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## INDETERMINATE SENTENCE AND RELEASE ON PAROLE.

(Report of Committee F of the Institute.)

EDWIN M. ABBOTT, Chairman.<sup>1</sup>

During the past winter and spring, the legislatures of most of the states of the Union have been in session, and as a result, great impetus has been given to the movement to make uniform throughout the United States the system of indeterminate sentence, probation and parole. Many states which have successfully used the probation and parole system have added the indeterminate sentence to their criminal code, while others, viewing the success of this new system of penology which has proved so advantageous both to the individual and the general public, have fallen in line and enacted legislation covering one or all of these subjects.

Again, other states have amended existing laws and burdensome conditions which have heretofore been placed upon paroled prisoners. These have been brought within more common-sense lines to the advantage and general welfare of all concerned.

The question of independent boards of parole has also been seriously considered, and the trend now is to divorce entirely from the other machinery of the law the care and control of prisoners. This is undoubtedly a step in the right direction, and the committee feels that too much emphasis cannot be placed upon this phase of the parole laws. Those having charge of paroled prisoners should be entirely divorced from all other branches of government. It is a separate and burdensome duty and needs men and women carefully prepared and fitted for this onerous work.

Another subject which has received careful attention has been the extending of the parole system to life prisoners. New Jersey, Pennsylvania, Texas and Nevada have taken up this feature and other states are considering the matter.

The result of the year's work has been one of encouragement all along the line. Reports from parole officers and others having charge

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<sup>1</sup>The entire membership of this committee is as follows: Edwin M. Abbott, of the Philadelphia Bar, Chairman. Charles R. Henderson, Prof. of Sociology, University of Chicago. Edward Lindsey, of the Warren, Pa., Bar. Robert Ralston, Philadelphia, Judge of Common Pleas Court No. 5, Philadelphia Co. Samuel W. Salus, Philadelphia, State Senator. Samuel G. Smith, President American Prison Association. Richard Sylvester, Chief of Police, Washington, D. C. Henry Wolfer, Warden of State Prison, Stillwater, Minn. F. L. Randall, of the Massachusetts Prison Commission. E. J. Murphy, former Warden of State Prison, Joliet, Ill. J. C. Sanders, Warden, State Prison, Fort Madison, Ia.

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of the work in the various states, show no diminution in the numbers of paroled prisoners now leading law-abiding lives throughout the entire country. Nearly 80 per cent of paroled prisoners have made good and it is only through stress of circumstances where the paroled prisoner has not availed himself of the good offices of the parole officer that he has again slipped back into the pathway of crime.

The question of re-parole for those who have broken the parole conditions is being carefully considered in nearly every state. There are numerous instances in which a second parole has been afforded a prisoner who has broken parole through vicissitudes and conditions too hazardous to surmount. After another term in prison he has again been given an opportunity to prove that there is something good in him, and reports show that a number of these prisoners also have resumed their status as law-abiding citizens.

In the state of Rhode Island the general assembly authorized a commission to consider the question of revision of the criminal laws of that state, and they are ready with a report for the next session of the legislature of 1914. They recommend the indeterminate sentence and parole system for their state. An act has been drafted creating a board of parole consisting of the governor, the attorney general, the presiding justice of the Superior Court, the agent of state charities and corrections, and the warden of the state prison. Whenever the governor is unable to attend any meeting, the lieutenant-governor shall act in his place, and whenever the presiding justice of the Superior Court is unable to attend, he shall designate some other justice of the Superior Court to attend in his place. The full control of prisoners is confided to this board of parole, and all prisoners serving sentence at the time this act becomes operative, shall be eligible for parole—three-fifths of the term being computed as the minimum sentence.

It is confidently expected that this act will become a law.

In the state of Wisconsin a bill was prepared and introduced in the legislature providing for the indeterminate sentence. The State Board of Control did all in its power to secure its passage but the bill was defeated largely because the courts in the state made such a vigorous opposition to it. Many of the judges believed that it took from them one of the most important functions, to-wit: discretion in the sentencing of prisoners, and as a result appeared before the committee on judiciary in opposition to the bill. Present sentiment opposes such a law, but the work will go on through a process of edu-

cation, and in the near future the legislature is expected to enact a law to this effect.

