even under definite sentence systems a minimum date of parole eligibility is set—generally reasonably related to the term of the sentence. I suppose the argument is that "expert" parole board members are in the best position to determine when a man should go out under supervision. For my part, considering the terrific variations in expertness of such commissioners, I think that it is far sounder to require that minimum terms be fixed by judges within the policy provisions of the law, rather than leaving it wholly to the discretion of administrators. Moreover, I believe that parole board members would be confronted by an even more difficult task than is now true where they must start reviewing the files within one year after commitment: within a sentence from one to twenty years or more, at what time should the prisoner be released? As I see it this presents issues of deterrence, incapacitation, and reformative treatment. I believe the average parole board is not prepared to weigh all the relevant considerations. I believe that the minimum required in any given case, determined very largely by criteria of deterrence and incapacitation, can best be set in a general way by the statutory range within which the judge must determine the specific minimum.

Judge Francis holds that the judge should set both the minimum and the maximum term. He writes:

> A judge who has experience in the administration of the criminal law, who knows what particular crimes are presently besetting the community, who frequently has spent time in the trial of the offender and so has come to some conclusion as to his character, who has studied the presentence report, who has had experience in matters of sentence, who is aware of the significance of probation and parole and the results thereof, should not be cast aside on the assumption that his judgment cannot compare with that of a parole board. The courts and the board have their places in the administration of the criminal law; those respective places have been indicated and I am unwilling at present to concede that justification exists for subordinating the function of the court in pronouncing the original sentence in terms of a minimum and maximum to the discretion of a parole board.
>
> The criminological psychiatrist, who advocates that all criminal offenders should be restored to society as soon as they become vocationally, socially, and emotionally adjusted, and that the determination of such adjustment should be left to the discretion of the parole board, concedes that his science has its definite limitations and that at best it is presently in the experimental and developmental rather than practical stage. At present he contends for no more than that, in the hands of competent clinicians, a system of diagnosis, classification, and diversified treatment could be initiated. And he says that when treatment is related to cause, a high degree of rehabilitation is achievable. (See Edwin J. Lukas, "A Criminologist Looks at Criminal Guilt," in *Social Meaning of Legal Concepts,* Vol. 2, p. 148.)
>
> I am heartily in accord with these objectives but I do not believe that the science has progressed far enough as of now to justify discarding completely the judge's prerogative of minimum and maximum sentence. The old notion of punishment being made to fit the crime provides, of course, no certainty of adequate protection of society, or of deterrence or rehabilitation. But we are not ready for the abolition of the notion completely; there is still use for the skill of the judges, tempered as it is becoming by acquaintance with the theories, and to some extent perhaps the results, of the criminologists.
>
> For the present I believe coordination of efforts between the courts and the parole board can best be accomplished by a recognition on the part of the courts of a need for greater spread between minimum and maximum sentences. This spread will provide a greater field of operation for the criminologists and psychiatrists and enable them to demonstrate to the community that

their science will produce better results in the way of rehabilitation and crime deterrence.

Mr. Finsley supports the provision for the maximum term, but opposes a minimum sentence. He writes:

> I would prefer to see the wording of the 1940 act retained. Such wording does not permit a minimum sentence. The abuses spoken of do not stem from statutes such as this but from other forms of "indeterminate sentence" which do permit a minimum. Our goal should be to try to develop the proper type of indeterminate sentence rather than duck the whole issue.
>
> Certainly there are abuses and "destructive features" present in the definite sentence system also. I have worked under both types of laws, and the parole board has much more flexibility under the proper indeterminate law than any other.

Mr. Pollock prefers a maximum term fixed by the judge, with parole eligibility at one-third of such term. He writes:

> The courts have, and properly should have, a real place in the sentencing process. Therefore, I am strongly in favor of adopting legislation which would authorize the court in its discretion to impose a sentence the term of which shall not exceed the statutory maximum provided for a specified offense and which would authorize the parole board to grant parole after a prisoner has served one-third of the term imposed by the court. Experience in the trial of several thousand cases leads me to the belief that it would not be desirable for the maximum term provided by law for the offense for which a prisoner was convicted to apply in every case.
>
> In the courtroom vernacular there is a considerable difference between a case of rape and *real rape,* burglary and *real burglary.* Under the law of Pennsylvania, burglary is committed when a person enters any building with the intention to commit a felony therein. Thus a person who goes into a department store with intent to steal an article valued at one dollar is guilty of burglary.
>
> I am opposed to the second paragraph of Section 12, solely on the ground that it precludes a judge from imposing a maximum term of imprisonment in his discretion and provides that the maximum term of imprisonment provided by law for the offense shall apply in each case.

