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Edmund C. Dickinson
West Virginia University College of Law

Clyde L. Colson
West Virginia University College of Law

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PROBATION AND PAROLE

EDMUND C. DICKINSON*

AND

CLYDE L. COLSON**

I. PROBATION.

A. Probation Defined and Explained.

Probation has been generally defined as "a process of treatment prescribed by the court for persons convicted of offenses against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court (or other constituted authority) and is subject to supervision by a probation officer." It is of course understood that if the probationer violates the conditions imposed he may then be imprisoned.

Probation involves suspension of either the imposition or execution of sentence; that is, the court either defers naming any sentence or, if one is named, suspends the execution of sentence and places the offender on probation. Thus the offender is at liberty on good behavior. Suspension of sentence, however, does not necessarily imply probation for the court may suspend sentence without placing the offender under supervision as would be the case if he were released on probation.

Probation should also be distinguished from pardon and from parole. Pardon is an act of executive clemency which restores citizenship and gives complete freedom under no supervision. In the case of probation, on the other hand, civil rights are not restored until the period of probation is ended; the offender is under constant supervision and may at any time for violation of the conditions imposed be required to serve his sentence. For the purpose of distinguishing probation from parole, which will be considered in detail later, parole may be defined as the "conditional release granted to a prisoner who has served a part of his sentence in a penal institution." Thus, although both probation and parole

* Professor of Law, West Virginia University.
** Associate Professor of Law, West Virginia University.

provide for freedom under supervision, in the case of probation this freedom is granted before, rather than after, imprisonment.

One might suppose that the only duty of the probation officer is to play the part of a policeman, that is, to watch for violations of the conditions of probation. While this police function is a part of the supervision, the more important part is the "personal guidance of the probationer to improve his conduct and environment, and his attitude toward society. It aims to provide, by the condition that probation will continue only if the probationer's conduct is good, a powerful incentive to reformation; and, by contact with a constructive personality, a real aid to its accomplishment."

B. Essentials of Probation.

To the proper functioning of a probation system there are at least four essentials:

1. Preliminary investigation and report. A careful study should be made by the probation officer of all offenders before they are placed on probation. This means investigation of their court and criminal records, their family background, their education, their habits, their physical condition, their emotional peculiarities and their mental condition. On the basis of this investigation, the probation officer will file with the court a carefully prepared report including his recommendations.

2. Proper selection by the court. This requires a judge who understands and sympathizes with the fundamental theory of probation. It is essential that he have broad power to place adult offenders on probation. On the basis of the preliminary report he should select persons to be placed on probation solely with a view to the probability that they and society will benefit from probation.

3. Competent probation officers and adequate supervision. This means the use of thoroughly trained probation officers. The qualifications of these officers should include, preferably, graduation from college (or its equivalent) or from a school of social work, and in any case at least one year's experience in social work under competent supervision. The proper type of personality, tact, and resourcefulness are essential. The probation officer should be neither too sentimental nor should he be merely a policeman.

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3 Hughes, Adult Probation (1932) 57 A. B. A. Rep. 609.
4 These four requirements are included in the "Necessary Standards of Probation" in the Advisory Report, op. cit. supra n. 1, at 189-190.
Adequate supervision means not merely receiving reports periodically from the offender, but visiting him frequently enough to make sure that he is making satisfactory progress and keeping the conditions of his probation. It means helping him to solve his problems and bring about necessary adjustments. It means making use of the educational, industrial, health, recreational, social and religious facilities of the neighborhood.

It is obvious that this careful supervision is not possible if the officers have in charge at one time too large a number of probationers. The Wickersham Commission suggests fifty active cases as an ideal maximum, but reasonable success has been attained with a considerably larger load.

4. Certain and prompt commitment for violation. As a matter of discipline it is essential that the probationer be returned to court and committed to an institution if he again commits crime, violates any condition of his probation, or shows that he is likely to become a menace to the public.

II. PAROLE.

A. Parole Defined and Explained.

Parole has been defined as "a method by which prisoners who have served a portion of their sentences are released from penal institutions under the continued custody of the State upon conditions which permit their reincarceration in the event of misbehavior."

