

1910

## Adult Probation Parole and Suspended Sentence

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### Recommended Citation

Wilfred Bolster, Adult Probation Parole and Suspended Sentence, 1 J. Am. Inst. Crim. L. & Criminology 438 (May 1910 to March 1911)

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## ADULT PROBATION, PAROLE AND SUSPENDED SENTENCE.<sup>1</sup>

REPORT OF COMMITTEE C OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

WILFRED BOLSTER, CHAIRMAN.

In this report the term "probation" is used as signifying judicial dealing with a convicted person, without sentence, and as a substitute therefor, "parole" as signifying the conditional release from imprisonment of a sentenced convict, and "suspended sentence" as signifying suspension of the execution of sentence of either fine or imprisonment. So much confusion exists in the use of these terms that it is necessary so to define them in accordance with the better and prevailing practice.

Probation is a judicial system by which an offender against penal law, instead of being punished by a sentence, is given an opportunity to reform himself under supervision, and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed no penalty for his offense will be imposed.

Its prototype was the practice of many judges to continue cases from time to time, with the consent of the defendant and during his good behavior, with a view to the final placing of the case on file.

Its first legislative sanction as a part of the quasi-penal machinery was in Massachusetts, under statute 1878, chapter 198, authorizing the appointment of a paid probation officer, under control of the chief of police, in Suffolk county (Boston). The system was made general throughout the state by statute in 1880, chapter 129, and its control was vested in the judiciary by statute in 1891, chapter 356. From that time it has been extended, in varying forms, to thirty-seven states, the District of Columbia, and to New Zealand, Great Britain, Canada, Australia, Germany and Hungary. A bill is now pending in Congress for its adoption in all Federal courts except in the District of Columbia, where the system has been applied to children for several years. Adult probation now obtains in the states of California, Connecticut, Georgia, Indiana, Maine, Mary-

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<sup>1</sup>The topics originally committed included indeterminate sentence. In view of the fact that this subject is one peculiarly involving matters of institutional treatment and prison discipline, your committee recommends that it be referred to a new committee composed of members who can deal with it from first-hand experience, believing that in this way only can results of practical value be obtained. The same consideration will explain the scope adopted for this report. We believe that what is most needed is a more widespread knowledge of the practical workings of the probation system, and that theoretical discussions may well be deferred until wider knowledge and more uniform application render scientific deductions reliable.

land, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Rhode Island (women)<sup>2</sup>. The fact that where once legally adopted it has yet to be abolished, sufficiently shows its value as an adjunct to the penal system.

Legislative sanction of the system has usually begun with juvenile offenders and minor offenses, and has thence been extended, certain legislatures exempting from its operation specified major offenses, or felonies as a class, or offenses peculiarly crime-breeding. The growth of modern ideas as to the value and possibilities of reformation as a social factor will in time leave as the only logical barrier to the use of probation the paramount necessity of social defense, the standard of which must of necessity vary with local conditions. If such a standard is susceptible of even a rough definition the data of experience necessary for its formulation are not yet available. The differences between juvenile and adult probation are not differences of principles but only of application and methods, due to differences of offenses, offenders and the remedial agencies available.

Historically, probation systems have grown gradually, usually under permissive legislation, as a branch of judicial machinery. Experience has shown, notably in New York and Massachusetts, that at a certain period of such growth a centralization of control, or at least of supervision, is of paramount necessity. Divergencies, and often absurdities, of local use and practice, can be avoided only by this means. And your committee believes that its extension to new territory and its development in states now using the system should include the establishment of a central state board having large authority to prescribe forms for records and reports, suggest and urge uniform methods of carrying on the work, promote coördination, and exercise general supervision over the probation work. By this means can best be avoided vagaries in practice which tend strongly to bring the entire system into disrepute.