Mr. Phillips commented:

> It is my belief that the indeterminate sentence is the only proper way to coordinate the functions of the court, the correctional system, and the parole authority. It is, therefore, in my judgment essential to a parole act. The observation that a parole system

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works with definite sentences is accurate but does not consider how much better it could work otherwise. Virginia may not be typical, but out of 1800 commitments a year there are a substantial number of one- and two-year commitments, probably 50 per cent. Take a one-year sentence and try to visualize any program of rehabilitation. On the thesis that supervision should not extend past the fixed sentence, how can anything adequately be accomplished within the framework of such a sentence? It is my belief that definite-sentence states elsewhere will have this terrific group of short-sentence persons in which adequate treatment and parole have great difficulty because of the limitation of time.

Modification of Sentence

The provision authorizing the modification of a sentence within sixty days after it is imposed again emphasizes the policy of a sentencing procedure which facilitates full consideration. The provision permits a reasonable period of time, not so much for the correction of legal error as for further consideration by the court as to the social wisdom of the sentence imposed. The period of sixty days is a suggestion only; it follows among others the federal rules of criminal procedure. It is the view of the revision committee that the 1940 draft was unnecessarily rigid in requiring that "the court shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence."

Civil Rights

There should be no doubt that probation or suspension of sentence is a final judgment, from which an appeal may be taken. The present draft, like the 1940 model act, establishes this clearly by making probation and suspension of sentence dispositions of a case. In one important respect, however, the consequences of an institutional commitment are differentiated from the consequencies of the other authorized dispositions. It is provided in this section that only a commitment entails loss of civil rights. There is some existing precedent for retention of civil rights upon conviction followed by suspension of sentence or probation. A number of statutes provide for the restoration of civil rights upon discharge from probation. It seems clearly preferable from a treatment point of view for an individual under supervision in the community to be encouraged to behave as do the other members of the community, which suffers no danger in the exercise of these right. (See the article by Paul W. Tappan, "Loss and Restoration of Civil Rights of Offenders," NPPA *Yearbook,* 1952.) Compare Section 27 herein, Discharge of Prisoner, Parolee, or Conditional Releasee. The enactment of such a provision respecting civil rights would generally entail the

examination of other provisions of the code, some of which might be found to be in conflict.

No Probation before Conviction

The 1940 model act authorized probation before conviction with the consent of the defendant. This provision did not receive the unanimous endorsement of the 1940 committee and was unanimously condemned by the present committee. One of the difficulties with the provision is that if a determination of guilt is not made originally and probation is later revoked, a delayed trial is necessary with many disadvantages over an immediate trial. Some members of the committee felt that the provision might lead to judicial abuse of the defendant's rights. In any event, much of the purpose of the provision is obtained by avoiding the loss of civil rights on conviction, except as to committed defendants.

Multiple Sentences

One sentencing practice not covered in Section 12 and requiring further development, particularly in administrative practice, is the sentencing of a defendant convicted on more than one charge, or against whom additional charges may be pending. The imposition of multiple sentences is condemned by the committee, whether within one court or several. Where the defendant is convicted on several counts within one court, only one sentence should be imposed. Where charges are pending in other courts, every effort should be made to obtain their prompt disposition, so that a single sentence may be imposed wherever possible. Multiple sentences to be served consecutively are warranted, however, when a defendant convicted on several counts of minor offenses is found to be a seriously antisocial person.

In line 2 the word "offense" is included for use in jurisdictions in which a quasi-criminal charge is so called.

§ 13. Information from Courts

1 **It shall be the duty of the court disposing of any**
2 **criminal case to cause to be transmitted to the board sta-**
3 **tistical data, in accordance with regulations issued by the**
4 **board, regarding all dispositions of defendants whether**
5 **found guilty or discharged.**

Comment on Section 13

See Section 4, requiring the board to compile dispositions by criminal courts throughout the state, and comment thereon.