Here again in order to avoid confusion it is desirable to distinguish parole from other methods by which an offender may be released. As already pointed out, probation is a period of treatment prescribed by the court as a substitute for, or alternative to, imprisonment, whereas parole is a similar period of treatment in the community for an offender who has already served a part of his sentence. While there is a clear distinction between parole and an absolute pardon, which is the complete remission of the penalty, one is likely to confuse parole and conditional pardon. If released on conditional pardon, the prisoner is no longer under the custody of the state, although he may be reimprisoned as in the case of parole if he violates the conditions of his release. If, on the other hand, he is released on parole, he remains in the custody of the

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5 WICKERSHAM COMMISSION REPORT ON PENAL INSTITUTIONS, PROBATION AND PAROLE (1931) 127.
state and is subject to parole supervision, and while on parole his civil rights are not restored as in the case of conditional pardon.

B. Essentials of Parole.

It is generally agreed that the following elements are essential to an efficient parole system:  

1. An indeterminate sentence law. This will permit the offender to be released conditionally at a time when he is most likely to make good, not at the end of a term fixed arbitrarily in advance.

2. Selection by competent parole authority of persons to be paroled. Selection for parole should be on the basis of all pertinent information concerning the prisoner, including detailed reports of examinations by the scientific members of the prison staff and reports concerning his personal history and social background. The parole authority should be familiar with the applicant's mental and physical condition, his crime, his previous record, the nature of the environment into which he will go upon release, and his accomplishments in the courses of educational, moral and vocational training within the institution. All these matters have a direct bearing on the probability of success or failure on parole. In view of the difficulties inhering in such a process of selection, the placing of authority to parole is of prime importance. In its discussion of the requisites for effective parole administration the Wickersham Commission said: "Every effort should be made to guarantee... an expert personnel and freedom from political interference."

3. Adequate supervision. Here again the successful operation of a parole system depends in large part upon the skillful and sympathetic supervision of the prisoner who is on parole. The nature of the supervision and the qualifications of the officer are essentially the same as in the case of probation.

4. Revocation of parole for violation. It is necessary that there be prompt return of offenders who violate the conditions of their parole or who indicate that they are likely to become public menaces.

III. Arguments for and Against Probation and Parole.

The criticism most commonly directed at the advocates of probation and parole is that they are sentimentalists and theorists who...
under the guise of reforming the criminal are as a matter of fact merely satisfying their natural bent toward leniency. This criticism was met by the Wickersham Commission Advisory Committee in these words:

"Among sentimentalists are those who, because of attachment to outworn or existing procedures or plans, wish to keep such plans. The realist is the person who is willing to face the facts—not only some of the facts, but all of the facts. In our opinion existing methods of handling criminals are largely defective. We believe, therefore, that the sentimentalist in respect to matters of handling criminals is the person who insists on present methods, or making them even harsher, without being aware that these methods have failed, and that the realist is the person who is willing to approach the matter in a calm, unprejudiced, scientific manner, desirous to find out just how a tendency toward crime can be stopped or a criminal himself made a law-abiding member of society."

A glance at the history of penal treatment affords another answer to this criticism. Only two centuries ago, when 160 crimes were punishable by death, there was no problem of reforming the criminal. At this time satisfaction of society's desire for vengeance was the dominant idea and little effort was made to differentiate crimes. Following the challenge of Beccaria and Bentham to this retributive theory of justice, it became the practice to differentiate crimes according to their gravity and then to fit the punishment to the crime. As a consequence, imprisonment for definite terms took the place of capital punishment in the case of an increasing proportion of crimes and the problem of the released convict for the first time became important. Throughout this development the retributive theory of criminal justice remained dominant. Gradually, however, this theory has in large measure given way to a new point of view expressing itself in the rise of the industrial school, the reformatory, the indeterminate sentence, the juvenile court and clinic, probation and parole. Back of all these new methods of penal treatment are the concept of "fitting the punishment to the criminal rather than to the crime" and the belief that society is most adequately protected through the reform and rehabilitation of the criminal. Not only has this new principle found expression in legislation of this type but in some states it has been written into the constitution itself. For instance, Art. I, Sec. 15, of the Constitution of Oregon reads: "Laws for the punishment of crimes

\[\text{Advisory Report, op. cit. supra \# 1, at 180.}\]
shall be founded on the principles of reformation and not of vindictive justice." Thus, while it is true that a portion of the general public still adheres to the retributive theory of justice and frowns upon any effort to reform the criminal, the fact remains that for many years the trend has been definitely toward the reformative theory of criminal justice.