In North Carolina the first step has been taken towards this end. Convicts have been sentenced to work upon the public roads as a method of parole, and thus they earn a deduction of time for good conduct. This is considered a form of parole, but the committee, although perfectly sensible to the advantages of allowing all convicts in all penal institutions to work at some form of labor during confinement, feel that this is not parole as a method for regeneration. Under the North Carolina act the prisoners are under the control of the county commissioners, who have power to discharge prisoners after they have served the time of sentence less the number of days earned by good and faithful discharge of his duties. But after discharge, he goes his way without any further supervision.

In Pennsylvania, parole boards have jurisdiction in making rules and regulations relating to paroled prisoners. Heretofore, these boards have insisted that a sponsor be obtained by each prisoner before paroled. As a result, many worthy prisoners have been compelled to serve out the greater portion of their maximum sentence, entailing great hardship. The present legislature has curtailed this power and prescribed that where the prisoner cannot obtain a sponsor and that is the only reason for his remaining over the minimum term, then the board shall procure a sponsor for him and he shall be entitled to parole.

In the state of Georgia, the legislature is now considering an indeterminate sentence, parole and probation law drafted after the Pennsylvania act. The Prison Association of that state is using every endeavor to have such an act become a law and it is hoped to place it upon the statute books before the end of this year.

In New Jersey, the act of April 14, 1913 extends the parole system to all prisoners convicted of any offense, including those sentenced for life term, and grants parole to life prisoners after having served 15 years, if the board of parole thinks there is a probability that the applicant will live without violating the laws in the future.

In Ohio, the indeterminate sentence system has been extended to include all sentences to the penitentiary for felonies, except treason and murder in the first degree, and contains the proviso that no such term shall exceed the maximum nor be less than the minimum term provided by law for the felony of which the prisoner was convicted. The act also provides that if a flat sentence should be given by any judge, that it shall not become void, but that the person so

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sentenced shall serve an indeterminate sentence regulated by the minimum and maximum sentence as prescribed for the crime committed.

California has added the indeterminate sentence system to her code, making twelve months the minimum and restricting the maximum to not more than the maximum time prescribed by law. The parole board shall determine when the sentence shall terminate. The benefits of parole under this act are restricted to those "convicted for the first time."

In Missouri, a Board of Pardons and Parole has been created to cooperate with the Governor of that state, who has heretofore had the power generally granted such a board. The entire question of parole is left to them and the members are to confine their labors entirely to this work. This is one of the independent boards created to supervise parole work, and an example of the most effective system that can be devised. They recommend to the Governor, who is not restricted in his authority along the same line, but it is their duty to receive all applications and to act upon them with such recommendation for executive clemency as they deem wise and in the best interest of all concerned.

In Texas the indeterminate sentence law has been enacted and applies to persons over 16 years of age. For all crimes except those punishable by death, the minimum is to be the minimum punishment now or hereafter prescribed by law for the said offense, and the maximum not to exceed the maximum prescribed by law. The prison commissioners and board of pardons shall have regulation of parole of prisoners subject to the approval of the governor, and the application of the system is extended to life prisoners after incarceration of 15 years.

An elaborate system of control of prisoners on parole and giving them an opportunity to terminate their parole after 12 months' good behavior is also provided in the act.

During the past year, all those interested in the indeterminate sentence, probation and parole laws have reason to feel gratified at the progress this new legislation has been making. The merciful consideration of prisoners has not been without its recompense, for justice tempered with mercy must produce beneficent results both in the individual and in the state.

Therefore, it will not be long now before the entire country will be using this method of treating prisoners, and rehabilitating them.

Three new states have been added thus far during the year to the number of states now operating under either the indeterminate sentence, probation or parole systems. These states are Maine, Nevada

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and Oregon. Taking the key as set forth in the report of this committee last year, these states can be grouped as follows:

APPENDIX.