ARTICLE V. PROBATION AND SUSPENSION OF SENTENCE

§ 14. Conditions of Probation or Suspension of Sentence

1 The board may adopt general rules or regulations con-
2 cerning the conditions of probation or suspension of
3 sentence. The conditions shall apply in the absence of any
4 specific or inconsistent conditions imposed by the court.
5 Nothing herein contained shall limit the authority of the
6 court to impose or modify any general or specific condi-
7 tions of probation or of suspension of sentence.
8 The probation officer may recommend and by order
9 duly entered the court may impose and may at any time
10 modify any conditions of probation or suspension of
11 sentence. Due notice shall be given to the probation officer
12 before any such conditions are modified and he shall be
13 given an opportunity to be heard thereon. The court shall
14 cause a copy of any such order to be delivered to the pro-
15 bation officer and the probationer.

Comment on Section 14

A list of authorized conditions does not broaden the stated discretion of the court. However, if it is thought desirable to inform legislatures and courts as to the purposes of probation, the following provision may be added to the section: "The court may include among the conditions of probation the following, or any other: That the defendant shall (a) avoid injurious or vicious habits; (b) avoid persons or places of disreputable or harmful character; (c) report to the probation officer as directed; (d) permit the probation officer to visit him at his home or elsewhere; (e) work faithfully at suitable employment as far as possible; (f) remain within a specified area; (g) pay a fine or costs, applicable to the offense, in one or several sums as directed by the court; (h) make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court; (i) support his dependents."

§ 15. Transfer of Jurisdiction

1 Whenever a defendant on probation or under sus-
2 pended sentence is permitted to go from one court district
3 in which he is being supervised to another court district,
4 jurisdiction over him may be transferred, in the discretion
5 of the court, from the court for the district from which
6 he goes to the court for the other district having jurisdic-
7 tion over the offense of which the defendant was con-
8 victed, with the concurrence of the latter court. There-
9 upon the court for the district to which jurisdiction is
10 transferred shall have all power with respect to the de-
11 fendant that was previously possessed by the court for the
12 district from which the transfer is made, except that the
13 period of probation or suspension of sentence shall not be
14 changed without the consent of the sentencing court.

Comment on Section 15

Under the interstate compact for the supervision of parolees and probationers, interstate transfer of supervision may be made. This section, facilitating and simplifying the intrastate transfer of probationers, is desirable to avoid the necessity of returning the defendant to the sentencing court for appearances in connection with any phase of supervision. The provision is similar to a provision for transfer added to the federal probation act several years ago.

§ 16. Period of Probation or Suspension of Sentence; Termination

1 The period of probation or suspension of sentence
2 shall be fixed by the court at not more than five years,
3 subject to renewals by the court for fixed periods not ex-
4 ceeding five years, but in no event shall the total period of
5 probation or suspension of sentence exceed the maximum
6 term provided by law for the offense, except that where
7 the defendant is guilty of failure to provide subsistence for
8 his dependents, the period may be continued as long as
9 responsibility for support continues. Probation or sus-
10 pension of sentence may be terminated by the court at
11 any time and upon such termination, or upon termination

12 by expiration of the term, an order to this effect shall be
13 entered by the court.

COMMENT ON SECTION 16

Although under the above section, the term of probation may be quite long, the provision regarding term is importantly modified by the provision that probation or suspension of sentence may be terminated by the court at any time. In most cases probation will terminate, successfully, prior to the expiration of a five-year period. To continue supervision beyond the effective period is a burden on the probation service and an obstruction to ultimate rehabilitation. For most individuals the effective period will not be more than two or three years, and in such cases discharge should follow. The authorization of extended periods of probation is for the relatively small number of cases in which continued treatment is necessary. Mr. Pollock opposed the provision for renewal, commenting: "If a man has lived up to the conditions of his probation for the period of time stipulated by the court, he ought not to be subject to further control. Inherent in the practice authorized by this section is a great deal of mischief which, in my opinion, should be avoided. Moreover, the right to renew may result in abuse on the part of the probation officer."