A criticism of probation and parole, commonly heard when a criminal while out on probation or parole commits another crime before the expiration of his original sentence, is that these methods cause an increase in crime; that not only have they failed to deter the criminal himself from committing further crime but they also make it less likely that others will be deterred. This argument is perhaps best answered by a statement of Sanford Bates, Director of the Bureau of Prisons of the United States:

"I do not think I shall find any dissent from the statement that probation has developed to a greater extent in Massachusetts than in any other state in the country. I should not hesitate to put New York second... For years Massachusetts has averaged four times as many people on probation as in prison. The number on probation in New York at the present time substantially exceeds those who are in correctional institutions. The latest report of the Bureau of the Census shows that the average for the whole country of the number of persons per 100,000 committed to state prisons and reformatories in 1932 is 70.2. This figure for Massachusetts is 35.8 and for New York is 37.5.

"One might say that this is not surprising, because if people are put on probation they naturally aren't put in prison. I have attempted to supplement these data by reference to the number of crimes committed. The last issue of the publication of the United States Division of Investigation, Uniform Crime Reports, gives the rate per 100,000 of offenses known to the police for the period from Jan. 1 to June 30, 1933. I have taken the crime of robbery as a typical offense in which the public is interested from the point of view of protection.

"I find that the figures range from 46.7 per 100,000 in the South Atlantic States to 89.5 in the East North Central States, whereas, in Massachusetts, the figure is 10.4, and for New York it is 9.2. The figures for larceny and theft vary from 331.8 in the East South Central States to 621.4 in the Pacific States, while in Massachusetts there were 197.6 per 100,000 and in New York, 177.1.

"These figures may not be convincing, but at least they
have a tendency to offset any claim that the liberal use of probation is accompanied by any increased amount of crime.79

So, much, then, for the argument that probation tends to increase crime. The similar argument that under a parole system the criminal is treated more leniently with the result that his punishment has no deterrent effect either on him or on others and hence that parole will increase crime is simply not borne out by the facts. Actually, the criminal does not get off lighter under parole. Although exhaustive figures on this subject are lacking, such studies of the matter as have been made in Illinois80 and Massachusetts11 seem to indicate that terms of imprisonment increase rather than grow less under parole. These studies show an average increase of three months or more.

It is clear that an expanded program of probation and parole is not open to the objection that it would increase the cost of penal administration. According to figures collected by the Wickersham Commission the annual cost of maintenance in a properly conducted institution, leaving out of consideration the investment in the plant, varies from $250 to $550 per prisoner whereas, under a well financed probation or parole system, the cost of supervision is approximately one-tenth that amount.

In addition to this saving, in some states where it is made a condition of probation that the offender pay fines and costs and that he make restitution, probation officers collect considerably more than the whole cost of the service. Thus in Massachusetts in 1926 they collected $1,800,000 which was $1,800,000 more than was spent on probation supervision. In New York in 1927 while the cost of the whole probation system was approximately $800,000, the probation officers collected nearly $4,000,000. Another factor to be taken into account in connection with the cost of probation and parole is the fact that the offender while in prison makes little or no contribution toward the support of his family with the result that it becomes a public charge. On the other hand, when he is released on probation or parole, it is usually made a condition of

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79 Bates, Probation and Parole as Elements in Crime Prevention (1934) 4 LAW AND CONTEMPORARY PROBLEMS 484, 487. For other collections of statistics showing that there has been a decrease in crime in states having well developed probation systems, see Moore, The United States Probation System (1932) 23 J. CRIM. L. 638, 646; WICKERSHAM COMMISSION REPORT, op. cit. supra n. 5, at 164-165; ADVISORY REPORT, op. cit. supra n. 1, at 188.