The selection of good officers is a matter of first importance to the probation system. The ideal probation officer should possess sound judgment, tact, patience and zeal in the work, the ability to read human nature, sufficient adaptability to appreciate and make due allowance for varying results of temperament, history and environment. He should be one who knows how to lead rather than drive, but who can drive effectually if need be. He should understand the influences that determine human character and conduct for good and ill, as well as methods of molding character and how to apply them. And above all, he should have a love for the work. The desirability of separation from other court duties will preclude

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<sup>2</sup>The statutes relating to probation are quoted in detail in the appendices to the reports of the New York State Probation Commission, and for that reason are not reproduced here. The same reports contain an excellent bibliography of the subject.

the appointment of clerks of courts, bailiffs and like officers. Members of the police force do not ordinarily make good probation officers. When they do so it is not because of, but in spite of, their police training. The appointment of superannuated persons is vicious. While the use of unpaid volunteer probation officers alone is to be avoided, as too haphazard and irresponsible, yet their use under experienced paid officers has valuable qualities and seems likely to be extended in future practice.

The probation officer should be appointed and removable by the court, subject to approval in each case by the central authority or commission. His tenure must necessarily vary with variations in the system of which he is a part. In most states the probation officer holds his position solely at the pleasure of the court. In New York he is appointed by a judge or board of judges from civil service eligible lists and the judge or judges may at pleasure remove. But whatever his tenure, it should be entirely removed from politics.

The salary paid should be adequate to secure persons of the requisite qualifications. True economy in this regard consists in freeing the probation officer from all detail work which can be turned over to lower-paid clerks. Experience shows that in populous centers the number of probationers which can be properly supervised by each probation officer does not exceed seventy-five at a time. The use of women probation officers to care for female probationers is strongly recommended.

The intimate knowledge of local conditions which a probation officer must have in order to do effective work renders it desirable that his duties should cover a limited area. The removal of probationers to another jurisdiction can best be dealt with by coöperation among probation officers. Frequent conferences of probation officers for discussion of probation methods and problems and to secure coöperation are beneficial and should, if possible, be held under the direction of the central state board.

The duties of the probation officer should begin with an exhaustive investigation into the cases of persons under arrest, seeking to obtain all possible information as to previous arrests, family history, environment, employment, present mental attitude of the defendant, and any facts which may have induced or contributed to the offense. The result of such investigation should be recorded in permanent form.<sup>3</sup>

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<sup>3</sup>The probation officers in Massachusetts have recently been used for a purpose which, though not strictly involving probation work, is so closely akin to it, that it is briefly referred to here. In that state, where drunkenness is a crime, probation officers are empowered to release persons who have not twice been arrested for that offense during the preceding twelve months, upon the written application of the prisoner for such release, stating his residence, occupation, the number of dependents and his previous arrests. The statement is filed in court

WILFRED BOLSTER.

MASSACHUSETTS FORM.

The Commonwealth of Massachusetts.

ss. Court, (Seal)

To.....19...

In order to give you an opportunity to reform without punishment, the court has placed you on probation for the period of ..... in the care of the probation officer.

You must observe the following conditions:

- 1. Obey such orders as the court may make. This includes the payment of costs, restitution or reparation, when directed.
2. Report promptly to your probation officer, as required on the back of this card.
3. Work regularly.
4. Keep good company and indulge in no bad habits.

If any of these conditions are violated you will be surrendered to the court for sentence.

(The reverse side should contain the name and address of the probation officer, with full instructions relative to the time and place for reporting, etc.)

NEW YORK FORM.

Form for Terms and Conditions of Probation in Case of an Adult.

To be given by the probation officer to the probationer.

.....Court, .....N. Y. To .....

Believing that you will profit by the leniency of the court, you are placed on probation for the period of ..... under Probation Officer ....., whose address is ....., and who is to report to the Court as to your conduct. If you behave properly you will be released; if you do not, you will be brought back to Court and may be committed or otherwise punished. Remember that your Probation Officer represents the Court. You must obey the following rules:

- 1. Report promptly to your Probation Officer as required on the back of this card.
2. Work regularly.
3. Keep good company and good hours and indulge in no bad habits.
4. Tell your Probation Officer at once if you move or have any trouble.
5. Obey whatever other orders or advice the Court or your Probation Officer may give.
6. ....
7. ....
Dated ....., 19...

.....Judge.

Additional Conditions for Case of Intoxication.

6. Do not drink or taste any ale, beer, cider or other alcoholic drinks. Keep away from saloons.

Additional Conditions for Case of Non-support.

6 or 7. For the support of your family pay ..... dollars (\$.....) to ..... on each .....