§ 17. ARREST; SUBSEQUENT DISPOSITION

1 At any time during probation or suspension of sen-
2 tence the court may issue a warrant for the arrest of a de-
3 fendant for violation of any of the conditions of release,
4 or a notice to appear to answer to a charge of violation.
5 Such notice shall be personally served upon the defend-
6 ant. The warrant shall authorize all officers named therein
7 to return the defendant to the custody of the court or
8 to any suitable detention facility designated by the court.
9 Any probation officer may arrest such defendant without
10 a warrant, or may deputize any other officer with power
11 of arrest to do so by giving him a written statement setting
12 forth that the defendant has, in the judgment of the pro-
13 bation officer, violated the conditions of his release. The
14 written statement delivered with the defendant by the
15 arresting officer to the official in charge of a county jail
16 or other place of detention shall be sufficient warrant for
17 the detention of the defendant. After making an arrest the

18 probation officer shall present to the detaining authorities
19 a similar statement of the circumstances of violation. Pro-
20 visions regarding release on bail of persons charged with
21 crime shall be applicable to the defendants arrested under
22 these provisions.
23 Upon such arrest and detention, the probation officer
24 shall immediately notify the court and shall submit in
25 writing a report showing in what manner the defendant
26 has violated the conditions of release. Thereupon, or upon
27 an arrest by warrant as herein provided, the court shall
28 cause the defendant to be brought before it without un-
29 necessary delay for a hearing on the violation charged.
30 The hearing may be informal or summary. If the violation
31 is established, the court may continue or revoke the pro-
32 bation or suspension of sentence, and may require the
33 defendant to serve the sentence imposed, or any lesser
34 sentence, and, if imposition of sentence was suspended,
35 may impose any sentence which might originally have
36 been imposed.
37 A probationer or defendant under suspension of sen-
38 tence for whose return a warrant has been issued by the
39 court shall, if it is found that the warrant cannot be served,
40 be deemed to be a fugitive from justice or to have fled
41 from justice. If it shall appear that he has violated the pro-
42 visions of his release, the court shall determine whether
43 the time from the issuing of the warrant to the date of his
44 arrest, or any part of it, shall be counted as time served on
45 probation or suspended sentence.

COMMENT ON SECTION 17

A charge of violation of probation or suspension of sentence should not call routinely for the incarceration of the defendant. For one thing, the charge may not be sustained, and for another, even if sustained, probation or suspension of sentence may be continued by the court. Therefore, the section provides for notice as one alternative method of instituting a proceeding on a charge of violation, and provisions regarding release on bail are made applicable.

Probation officers should, however, have power to arrest. It is a necessary incident of their supervisory power over probationers and

probably has a healthy effect upon them. But it must be impressed upon the probation officers that arrest is a last resort and means in some measure that their supervision has failed.

When arrested, probationers rarely are able to make bail. So they stay in jail for varying periods before their hearings and more often than not lose their employment even when the court does not revoke the probation. If the job is gone the value of the probation is seriously impaired—thus the need for persons of good judgment and discretion in probation departments.

In the last paragraph of the section both the phrase "fugitive from justice" and "fled from justice" are used. The term "fugitive from justice" is generally applicable to an individual who has committed a crime and then withdraws himself from the state's jurisdiction. The term "fled from justice" is applicable to a person who commits a crime and conceals himself within the jurisdiction to escape apprehension. The plan of the above section is that time on probation prior to an alleged violation shall be deemed service of the term of probation, but that where a warrant is issued for a violation and the violation has been established, it is within the discretion of the court as to what credit for time served thereafter shall be allowed.

A hearing on a charge of violation of conditions is as much a protection to the court against error as it is a protection to the probationer. However, the hearing is administrative in nature and its form is at the discretion of the court.

ARTICLE VI. PAROLE AND CONDITIONAL RELEASE

§ 18. Parole Authority and Procedure

At any time after service of the minimum term of sentence, less such work and good behavior credits as have been earned—or, where such term was not imposed, at any time—the board shall release on parole any person confined in any correctional institution administered by state authorities, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the community or to himself. All paroles shall issue upon order of the board, duly adopted.

Within one year after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstance of his offense; the report filed under Article IV, Section 11 hereof; his previous social history and criminal record; his conduct, employment, and attitude in prison; and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings, or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

COMMENT ON SECTION 18

In most states the boards consider prisoners for parole without formal application. The requirement that the board shall examine the record of each prisoner within one year after his admission does not, of course, mean that any prisoner *must* be paroled at that time, but it assures every prisoner that his case will be considered without his having to prepare any documents, secure petitions, or employ an attorney.