80 See ADVISORY REPORT, op. cit. supra n. 1, at 298-299.

11 Bates, supra n. 9, at 490.
release that the offender have employment and that he support his family. 12

The obvious saving which would result from a modern system of probation and parole would not justify its adoption unless society would be at least as well protected as under existing methods. Fortunately, however, if the opinions of those best qualified to judge are to be accepted, probation and parole properly administered afford society even greater protection. 13 This protection of society against crime is, of course, the primary objective of both probation and parole. Their methods may differ, but their broad purpose is the same.

Let us first consider probation. After an offender has been convicted, in most states the only alternative to probation is imprisonment. In the case of many offenders, however, imprisonment may be both an unnecessary and an inadequate means of treatment; unnecessary because our primary objective, the protection of society, may be achieved without the cost of confinement, and inadequate because imprisonment may create difficulties and complications which will make more doubtful the reinstatement of the offender as a law-abiding citizen. The advantages in this respect of probation over imprisonment are well summarized by the Wickersham Commission Advisory Committee:

"... (1) it [probation] avoids instilling that bitterness of spirit into a person which penal institutions often instill; (2) it keeps him in normal social relations; (3) it does not shut him up in very close confinement with other offenders, from whom he can learn all that he does not know about crime; (4) it withholds the stigma (from both him and his family) of having 'served time' or been a 'convict.'" 14

The argument favoring parole over other methods of release cannot perhaps be better expressed than in these words of the Advisory Committee:

12 For further discussion of the cost of probation and parole as compared with the cost of imprisonment, see WICKERSHAM COMMISSION REPORT, op. cit. supra n. 5, at 168-169; ADVISORY REPORT, op. cit. supra n. 1, at 189, 326; Lane, Parole Procedure in New Jersey (1931) 22 J. CRIM. L. 375, 402-403.

13 WICKERSHAM COMMISSION REPORT, op. cit. supra n. 5, at 129, 146-147; ADVISORY REPORT, op. cit. supra n. 1, at 207, 298; Hughes, supra n. 3, at 610-611; Glueck, The Significance and Responsibilities of Probation (1932) 57 A. B. A. REP. 618; Burgess, Protecting the Public by Parole and by Parole Prediction (1936) 27 J. CRIM. L. 491, 494.

14 ADVISORY REPORT, op. cit. supra n. 1, at 188.
"One [popular misconception] is that parole is based on consideration for the offender. It is not. It is part of the course of treatment designed by the State for people who break the laws of the State. It is therapeutic in purpose, and its ultimate object is the protection of society. Were its foundations laid simply in humanitarian considerations, it would have far less justification than it has. As we have emphasized in our foreword, the primary concern of this committee is the reduction of crime. Parole is to be preserved only in so far as it is a measure for the rehabilitation of offenders. What the public forgets is that people come out of prison anyway. Which is better, that they come out at the end of definite sentences, when the State has no more control over them; or that they come out at the end of indeterminate periods, and are supervised for a while under conditions approximating normal life, with the authority retained in the State to hale them back to the institution if they do not obey the laws of the land? All students of behavior must know that trial periods under normal conditions are desirable. Parole has carefully considered scientific arguments in its favor; a humanitarian interest in the offender is not its justification."

Having presented probation and parole in a favorable light, it will not be amiss to call attention to at least two dangers which must be guarded against. The first is the danger of "overselling", of promising more than can be reasonably expected or delivered. It should not be claimed that probation and parole are the cure for crime. Too often have the advocates of new methods made this claim.

"Each device—the penitentiary, the reformatory, the indeterminate sentence, the juvenile court, the psychiatric clinic . . .—has in its day been confidently put forward as 'the cure for crime'. . . . All that can be claimed and expected of any device for coping with criminality by way of treatment is that it is of some assistance, in an appreciable number of cases, in putting certain offenders on the road toward rehabilitation."

The second danger is that of assuming that the enactment of a law insures an adequate probation or parole system. The idea cannot be overemphasized that the success of any method of penal treatment depends primarily upon its administration.

15 ADVISORY REPORT, op. cit. supra n. 1, at 298.
16 Glueck, supra n. 13, at 621.
IV. PROBATION AND PAROLE IN WEST VIRGINIA.