Additional Conditions for Case in Which a Fine Is Imposed, or Restitution Is Required.

6, 7 or 8. Pay :..... dollars (\$.....) fine (or restitution) to ..... in instalments of ..... on each .....

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This all looks to a recommendation to the court for or against probation in the particular case, after conviction, and is essential, if the judge is to be properly informed whether the case is a fit one for probation. The facts thus obtained should be used only for the question of sentence; inquisition methods should be avoided, above all in cases where the defendant denies guilt, for the probation officer is no part of either prosecution or defense.

Investigation, report and recommendation made, the responsibility for the next step shifts to the court. The personal equation of the judges is too much in evidence in the application of probation. They need to keep constantly in mind that the probation system must be supported by public opinion; that such support can be retained only by a fairly uniform application of the system, and that only those cases should be placed on probation in which investigation shows that such disposition can be made consistently with the interests and protection of the public and with a reasonable expectation of the offender's reform without punishment. The lack of uniform standards which appears in practice can best be remedied by the creation of a central board with large supervisory authority and by frequent meetings of judges for the discussion of probation problems and methods.

Probation granted by the court, its conditions and purposes should be plainly and permanently set out. This is usually done by giving a printed card to the probationer. The common Massachusetts and New York forms will suffice for illustration.

The length of the probation term must necessarily vary with local conditions, and the greater cost of longer supervision may often shorten the term to less than the ideal one. The tendency has been toward its gradual lengthening. In the Superior Court of Massachusetts it is two years; in the lower courts less than one year; in New York it has until recently been for the maximum sentence possible for the particular offense, but the periods may now last, in the case of a child, until his eighteenth birthday; in the case of an adult

with a return of the officer's investigation into its truth and his action thereon. The statute authorizing such procedure took effect May 8, 1905. Since that time the percentage of releases to total arrests for this offense are as follows:

	Total Drunk Arrests	Released	Per Ct. Released
1905	73,972	7,280	
1906	79,395	26,800	33.8
1907	86,140	31,300	36.3
1908	86,365	31,313	36.2
1909	90,550	33,798	37.3

In many cases this procedure has accomplished the desired result of preventing rearrest, without the humiliation of public arraignment in court, with the common sequence of lost employment. Whether the net result has been an encouragement of increased intemperance, it is too soon to declare positively. Deductions from figures are unsafe because proper allowance cannot be made for changes in license laws and police activity and other social factors.

convicted of an offense less than a felony for not exceeding two years, and in the case of an adult convicted of a felony, for not exceeding five years. Logically, it should be sufficient to test whether the results contemplated at the time of placing on probation have been or can be attained.

Whatever the period, it should look to some definite termination of the case, but subject to the power of the court to extend the term for a further definite period, and we strongly recommend that after successful probation the indictment or complaint should be dismissed of record.

During probation, constant, judicious and helpful supervision, not amounting to undue annoyance, is imperative. This involves a constant study of the probationer and his environment, and the enlisting of all agencies, social, charitable, religious and industrial, which can aid in the work of reform. The officer should help his charge to obtain suitable employment, to live under proper conditions, to associate with desirable companions, and avoid harmful influences. The officer should strive to gain the probationer's confidence and respect and at the same time to impress upon his mind that the relation must be mutual.

He should not be content with aiding him to hold in check his criminal or evil proclivities during the time of his probation—proclivities which, if still existent, are liable to break out again as soon as he has escaped sentence—but should endeavor to help him to really reform himself. To this end the officer should endeavor to stimulate the probationer's dormant energies for a morally healthful and useful life; develop in him ideas of right living, duty and sobriety, and ambitions along desirable and laudable channels; change those impulses, points of view and attitudes toward life and society which are wrong; develop new mental habits in place of old ones; stimulate his confidence in his own capacity to control himself and to succeed in a new and useful life. The reawakening of will power is an object of prime importance, inducing the probationer to depend rather upon his own effort and initiative than upon the officer. In sum and substance, the officer should endeavor to build up a new character in the offender; to replace the perverted ideas, impulses and habits which he has acquired through his environment with a new stock, i. e., to re-educate him along lines which determine conduct.