A routine which makes prisoners scramble to get their cases presented to the parole board is unfair and demoralizing. It can be prevented by the adoption of rules by the board and the establishment of approved procedures. Parole consideration should be a routine part of correctional treatment, not a favor or a form of leniency. Such administration requires systematic and equal consideration of all prisoners. Where the number of cases does not make it impracticable the board should not only consider the records but also interview every prisoner at least annually.

The only limitation upon parole discretion in this section is that the minimum term must be served, if such has been imposed by the court, and this may be reduced by the court upon recommendation by the board. (See Section 12.) The board should not be hampered by arbitrary legislative rules of eligibility based upon offense, length of imprisonment, or other factors, which, however important, are by no means conclusive without reference to other circumstances. The board should be given broad discretion to make rules, to modify such rules from time to time in the light of experience, to make exceptions when such are proper, and to give all the factors consideration in each case.

In the first clause of the section, "the board *shall* release on parole . . . ," the term "shall" does not require the board to release any prisoner at any time, but only, as stated later in the sentence, "when in its opinion there is reasonable probability that the prisoner can be released without detriment to the community or to himself." The word "shall" however, stresses the policy of the Standard Act that treatment in the community is to be preferred to institutional treatment, where it is feasible, "without detriment to the community or the prisoner himself." The entire section makes it clear that the basic criterion for release is the potentiality of the prisoner from the point of view of treatment. Denial of parole should be determined on the basis of a case analysis and should not be a punitive action.

In states having capital punishment, the phrase "except persons under sentence of death" should be inserted after the word "authorities" in line 6.

§ 19. Conditional Release

1 A prisoner having served his term or terms, less such
2 work and good behavior credits as have been earned, shall,
3 upon release, be deemed as released on parole until the
4 expiration of the maximum term or terms for which he
5 was sentenced.

Comment on Section 19

Conditional release provisions are found in the United States and Wisconsin systems. It is preferable that, with rare exceptions, prisoners released be assisted in their readjustment in the community by the professional skills and other resources available to a parole system. Most of these releases should be by parole. However, in cases in which the prisoner is not granted parole but is nevertheless released by virtue of good time credits prior to the expiration of his term, a period of time is available in which assistance through supervision can be provided. This section establishes such an authority in the parole board, and brings into play its service and the provisions relating to conditions of parole, and termination by revocation, discharge, or expiration of term.

§ 20. Parole from Local Institutions

1 The board shall promulgate regulations regarding and
2 shall direct, control, and supervise the administration of a
3 system of paroles from correctional institutions adminis-
4 tered by county and municipal authorities.

Comment on Section 20

Parole of prisoners from local institutions is frequently stamped with the defects existing in the administration of institutions in many places—political control, absence of program and professional staff, inadequate appropriations, etc. Systems of parole from local institutions take a variety of forms even within the same state, and at times even within the same institution. For many institutions no parole system is authorized, and in some others legal authority exists but is not used.

In some jurisdictions release from local institutions is controlled by the criminal court judges; in others it is administered by institutional personnel or local executive officers; and in a number of jurisdictions authority to grant release from local institutions is placed in the state parole board.

In the first edition of the model probation and parole act, the authority of the board to release applied equally to state and local institutions, but the board was not required to consider the cases of those serving sentences of less than a year. A large percentage of prisoners in local institutions are serving terms of between six months and a year and should be considered for parole. In fact, many prisoners serving shorter terms should be eligible for and considered for parole. In practice, very few prisoners in local institutions, even those serving over one year, are released by state parole boards, which give their first attention and priority in service to state prisoners.

It is, therefore, probable that parole from local institutions will and should remain principally a local responsibility. Like local probation service, however, the existing situation in local parole systems strongly calls for efforts by the state, through the state parole system, to standardize, improve, and regulate the procedures.

Release and supervision by the state board is certainly one of the forms of organization which may be used, particularly where local institutions are established on a regional basis. It would probably be desirable, in such case, to provide a separate staff for consideration of local institution prisoners; for example, state regional directors might be required to consider in the first instance the eligibility of the prisoners for parole. They would act as referees, transmitting their findings to the state board for final action.

§ 21. Information from Prison Officials

It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether the prisoner shall be paroled.