1. **Probation.** Authority to suspend sentence and to place on probation is conferred by statute upon any court having original criminal jurisdiction except justices of the peace. The authority is, however, quite limited. Adults may be placed on probation only in the case of misdemeanors; minors, in the case of felonies also, except capital offenses. Persons convicted in justices' courts may be placed on probation by the court to which an appeal would lie.

The period of probation is limited to five years. While on probation the offender may be required to pay a fine, to make restitution, and to provide for the support of those for whom he is legally responsible.

No provision is made for special probation officers, the duties of such officer being placed upon the sheriff of each county. The statute sets out in detail the duties of the sheriff with respect to the supervision of probationers and gives him authority to arrest for breach of the conditions of probation. According to the recent survey by the Prison Industries Reorganization Administration the only special probation officers in West Virginia are those appointed by the juvenile courts in sixteen counties, and by the domestic relations court in Cabell County. Kanawha County had for two years a special adult probation officer, but this office was abolished by the legislature in 1933.

2. **Parole.** By statute the Governor is given authority to parole convicts imprisoned in the penitentiary under such rules and regulations as he may prescribe. Any convict is eligible for parole who is under sentence other than a life sentence, and who has not previously served two terms of imprisonment in a penal institution for felony. The parolee remains in the legal custody and under the control of the Governor and may be recommitted by him at any time at his sole discretion. It is expressly provided that while on parole the parolee shall be deemed to be serving out the sentence imposed upon him by the court and shall be entitled to good time allowance the same as if he were confined in the penitentiary. This provision is objectionable in that it unduly limits the period of

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17 W. Va. Rev. Code (1931) c. 61, art. 11, § 22.
18 The Prison Labor Problem in West Virginia (1937) 41.
parole in many cases and likewise progressively lessens the deter-
rent effect which a threat of reimprisonment should have.

In conformity with the authority conferred upon him, the
Governor has prescribed certain rules with reference to applications
for parole. These rules further define eligibility by providing that
applications for parole of all prisoners whose minimum sentence is
ten years will be considered when they have served five years; all
others when they have served the minimum sentence for the crime
for which they were convicted, less good time allowance. This rule
which denies consideration for parole prior to the serving of a
minimum sentence is open to the criticism that it renders ineligible
for parole those who normally would be the best parole risks. For
instance, a first offender, given only the minimum sentence because
of his youth and other favorable considerations, would under this
rule be ineligible for parole.

Although seldom used, a type of indeterminate sentence has
been authorized in West Virginia:

"Every sentence to the penitentiary of a person convicted
of a felony, except for murder in the first degree, who has not
previously been convicted of a felony and served a term in a
penal institution, may be, if the court having the case thinks
it right and proper, a general sentence of imprisonment in the
penitentiary. The imprisonment of any person so convicted and
sentenced may be terminated by the Governor as in the
case of paroled prisoners. Such imprisonment shall not exceed
the maximum term provided by law for which the prisoner
was convicted and sentenced, and no such prisoner shall be
released until after he shall have served at least the minimum
term provided by law for such crime . . . ."21

As has already been mentioned, an indeterminate sentence law
is one of the essentials of an effective parole system. This being
true, proper steps should be taken to extend the use and broaden
the scope of our indeterminate sentence law.

In addition to the Governor’s authority to parole, authority is
vested in the State Board of Control to parole the inmates of the
Industrial Home for Girls22 and of the Industrial School for Boys.23
Provision is also made for the granting of parole to inmates by the
Board of Directors of city and county work houses.24 In all these

21 Id. c. 28, art. 5, § 29.
22 Id. c. 28, art. 3, § 11.
23 Id. c. 28, art. 1, § 6.
24 Id. c. 7, art. 9, § 24.
cases, custody and control of parolees are placed in the parole authority but no provision is made for their supervision.

B. West Virginia Probation and Parole in Practice.

In the preparation of this article, both opportunity and facilities to make an exhaustive study of the operation of probation and parole in this state were lacking. Fortunately, however, such a study was recently made by the Prison Industries Reorganization Administration as part of its survey of the penal and correctional system of West Virginia. Liberty has been taken to incorporate portions of the chapter of its report dealing with probation and parole, including not only statistics but also some of its conclusions and recommendations:

"Probation."