We fully realize that the practical difficulties are great and in individual cases insurmountable, particularly when the coöperation of the offender cannot be obtained, but experience has demonstrated that much can be done both for the individual and society. Furthermore, it must be borne in mind that one of the principles of the probation system is the selection of the fit only for probation—offenders whose history shows that they are likely to be amenable to the above-mentioned influences.

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The Commission on Probation in Massachusetts has issued a set of recommendations for probation officers which are worthy of reproduction.

### RECOMMENDATIONS.

"In order to promote efficiency and secure uniformity in the operation of the probation system throughout the commonwealth, the Commission on Probation now submits the following recommendations:

"1. Revised Laws, chapter 217, section 84, provides: 'Each probation officer shall inquire into the nature of every criminal case brought before the court under the appointment of which he acts, and may recommend that any person convicted thereby be placed upon probation . . . .'

"Each probation officer shall keep full records of all cases investigated by him, of all cases placed in his care by the court, and of any other duties performed by him.'

"In every case investigated the probation officer should fill out one of the 'investigation cards' prescribed by this commission. In the cases later released on probation by the court, this card must be filed by the officer in the probation envelope.'

"The purpose of this investigation is to learn the character and ability of the person under consideration, the influences that surround him and those that may be brought to bear in the event of probation.

"These facts will not only enable the court to decide whether the persons should be allowed probation, but also suggest to the officer the means of making the probation effective.

"In filling out this blank sufficient detail should be used to inform the judge, for instance, whether the person's parents are alive, with whom he is living, the ages of brothers and sisters, intemperance in the family, and other facts indicating the moral influence of the home.

"2. Before recommending probation in a case, the officer should be satisfied that such disposition can be made with due regard to the protection of the community; and further, that the past history and present disposition of the person investigated indicate that he may reasonably be expected to reform without punishment, and that he will comply with the conditions of probation.

"3. The probation officer should give to each probationer a card substantially in the following form:

"4. The term of probation is two years in the Superior Court. A period of one year in the local courts is recommended. In exceptional cases this period might be made longer or shorter.

"5. The probationer should report at least once a month in person or by letter. Such letter should be preserved, and the officer should file written memoranda of the probationer's visits.

"6. The commission earnestly recommends that the officer shall visit each probationer at least once a month. By this means the officer will know whether his charge is working, keep informed as to his companions and home surroundings, and then he can intelligently exercise his personal influence upon the probationer,—which is the vital element in probation work.

"7. Besides keeping himself informed of the conduct and surroundings of those placed on probation under his supervision, the officer should win the confidence of his probationers if possible; should impress upon them the fact that his purpose is not to watch, but to watch over them and to aid them to help themselves. He should learn, and seek to remove, the causes of their temptations; should aid and encourage them by friendly advice and admonition, and take an active interest in reclaiming them from evil courses.

"8. When the probationer resides outside the jurisdiction of the court in which he was placed on probation, and cannot report in person without unreasonable expense, a report by letter should be required.

"Such letter, before it is forwarded to the probation officer of the court in which the case is pending, should have the indorsement of the probation officer in whose jurisdiction the probationer may reside, and the probationer shall there-

after be under the supervision of the last-named officer, except when the court otherwise orders.

"9. In every case appealed or sent to the Superior Court the probation officer of the court in which the case originated should transmit the result of his investigation to the Superior Court probation officer; and officers should promptly furnish information to each other on request.

"10. When a person on probation violates the terms and conditions of his probation, and the officer is of opinion that he should be sentenced, there should be submitted to the court at the time of surrender a written report of the case.

"11. At the end of the probation term, before the case is dismissed or otherwise disposed of, the officer should submit to the court a report as to the probationer's observance of the conditions of his release and his general conduct while on probation."

The keeping of adequate, systematic records of cases looking toward the construction of life histories of offenders has been found indispensable to the proper working of the probation system.

Restitution and reparation, as conditions of probation in appropriate cases, are being more and more recognized as of importance. In such cases it is made an additional condition of granting probation that the offender shall make good the individual loss accompanying his offense against society. The amount collected by probation officers in Massachusetts for purposes of restitution during the year ending September 30, 1909, was \$5,958.06. This branch of probation work is deserving of a much wider application than it has yet received. A complainant who sees his individual loss repaired by exaction from the party responsible, as the price of his freedom, without the need of tedious, expensive and generally ineffectual civil suits is apt to have a larger respect for the judicial system than one whose personal loss is swallowed up in a payment into the public treasury. The moral effect on the offender is no less salutary.