*Questions.*

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole board.
4. Duties of parole board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions of final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

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*Answers.*

MAINE—

- (1) Any prisoner convicted of crime.
- (2) Minimum not less than 6 months; maximum to be fixed by the judge and not to be more than that prescribed by law.
- (3) Committees of three from the executive council to act as advisory board in the matter of paroles.
- (4) Act jointly with the governor with certain exceptions where governor acts alone.
- (5) Prisoner can petition—blanks being furnished by the warden or superintendent.
- (6) Any prisoner who has served the minimum.
- (7) Upon recommendation of warden or superintendent based upon good behavior and faithful observance of rules.
- (8) Arrangements made for honorable and useful employment. Must obtain a sponsor who will execute an agreement that he will employ the prisoner or use his best efforts to obtain suitable employment for him. Bond may be required of the sponsor. Prisoners must report regularly.
- (9) Any violation of the above conditions.
- (10) Warrant of Superintendent or warden directed to any officer.
- (11) Imprisonment for the balance of the maximum term, losing the benefit of the time while on parole.
- (12) At any time board or governor decides that he is worthy of discharge.
- (13) Automatically, at the expiration of the maximum sentence or sooner if pardoned or commuted by governor.
- (14) Not given.
- (15) State system.
- (16) Not given.
- (17) The act meets with great favor. In all cases where the judge can give a life sentence, he is authorized by this act to fix a minimum and a maximum. The minimum shall not be more than one-half of the maximum. There is also a proviso that paroled prisoners shall make a written report to the warden the last day of each month to show conduct during the current month, employment, earnings and expenditures, probable postoffice address and place of employment for the coming month.

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### NEVADA—

- (1) Any person convicted of any violation for which no fixed period of confinement is imposed by law.
- (2) Minimum term not less than the shortest term fixed by law; maximum term not greater than the longest term fixed by law.
- (3) Board of parole commissioners composed of governor, justices of the Supreme Court and attorney general.
- (4) To consider all applications, grant or refuse parole, enforce requirements of parole, re-arrest and revoke.
- (5) Application must be made by the prisoner or his attorney with notice to the district judge and the district attorney.
- (6) All prisoners, including life prisoners who have served 7 calendar years.
- (7) Discretion of the board.
- (8) Must report once a month; must not leave the state without permission and obey the parole conditions.
- (9) Any violation of the above requirements.
- (10) Any officer authorized by law.
- (11) Imprisonment for the balance of the maximum term.
- (12) At any time board decides.
- (13) Automatically at the expiration of the maximum sentence unless otherwise commuted or pardoned.
- (14) Not given.
- (15) State system.
- (16) Not given.
- (17) Giving general satisfaction. When prisoner is paroled the board have authority to provide him with funds sufficient to aid him in securing employment. He cannot use any of these funds for attorney's fees and attorneys are prohibited from accepting or receiving any portion of said money for services.

### OREGON—

- (1) Any person convicted of crime sentenced to the penitentiary.
- (2) Court shall fix the maximum and minimum within the limitations prescribed by law.
- (3) Parole board consisting of three residents of the state, one of whom must be the superintendent of the penitentiary, appointed by the governor to serve at his pleasure.
- (4) They shall investigate all cases where prisoners are confined in the penitentiary and report to the governor with their recommendation; to make such rules and regulations as they think necessary.
- (5) No petition required. The superintendent of the penitentiary recommends.
- (6) All prisoners having served minimum and in good standing.
- (7) Prisoner's general demeanor, good conduct at the penitentiary and information regarding circumstances likely to surround him if paroled.
- (8) Faithful observance of the conditions of parole.
- (9) Any infraction of the parole regulations and rules.
- (10) Any sheriff or officer of the city or official or employee of the penitentiary; no fees.
- (11) Must serve the balance of the unexpired maximum term, the time during which prisoner was out on parole not to be deemed part thereof.
- (12) A discharge by the governor, a pardon by the governor or serving out the maximum on parole.
- (13) Automatically or on action by the governor.
- (14) Not given.
- (15) General.
- (16) Not stated.
- (17) This act is giving general satisfaction. A proviso has been made that any person who has on two prior occasions been sentenced to serve a term in any penitentiary or reformatory, shall not be entitled to the benefits of parole,

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but shall be sentenced for a definite term of years; any person who has on one prior occasion been sentenced to serve a term in any penitentiary or reformatory shall only be entitled to parole after he shall have served a term of years equal to twice the minimum penitentiary penalty.