"1. Eligibility."

"The West Virginia law is thus seriously defective, both in limiting the discretion of the courts in the use of adult probation and in making no adequate provision for probation service. It should be amended so as to authorize the use of probation in any case. Adult probation service of a satisfactory quality can probably only be provided through a state-appointed and state-paid staff to administer both probation and parole."

"2. Extent."

"The clerks of the courts of record of 43 counties have provided information on the use of probation. [There are 55 counties in the state. The 43 covered include 82 per cent of the total population. One of those omitted (McDowell) had 90,479 people in 1930, but each of the other 11 had less than 30,000.] In 1935, 2,873 persons were convicted and 741, or 25.8 per cent of the total, were placed on probation. Leaving out of consideration Wirt County, where only 3 persons were convicted and all were placed on probation, the percentage so handled varied from as low as 3.2 in Greenbrier (population 35,878) to as high as 47 in Wetzel (population 22,334).

"These 741 probationers were persons over 21 convicted for misdemeanors and minors convicted for either felonies or misdemeanors. One county, however, (Cabell) reports that in 15 per cent of the probation cases, charges of felonies were reduced to misdemeanors in order to make the defendants legally eligible for probation.

\[26 \text{Op. cit. supra n. 18, at 40-64.}\]
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</tbody>
</table>

1 Data not available.
2 Percentage not significant.
4. Prisoners in the West Virginia Penitentiary Suitable for Probation:

* * * * *

"...we may estimate that altogether there are probably 200 to 300 state prisoners who could be on probation if West Virginia had an adequate probation law and organization.

5. General Conclusions.

"The law is seriously defective, both in restricting the use of probation to misdemeanor cases for persons over 21 years of age and in providing only such service as the sheriffs can give for pre-sentence investigations and for the supervision of those released on probation. The considerable use made of probation is the result of overcrowding of the jails rather than of an appreciation of the value of probationary treatment. Adult probation in West Virginia amounts to little more than suspension of sentence. There are many prisoners in the penitentiary who would have been found to be suitable for probation, if the law had permitted the use of probation in felony cases and if facilities had existed for thorough investigation of convicted persons and their careful supervision on probation.

"It is certain that most of the counties will not or cannot provide better probation service. A recent effort to do so in one of the larger counties failed. The participation of the state is clearly essential to the development of efficient probation work with high standards.

Parole.

* * * * *

1. Eligibility.

* * * * *

"The legal restrictions on parole limit its use in West Virginia excessively. While the prisoner's criminal history is an important factor in his consideration for parole, it should not be so emphasized as to exclude all consideration of other factors. The prohibitions of parole for life and third term prisoners should be modified to permit within legal restriction the consideration of meritorious cases.

"It would also be desirable that some prisoners sentenced for comparatively short terms should be subject to parole supervision for longer periods than is now legally permissible. This could be most readily accomplished through the imposition of an indeterminate sentence . . . . and would be, indeed, practically the only change effected by the substitution of such sentences, already authorized by law, for the definite sentences usually imposed in West Virginia.
2. **Extent.**

"All prisoners are advised on admission of the date on which they will become legally eligible for parole, and practically all apply when eligible. About half of those considered are favorably recommended by the parole board. The number paroled is not comparable with the number recommended, as the Governor paroles some State prisoners confined in county jails, in whose cases the board does not make a recommendation.

"Table 13.—West Virginia: Use of Parole, 1931-36*

<table>
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<tr>
<th>Parole Cases</th>
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<td>Number recommended</td>
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<td>263</td>
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<tr>
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<td>3</td>
<td>5</td>
<td>5</td>
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<tr>
<td>violating parole</td>
<td></td>
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</tr>
</tbody>
</table>

* Year ending June 30. Variations from year to year are due to irregular times of meeting of the parole board.

"The number on parole on January 1, 1936 was 336, about 15 per cent of the penitentiary population of 2,224. [In New York State, the number on parole from the State reformatory and prisons was 8,797 at the end of 1934, being 98.3% of the institution population of 8,948.]