Comment on Section 21

Parole decisions should be based upon much more information about prisoners than is obtained by most prison staffs. Every prison

should have a classification system based upon a many-sided study of each prisoner and his progress from time to time. When the prison staff is adequate for such well-rounded studies, its reports and recommendations, supplemented by information as to the prisoner's prospects in the community to which he is to go, form an important part of the information upon which the board will base its decision.

§ 22. Information from Attorneys and Other Persons

1 The board shall not be required to hear oral state-
2 ments or arguments by attorneys or other persons not
3 connected with the correctional system. All persons pre-
4 senting information or arguments to the board shall sub-
5 mit their statements in writing, and shall submit there-
6 with an affidavit stating whether any fee has been paid or
7 is to be paid for their services in the case, and by whom
8 such fee is paid or to be paid.

Comment on Section 22

Improper activities of paid attorneys have done much to bring parole into disrepute in many states. Some attorneys solicit business from prisoners, representing that they have influence to get paroles for a fee. The representation is, unfortunately, well founded in some states. Even attorneys who are members of the legislature present cases before some parole boards in spite of the fact that in doing so they may be exerting improper influence by reason of their power to oppose appropriations and policies of the state officers who compose the parole board.

In general, it is undesirable to have attorneys or relatives and friends of the prisoner present when the parole board is interviewing him and discussing his potentialities for parole. But in order to hear the arguments and pleas of these persons, some parole boards hold special meetings at which they may appear, but at which decisions are not necessarily made. These meetings make it easier for board members to discourage such persons from attempting to interview them individually, a most undesirable practice.

§ 23. Witnesses; Production of Records

1 The board shall have power to issue subpoenas re-
2 quiring the attendance of such witnesses and the produc-

3 tion of such records, books, papers, and documents as it
4 may deem necessary for investigation of the case of any
5 person before it. Subpoenas may be signed and oaths ad-
6 ministered by any member of the board. Subpoenas so
7 issued may be served by any sheriff, constable, police,
8 parole or probation officer, or other law enforcement
9 officer, in the same manner as similar process in the
10 . . . . . court. Any person who testifies falsely or
11 fails to appear when subpoenaed, or fails or refuses to
12 produce such material pursuant to the subpoena, shall be
13 subject to the same orders and penalties to which a person
14 before a court is subject. Any . . . . . court of this
15 state, upon application of the board, may in its discretion
16 compel the attendance of witnesses, the production of
17 such material, and the giving of testimony before the
18 board, by an attachment for contempt or otherwise in
19 the same manner as production of evidence may be com-
20 pelled before such . . . . . court.

COMMENT ON SECTION 23

This section is not intended to encourage formal hearings with witnesses and sworn testimony. In most cases the board will obtain the information it needs from reports of the institutional classification committees, investigations of the probation and parole officers, and other reports, but in exceptional cases the board may need to exercise the powers conferred in this section in order to test the credibility and knowledge of persons who are intervening for or against the parole of a prisoner or who are believed to be withholding important information.

§ 24. PROVISION FOR PAROLEE

1 When a prisoner is placed on parole he shall receive,
2 from the state, civilian clothing and transportation to the
3 place in which he is to reside. At the discretion of the board
4 the prisoner may be advanced such sum for his tempo-
5 rary maintenance as the board may allow, not to exceed
6 . . . . . dollars, from a fund which shall be pro-
7 vided for the use of the board for this purpose.

COMMENT ON SECTION 24

In most states the prisoner released on parole receives clothing, a sum of money, and transportation. Inadequate provision for paroled prisoners makes it difficult for many of them to subsist without begging or stealing.

§ 25. RETURN OF PAROLE VIOLATOR

At any time during release on parole or conditional release the board may issue a warrant for the arrest of a released prisoner for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any parole or probation officer may arrest such prisoner 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 prisoner has, in the judgment of the parole or probation officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution to which the prisoner is brought for detention shall be sufficient warrant for detaining him. After making an arrest the parole or probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in the institution.

Upon such arrest and detention, the parole or probation officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner had violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the viola-

32 tion is established, the board may continue or revoke the
33 parole or conditional release, or enter such other order
34 as it may see fit.
35 A prisoner for whose return a warrant has been issued
36 by the board shall, if it is found that the warrant cannot
37 be served, be deemed to be a fugitive from justice or to
38 have fled from justice. If it shall appear that he has
39 violated the provisions of his release, the board shall de-
40 termine whether the time from the issuing of the warrant
41 to the date of his arrest, or any part of it, shall be counted
42 as time served under the sentence.