The judge of any court is empowered to parole any person convicted of crime before such person is committed to serve the sentence for the crime.

DISCUSSION.

MR. EDWIN M. ABBOTT: "The report of this committee this year is simply a following up of the work which we attempted some time ago and most of which was published last year. This report was gathered together during the winter months and up until the very last moment which I thought I could give to gathering up the data. Since it has been sent to the various members of my committee and finally sent on to the secretary, Mr. Randall takes exception to one statement which we see in the report, to the effect that 80 per cent of those upon parole have made good. I have struck the general balance from the reports which have come to me throughout the entire United States. In some states as high as 94 per cent have made good, and in other states the percentage has not been beyond 56 per cent, so that the general balance is struck at about 80 per cent. Mr. Randall probably did not appreciate that when he sent the letter which he did to me, and also to the secretary. I also would say that both he and another member of the committee take exception to the fact that it appears in this statement that we endorse the system as proposed in Rhode Island. That is not a committee endorsement at all. If it is so expressed in the report it is not meant in that way. It is meant as an expression of the opinion of the persons who sent me the data. They trusted that the proposed system would become a law in the state of Rhode Island.

"In conclusion I would say, that after a careful study, covering several years of this work, I feel, Mr. Chairman, that it was not only to our committee, but to the Institute, to recommend another subject to the consideration of this Institute along this line. Indeterminate sentence and parole have given the opportunity to the prisoner to be rehabilitated. It has done great work and efficient work, but there is something lacking in the system yet, which we found after all our study, and therefore we come to the conclusion, and we recommend to your consideration the study of the employment of prisoners and compensation for their work. We find that interlocked with parole is the work of fitting the prisoner for parole. If during incarceration he has been placed at some useful occupation, if he has been paid for his services, no matter how the return comes, he goes forth from the penitentiary or the prison first equipped with some money to meet his immediate needs, and equipped with some machinery by which he can provide for his future needs. During his incarceration also he has been compensated in such a way that his family is supported while he is within prison walls. We have only started in this work. Pennsylvania is taking up the idea. Some other states have already taken it up, but it is such a momentous question that I trust this Institute will take it up along the lines suggested. To my mind this is even more necessary than any other new subject which we could take up along the line on penology."

Mr. Abbott put his suggestion in the form of a motion, which was seconded and unanimously adopted. The report was received and referred to the Executive Board.

DEAN WIGMORE: "It has occurred to me that as the result of Mr. Abbott's report that it is exactly the kind that that committee ought to be making now, but that the status of the committee ought to be changed. If you will recall the general allotment of committees the last four years there were five or six or seven special committees and there is always a pressure to add more of those, but their work consists in research, primarily. After a year or two or three or four years, a final statement and endorsement of their conclusions should be made by this Institute. Then their function ends in that respect. The tendency has been to put on more committees to take care of the subject

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not yet studied, but in this particular case, and one or two others, such as that of criminal statistics, there is need of a committee to be watching all the time and reporting what is going on, and being in touch with the different states and advising about legislation. It seems to me, therefore, that this Committee on Indeterminate Sentence and Parole ought to be, if the Executive Board wishes, given the status of a special committee so that it will advise the Institute from time to time and keep up correspondence, and not give up its watch of the situation. That will then leave room for a new committee and I heartily endorse Mr. Abbott's recommendation that it be a Committee on the Labor of Prisoners. That subject some of you will remember has been for the last few years pressed upon us very earnestly by many as a fit subject, and if this committee is changed in its status that will leave room for it. I think the motion of Judge Winslow would cover this, that this report be placed on file; but to cover my suggestion there would have to be this additional recommendation to the Executive Board, that this committee be made a general committee."