"Although the overcrowding of the jails and the penitentiary is steadily becoming more acute, parole is used sparingly. During the four years ending June 30, 1934, there were 820 prisoners released on parole, but 4,130—five times as many—on expiration of sentence.

3. **Organization and Procedure.**

"The warden of the penitentiary and two citizens act as an unpaid advisory board on paroles, at the request of the Governor. There are no parole officers. The penitentiary clerk and assistants prepare applications for prisoners and carry on correspondence.

"The parole board meets at the penitentiary four times a year for one to three days. The pardon attorney sits with the board, but no one else appears. Attorneys may present written arguments only. The prisoner does not appear, but his written statement of his history is obtained.

"Each member studies the records of a number of cases separately and presents them to the board. The warden reports the prisoner's conduct and the observations of the prison staff. No psychiatric or psychological service is used. The board also has the prisoner's previous criminal record. Statements from the judge, prosecuting attorney and prospective
employers are considered, and in some cases statements from complainants are received.

"In all cases receiving favorable recommendation by the board, the complete record is sent to the Governor for his decision, with the advice of the pardon attorney. While attorneys are not permitted to present oral arguments to the parole board, they do interview the pardon attorney at Charleston. Most cases are acted upon within 30 or 60 days after receipt of the recommendation, but the Governor sometimes defers parole for as long as two years.

"Supervision consists only of written reports by the parolee, signed also by his employer, required every month for the first year, every two months during the second, every four months during the third, and thereafter twice a year. Parole continues until the expiration of the maximum sentence or sentence fixed by the court. It was stated by the prison clerk that all but 25 of those on parole in January, 1936, were sending their reports. Of the 336 parolees on January 1, 1936, 70 were residing outside West Virginia. They are also required to send reports, but if they do not, little is done about it.

"The record of supervision consists only of a 4x6 card for each parolee, on the face of which are entered descriptive data and dates, and on the back of which is noted the date of each report received.

"As will be noted from Table No. 13, parole is revoked in comparatively few cases—a situation to be expected in view of the lack of supervising officers.

"4. Prisoners Suitable for Parole.

* * * * *

"Estimating conservatively, it seems fair to say that probably 200 to 300, perhaps more, of the prisoners now legally eligible might properly be released on parole, if there were facilities for the careful investigation of their homes and prospective employers, to assist them in getting re-established in the community, and to give them helpful but strict supervision on parole.

"Among the 830 other prisoners now legally ineligible for parole and the 530 state prisoners in jails, no doubt a certain proportion, though a smaller one, would be found suitable for early parole, if information regarding them were available."

V. Modern Trends in Probation and Parole

In order to aid in the determination of the changes which might profitably be made in West Virginia, it may be helpful to refer briefly to what has been done in other states and to call at-
tention to some of the trends which are apparent in recent legislation.

A. Probation and Parole Authority.

In other states, as in West Virginia, authority to place on probation is vested in the courts. In some states all courts have this authority; in others it is confined to courts of record or to circuit courts. In West Virginia any court having original criminal jurisdiction, except a justice of the peace, may place offenders on probation. Despite a trend toward a unified system of probation and parole, which will be dealt with later, this unification has been limited to supervision, it having nowhere been thought practicable to take from the court the authority to place on probation.

Authority to parole has been lodged in various places. In 1930 in only five states, including West Virginia, was parole exclusively a prerogative of the governor. In a number of others the governor’s signature to parole orders is required before the offender can be released. Some states have placed the paroling authority in boards already clothed with other powers such as boards of charities, boards of prison commissioners, or boards of welfare. In still others, the final paroling authority is the board of managers of the institution where the offender is held. At least eight states have established a special board of parole.

B. Type of Sentence.

In some states original sentences are for a definite period, but prisoners may be released on parole before serving the full sentence. This seems to be the practice in West Virginia, where use of the indeterminate sentence is optional. In other states courts are required to impose an indeterminate sentence. Indeterminate sentence laws invariably provide a maximum at the expiration of which the prisoner must be released and usually provide a minimum which must be served before he may be released on parole. At times the spread between these limits is so small that boards of parole are given too little discretion with regard to the time when prisoners may be released.