This class of cases is especially benefited by a liberal application of probation methods, as the objects sought by prosecution are defeated rather than furthered by fine or imprisonment. The usual form of law permits the court to impose additional conditions of probation, notably payment of a fixed periodical amount to the probation officer for application to the support of dependents, with large power of modification of the order to suit changed conditions, and to order a bond to secure payment if the case admits of it. In Massachusetts during the year ending September 30, 1909, probation officers collected for such purposes \$24,507.33; in New York in the year ending December 31, 1909, \$14,993.66. The possibilities of these methods are only touched upon as yet, but their advantages over the older penal methods are obvious, and their indirect benefits in new and permanent habits of industry and re-established family relations are beyond calculation.

The question of surrender or return to court of probationers whose conduct is unsatisfactory is one which has not received suffi-

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cient attention. Officers are sometimes loath to make use of this power, as it often appears tantamount to an admission of failure. But the renewal of personal contact between the probationer and the court is often just what is needed to turn an unsatisfactory probation case into a successful one. No general rules for surrender can be laid down, except that a person on probation who is persistently and wilfully disregarding its conditions should be promptly surrendered, not only for his own sake, but for that of the system and of society. On such surrender the court should have powers co-equal with those possessed at the time of original probation.

### SUSPENDED SENTENCE.

It is necessary to distinguish between suspension of the imposition of a sentence and suspension of its execution. The first, when coupled with supervision by a probation officer, is probation pure and simple; if without such supervision it is only a continuance of the case for later disposition. The term "suspended sentence" as ordinarily used denotes a suspension of the execution of a sentence definitely imposed. So used, it is found in practice applied to cases of either imprisonment or fine and in either case with or without supervision by a probation officer.

(a) *Imprisonment.* A suspended sentence without supervision by a probation officer is but a makeshift, generally futile, often vicious. Coupled with proper supervision it has great value. The law should give power at any time during or at the end of the period of suspension to revoke or extend the suspension or modify the sentence.<sup>4</sup>

(b) *Fines.* The avoidance of imprisonment as an alternative for non-payment of a fine by suspension of the sentence of fine has attained in several states to considerable proportions and good results. It saves the offender from the stigma of imprisonment, his family from the want consequent upon the loss of his wages, the public from the expense of his support in prison, and from the often repeated reproach that the defendant is imprisoned, not for his crime, but for his poverty. The element of supervision is commonly not necessary, but may occasionally be used to good effect in fines for offenses involving moral turpitude. When used for violation of

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<sup>4</sup>In the Municipal Court of the city of Boston results in cases of drunkenness showed an increase of about 20 per cent in apparently successful termination as evidenced by final dismissal of the case over the general average of like termination of other drunkenness cases placed on ordinary probation by the same judge, notwithstanding the fact that the suspended sentence was used only as a last resort and often in cases of actual surrender. An almost similar gain was shown in a neighboring jurisdiction. These reports, fragmentary though they be, seem to furnish some indication that the realization by the defendant of an actual sentence in concrete form may have a deterrent effect greater than ordinary probation.

quasi-criminal law, local ordinances and the like, the element of probation would usually be better omitted.

The fine is ordinarily paid direct to the probation officer, and it is desirable that the law should permit such payment in instalments.

The distinction between this and true probation should be kept in mind for, logically, combining probation with the suspension of a fine is an anomaly where the sole purpose is to grant time to obtain money wherewith to pay the fine. In this case there is no true probation, but only a convenient employment of the probation machinery. It looks, not to reform with final forgiveness, but to a settlement of the offender's account with society by the exaction of a penalty. It is only when the purpose of suspension of fine is, as with imprisonment, a trial period looking to the annulment of the sentence *in toto*, that the case becomes one of probation. While the recognition of this distinction is not so important in the individual case, yet when drawing deductions from statistical results this misconception produces erroneous conclusions.