MR. BALDWIN, of Washington, D. C.: "I am not a member of the Institute, although I want to be. I am here as a delegate from the District of Columbia, where we are working for the indeterminate sentence. It is something we need with the new workhouse that we have got down there; we have a farm of 1100 acres, and I agree fully with Mr. Abbott as to its importance. I have asked him for a copy of this paper so we may use any information he has got there with regard to employment. I believe fully in the importance of compensation to prisoners. I have been interested in that for a number of years, especially in regard to the compensation of families of men imprisoned for non-support. It is absolutely necessary. Beyond that, if the prisoner can earn something to help him after he gets out it will be a very great benefit, and I should be very glad to see this committee appointed. I am glad to say that Wisconsin passed a bill of that kind at the last session. I hope it is a good one, although I have not examined the bill. Michigan also has done great work in that respect."

JUDGE OSBORNE, of New Jersey: "I hope that the Executive Committee will act favorably on this suggestion. It is a matter of extreme importance. New Jersey passed such a law providing for the employment and compensation of prisoners in 1911, an act drafted by me when I was a member of the New Jersey legislature, and we are now beginning to work under that act. If the committee is appointed I hope they will have an opportunity to look at it, because I think it is a very good, workable act. Then there is the other viewpoint. Aside from the interest that we all feel in the advantage of paying prisoners and families, it will assist the judge in the imposition of sentence very often, if he knows the family of the prisoner is being provided for in some way. One of the greatest difficulties that I have in determining what sentence to impose is the fact that I am taking a man away from a family, and preventing him from obtaining support for a wife and often for dependent children. It is one of the greatest difficulties I think that must confront every judge who has to impose a prison penalty, and if we could realize that the state was doing something to take care of these dependent families we could handle the question of the imposition of penalties, especially where they involve imprisonment, much more satisfactorily."

DR. SEARS, of Burlington, Vt.: "As a physician, I wish to sound this one note of warning: In the practical carrying out of the indeterminate sentence, to have a proper individualization of punishment, it seems to me that we should have a proper study of the individual, and I do not think that we can have a successful carrying out of the indeterminate sentence law unless we previously to the passage of the law make some provision for the study of the criminal. I think you all fully appreciate that fact, and I would advise that we provide in our statutes for psychopathic institutes such as that in Chicago, so that we can get down to the true condition of the criminal. I have had some experience in examining men after commitment, and have found many cases released on probation, in which the mental caliber of the man should not have allowed him to be released on probation; that he was simply a child as it were. A great

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many states are passing indeterminate sentence laws without having any means of studying the criminal."

JUDGE NORCROSS: We have in our Nevada State Prison, which, of course, is a small one in comparison with the other institutions, a very good system of carrying out what has been suggested. We have not had any trouble in that respect in that we have not only the advice of the prison physician, but we have what is regarded I think the best system on the Pacific Coast of obtaining data of prisoners through the state police system. I might explain this. We have a unique situation in the state of Nevada. The constitution made the justices of the Supreme Court, the attorney-general and the governor a parole and pardoning board, with the exception that you cannot pardon except with the vote of the governor, but he must have the vote of two others to act. We can parole with any three of the five members, and the board acting in that way, we assume the prerogative whenever a case presents circumstances which it seems to us justify paroling, we parole. We revoke paroles occasionally and then sometimes grant it again. The only paroles that we have had occasion to revoke have been due in most instances to drunkenness. That has been the situation also in California, and in cases where paroles have been revoked for trivial violations of the rules we generally re-parole after six months."

THE PRESIDENT: "The chief object of this Institute, to my mind, is to get the result of our researches so we will understand what they are, and then have those results put into our Journal. We hope some time to have sufficient financial means so as to send out the pamphlets to every one who wishes them. That is my chief thought with reference to this work; that we will distribute this carefully gathered information, not so much for the purpose of giving it here, because it is in a cursory and hurried manner, but for the purpose of putting it where it can be readily accessible to every one who desires to study the subject.

A motion to refer the recommendation for the appointment of a committee on prison labor to the Executive Board was unanimously carried.