The trend is definitely toward placing more and more discretion in the parole authority. Many students of the problem are urging that all sentences should be made absolutely indeterminate, specifying neither maximum nor minimum limits, but no state has yet seen fit to go so far. In discussing this proposal, the Wickersham Commission said:
We believe that an absolutely indeterminate sentence, administered with scientific precision by an expert tribunal affords an ideal toward which the penal policies of the American States might well be directed. ... But we are not convinced that the immediate and widespread adoption of an entirely indeterminate sentence is either possible or desirable."

C. Eligibility for Probation and Parole.

Statutes determining eligibility for probation vary greatly. In respect to offenses for which one may be placed on probation, most states impose some restriction; some, like West Virginia, permit it to be used only in cases of misdemeanors, others except from its operation only offenses punishable with death or life imprisonment. On the other hand, at least seven of the thirty-six states having adult probation laws have placed no limitation on the offenses for which probation may be granted. Commenting on the sharp differences between the states on the question of the specific type of crime for which probation may be allowed, the Wickersham Commission said: "The states which permit the courts the broadest discretion in the matter of probation are those on the whole that have had the longest experience with it. It is clear too that the present tendency is to widen the range of offenses for which probation may be granted."

As in the case of the offense, so in the case of the offender himself the states vary greatly in the extension of discretionary power to the court to use probation. Some states deny probation to any person previously imprisoned for a crime; others to persons convicted of a felony for the second time; another, still, to one convicted of a fourth felony. In this respect the West Virginia law raises no barrier to the use of probation. However, in view of the restriction which denies probation to an adult felon even though he is a first offender, it is not at all surprising that no other restrictions were imposed.

As with probation, there is little uniformity in the statutes dealing with eligibility for parole. Seven states prohibit the parole of persons serving second terms. The other states, including West Virginia, permit parole in such cases. West Virginia is one of only ten states which refuse parole to offenders sentenced for life, whereas eighteen states specifically permit this. In denying parole to

26 WICKERSHAM COMMISSION REPORT, op. cit. supra n. 5, at 144-145.
27 Id. at 154.
those who have previously served two terms, West Virginia is again in the minority, only twelve states prohibiting the parole of old offenders.

D. Combined Probation and Parole Supervision.

The similarity in the duties of supervision in probation and parole and the fact that the qualifications for an efficient probation or parole officer are essentially the same suggest the practicability and desirability of combining in one officer the duty of supervising both probationers and parolees. This plan was in fact adopted by Congress in 1930. Roy L. Huff, Parole Executive, U. S. Parole Board, discussing the reasons for and the advantages of this plan said that the "same officer who made the investigation and social contacts for the courts was in a better position than another to continue his contacts during incarceration and during supervision on parole. Congress considered the social and money economy of imposing parole duties upon probation officers." In addition to the Federal Government, the states of Minnesota, Vermont, Rhode Island and Wisconsin have combined their adult probation and parole departments, and recommendations that this be done were recently made in Illinois and New York.

The advantage of such unification of probation and parole supervision in West Virginia would be the probable saving in the expense of administration and the increased efficiency of the officer which would result from the greater localization of his work.

VI. Specific Recommendations of the Prison Industries Reorganization Administration.

Several important changes in our present law would be necessitated by the establishment in this state of a modern probation and parole system. Following the study of the West Virginia penal system by the Prison Industries Reorganization Board its report published in July of last year included these specific recommendations as to probation and parole in this state:

1. The establishment of a state adult probation system to apply in felony cases.

2. The improvement of the present parole system, modifying the legal restrictions on the use of parole and providing for the appointment of a centralized parole authority and of adequate

personnel for investigation and supervision of probationers and parolees.

(3) A more extensive use of the indeterminate sentence.

(4) The combined administration of the state probation and parole service.

(5) The selection of probation and parole officers on the basis of merit.

It is obvious that the success of any effort to improve our existing probation and parole procedure must in large measure depend upon the cooperation of the bench and bar of the state, and particularly is this true of probation, administration of which is primarily in the hands of the trial judges.