COMMENT ON SECTION 25

The provisions for the return of a parole violator are in general similar to the provisions for the return of a probation violator (see Section 17). As in Section 17, provision is made for bringing the prisoner before the board on a charge of violation by notice, as well as by arrest.

On the clause "fugitive from justice or to have fled from justice," see comment on Section 17.

Upon a violation being found, the board is authorized to continue parole, with or without forfeit of any period of time. Some of the existing statutes contain mandatory provisions for forfeiture of time, or even for barring continuation of parole release. It is clear that such mandatory features are punitive in purpose and effect and contrary to the purpose of the present draft.

§ 26. SERVICE OF TERM FOR ADDITIONAL CRIME

1 Any prisoner who commits a crime while at large on
2 parole or conditional release and is convicted and sen-
3 tenced therefor shall serve such sentence concurrently
4 with the term under which he was released, unless other-
5 wise ordered by the court in sentencing for the new
6 offense.

COMMENT ON SECTION 26

Any mandatory provision for consecutive service of terms would represent a punitive approach. The sentencing court, however, has this discretion and should be guided by the total treatment needs, taking into account the existing term.

§ 27. Discharge of Prisoner, Parolee, or Conditional Releasee; Restoration of Civil Rights

1 The period served on parole or conditional release
2 shall be deemed service of the term of imprisonment, and
3 subject to the provisions contained in Section 25 herein
4 relating to a prisoner who is a fugitive from or has fled
5 from justice, the total time served may not exceed the
6 maximum term or sentence. When a prisoner on parole or
7 conditional release has performed the obligations of his
8 release for such time as shall satisfy the board that his
9 final release is not incompatible with the best interest of
10 society and the welfare of the individual, the board may
11 make a final order of discharge and issue a certificate of
12 discharge to the prisoner; but no such order of discharge
13 shall be made in any case within a period of less than one
14 year after the date of release except where the sentence
15 expires earlier thereto. Such discharge, and the discharge
16 of a prisoner who has served his term of imprisonment,
17 shall have the effect of restoring all civil rights lost by
18 operation of law upon commitment, and the certification
19 of discharge shall so state.

Comment on Section 27

With reference to the restoration of civil rights on discharge, see comment on Section 12.

ARTICLE VII. EXECUTIVE CLEMENCY

§ 28. Cases of Executive Clemency: Investigations and Reports

1 All applications for pardon, commutation of sentence,
2 reprieve, or remission of fine or forfeiture shall be referred
3 to the board for investigation. The board shall thereupon
4 investigate each such case and shall submit to the gov-
5 ernor (or board of pardons) a report of the investigation,
6 together with all other information the board may have
7 regarding the applicant.

Comment on Section 28

Under the constitutions of almost all states pardon and other forms of clemency are in the hands of the governor. It is desirable, however, that a social investigation should be made of most such cases, as well as a study of their legal aspects. In most states the executive would have no facilities for making such social investigations, and the parole board would be the agency best set up to make them.

In a few states pardon and parole boards have been established with authority to issue pardons without concurrence of the governor. It is the view of the drafting committee that clemency authority should not be taken from the governor. On the other hand, it is recognized that abuses of this executive authority exist and serve to injure the proper administration of the correctional system. In some cases there is widespread use of "conditional pardon," which undercuts the parole system. Sometimes outright pardons are granted to prisoners who have been denied parole.

It is therefore necessary to recognize the criteria applicable to situations calling for pardon. The adoption of several of the provisions of this Standard Act would go far to reducing the existing abuses in the grant of pardons: a liberal parole eligibility law (Section 18), authorization to the courts to alter sentences even after commitment (Section 12), and restoration of civil rights on the discharge of a prisoner, parolee, or conditional releasee (Section 27).

This is the position taken also in the *Attorney General's Survey of Release Procedures,* Volume 3, "Pardon" (Government Printing Office, 1939), which in its concluding section points out that the exercise of the pardoning power should be restricted from two sides. The first of these is stated as follows: "All releases on condition of good

behavior and under supervision should be under the parole law, and not by conditional pardon." The second: "Criminal procedure should be liberalized so as to permit reversal of a conviction where new evidence is found indicating that the defendant was innocent."