#### PAROLE AND PARDON.

These are analogues to probation, often antedating it historically. Their logical purposes are to meet:

- (a) A sentence already imposed in which later investigation has shown error in the extent of the sentence.
- (b) Possibilities of reformation appearing after commitment, including good behavior during confinement.
- (c) Cases requiring short sentence with subsequent parole.

The first two classes explain themselves.

As to the third, notwithstanding the general condemnation of short sentences, it is patent to anyone familiar with actual conditions that ordinary probation in certain classes, as for a prisoner emerging from a long debauch, with weakened will-power and an inordinate craving for intoxicants, does not meet the necessities of the case. Many courts meet the difficulty by remanding for a short period for sentence, but this is not always practicable. While it is a course to be used sparingly, there are still many cases in which profitable use could be made of legislation permitting a brief incarceration with subsequent, relatively protracted, parole.

What has been said as to selection of officers, supervision and surrender in ordinary probation holds true in parole cases. The duties of the two positions are so nearly similar that in smaller jurisdictions probation officers may frequently be advantageously used also as parole officers. The experience that has led to the establishment of central boards to supervise probation work points to the necessity of similar supervision over parole work.

One of the great weaknesses in the parole system to-day is its

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lack of contact with the machinery which precedes commitment, which is only one aspect of the unfortunate lack of cohesion between the judicial and penal machinery.

The officer in charge of parole cases should report and be accountable not only to the head of the penal system, but also to the court of sentence.

We are inclined to recommend that the question of release on parole should be determined by a board which should include the head of the penal institution and a judge of the sentencing court, the latter as much for the purpose of familiarizing judges with the results of their own sentences as to give due weight to facts and investigations preceding sentence. One of the crying needs of to-day in the administration of criminal law is that judges should become more fully appreciative of the consequences of their sentences.

The conditions which should determine release on parole are really problems of the indeterminate sentence, and for that reason are not dealt with in this report.

In parole, as in probation, it cannot be too often or too strongly stated that the very foundation of successful operation lies in the selection of officers properly qualified by temperament and experience. Without these, the parole system, as well as the probation system, can never attain to its legitimate sphere of usefulness.

### RESULTS.

The results of probation, for lack of data, are not yet capable of scientific and accurate statement. Speaking in generalities, out of the experience of those dealing with the system at close range and under as favorable conditions as have yet been attained, it is possible to declare that there has been, through its operation, a large financial saving in the maintenance of penal institutions, for the cost of maintenance of the probation system is but a small fraction of the net cost to care for the same number in confinement; that prevention of waste in productive power, and of the public burden of supporting dependents of imprisoned convicts, is of still greater economic value, and the results to society by reformation of offenders in a large proportion of the cases better than the results obtainable through prison sentences; and that the fancied dangers to society arise, not from the application of the probation system, but from the misapplication of it, through judicial ignorance or error, to cases to which it is not suited.

But the probation system is new; as a piece of judicial machinery it has not yet attained its majority, and the keeping of systematic records is in its earliest infancy. A valuable beginning has been made by the probation commissions of New York and Massachusetts, but general conclusions cannot be drawn from brief and

local reports; only from data covering a considerable extent of both time and territory can reliable deductions be made. The two things which seem to be most necessary at this time as a groundwork for the further scientific study of probation and parole, and their subsequent extension along most desirable lines are, first, the obtaining of national legislation for the establishment of a bureau of judicial, penal and reformatory statistics, and, second, the prosecution of intensive studies directed along uniform lines of the workings and results of probation and parole in the largest possible number of jurisdictions and penal institutions employing probation and parole, thus obviating variations due to peculiarities of place or judicial system, such studies to be made by those in immediate contact with the work and the results to be collated and compared under the direction of a subsequent committee of this Institute.

In conclusion—

1. We approve of adult probation when coupled with thorough supervision by competent officers and when applied consistently with public safety to those cases in which there is a reasonable prospect of reform.
2. We approve of the suspension of sentences to imprisonment when coupled with like supervision and limitations.
3. We approve of a wider use of the suspended sentence of fine to avoid the alternative of imprisonment for non-payment.
4. We approve of state supervision of probation and parole work.
5. We recommend securing intensive studies of probation and parole methods and results.

WILFRED BOLSTER,  
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