The *Attorney General's Survey of Release Procedures* points out that if such reforms were adopted, executive clemency would still be needed "for the same general purposes for which it has historically always been used—to take care of cases where the legal rules have produced a harsh, unjust, or popularly unacceptable result, or where for political reasons the rule of law should be set aside." It continues as follows:

> We may enumerate some of the situations which will continue to arise, in which pardon may be proper:
>
> (a) Political upheavals and emergencies, wherein pardon may be necessary to pacify a revolution-torn country or unite a country for war.
>
> (b) Calm second judgment after a period of war hysteria, during which persons were given very severe sentences for political offenses later realized to have been very minor or upon evidence later felt to be insufficient.
>
> (c) Similarly, changed public opinion after a period of severe penalties against certain conduct which is later looked upon as much less criminal, or as no crime at all. Prohibition is a recent example. The present severity against kidnappers may give rise to cases which future judgment may recommend for clemency.
>
> (d) Cases "where punishment would do more harm than good," to quote Bentham, as in certain cases of sedition, conspiracy, or acts of public disorder.
>
> (e) Technical violations leading to hard results. We have mentioned at least one example—where the legal "principal" in a crime may be only a comparatively innocent hireling, while the brains of the plot is legally guilty only as an accessory.
>
> (f) Cases where pardon is necessary to uphold the good faith of the state, as where a criminal has been promised immunity for turning state's evidence.
>
> (g) Cases of later proved innocence or of mitigating circumstances. Although we have recommended liberalizing judicial procedure so that most of these cases could be handled by proceedings to reverse the conviction, probably some restrictions will necessarily be retained upon the right to such judicial review, and cases may still arise in which such review is impossible, though innocence is clearly probable.

(h) Applications for reprieve or commutation, especially in death sentence cases. Here, too, liberalization of judicial proceedings should permit reprieves to be granted by the courts. But while there is somewhat less logical reason for retaining this power in the executive than can be found for most of the other examples listed above, this last recourse to the governor in these cases is a benevolent power, which we shall probably want to retain and it will no doubt continue to be a major part of the pardoning power.

ARTICLE VIII. APPLICATION OF ACT

§ 29. Application to Persons Now on Probation and Parole

1 The provisions of this act are hereby extended to all
2 persons who, at the effective date thereof, may be on pro-
3 bation or parole, or eligible to be placed on probation or
4 parole under existing laws, with the same force and effect
5 as if this act had been in operation at the time they were
6 placed on probation or parole or became eligible to be
7 placed thereon as the case may be.

§ 30. Participation of Counties, Municipalities, or the United States

1 The board, with the written consent of the governor,
2 shall have the power and duty (1) to enter into an agree-
3 ment with the governing officials of any county or munici-
4 pality of this state for the payment by said county or
5 municipality of part of the cost of the performance by the
6 board of any parole or probation services within the
7 county or municipality; (2) to accept from the United
8 States of America or any of its agencies such advisory
9 services, funds, equipment, and supplies as may be made
10 available to this state for any of the purposes contem-
11 plated by this act, and to enter into such contracts and
12 agreements with the United States or any of its agencies
13 as may be necessary, proper, and convenient, not contrary
14 to the laws of the state.

Comment on Section 30

This section does not reflect existing practice in this country, but it authorizes the board (1) to accept local financial participation if a situation occurs in which it seems advisable, and (2) to accept federal aid if it becomes available.

§ 31. Cases of Juveniles Excluded

The provisions of this act shall not apply to probation in the juvenile courts or to parole from [names of the state institutions for juveniles].

§ 32. Time of Taking Effect; Quarters

The governor shall appoint the members of the board and call a meeting thereof on or before ..... The board shall immediately thereafter set up the system herein provided for and make the necessary appointments of its director, assistant directors, officers, and other employees, and this act shall thereupon become effective in all respects. Suitable quarters, supplies, and equipment shall be provided. The principal office of the board shall be in [ordinarily the state capital].

§ 33. Appropriation

The sum of $..... is hereby appropriated for the purpose of this act for the fiscal year [or biennium] ending.....

§ 34. Acts Repealed

Chapters..... and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 35. Effect of Holding of Unconstitutionality

If any part of this act shall be held to be unconstitutional such holding shall not affect any other part.

END