

THE PROBATION SYSTEM OF MASSACHUSETTS

By Chapter 198 of the Acts of 1878, the Legislature of Massachusetts first provided probation as a substitute for imprisonment. While this original law was limited to Suffolk County, and the probation officer therein provided was appointed by the mayor and attached to the police department, it embodied the essential elements of investigation, recommendation and supervision of the offender by a paid officer. In 1891 (Chapter 356 of the Acts of 1891), probation was made a feature of the judicial system, by requiring the justice of each municipal, police or district court to appoint a probation officer. In 1898 the Superior Court (which has juries and tries felonies and also appeals from the lower courts) was authorized to appoint such officers. There are now eighty-three probation officers of the lower courts, including juvenile courts, and fifteen of the Superior Court. Their salaries range from \$100 to \$2,100.

The creation of a State Commission on Probation, by Chapter 465 of the Acts of 1908, marks a new era in the probation system of Massachusetts. It was secured through the efforts of persons who recognized the possibilities of the system when properly administered, and whose investigations disclosed the lack of uniformity on the part of judges in placing cases on probation, and the more serious lack of proper qualifications in some of the officers.

This Act provided for a commission of five persons, to be appointed by the Chief Justice of the Superior Court, and to serve without compensation. The commission was authorized to appoint a salaried deputy-commissioner, who should be its executive officer. It was empowered to prescribe the form of all records and reports of probation officers; to make rules for the registration of reports and for the exchange of information between the courts, and to call conferences of the judges and of probation officers. The commission organized in October, 1908, and of the five members appointed, three are judges.

The commission was fortunate in the selection as deputy of a man who had been a successful probation officer of the Superior Court, who is an enthusiast in the work and possesses the confidence of every probation officer. He personally visited and examined the work of every probation officer in the State; and his

reports acquainted the commission with existing conditions and the problems suggested thereby. It is not my purpose to anticipate the first annual report of the commission, due in January, 1910, but I may say that not only is there already an approach to uniformity in the work of the lower courts and officers, but most important, the officers themselves have been instructed and stimulated to better work. Conferences of the judges, called by the commission, have awakened their interest in probation, and resulted in the formation of organizations among the judges themselves to advance the efficiency of the system. Similar conferences of the probation officers have quickened the spirit of cooperation between them and the commission, as well as among themselves.

As directed by the Act, the commission, prior to February 1, 1909, prepared and prescribed the use of a uniform system of record blanks. These comprise an "Investigation Card," a "Probationer's Card" and a "Probation History." The Massachusetts law 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." The investigation blank calls for such facts as the person's occupation, periods of employment, contribution to family support, members of family, home influences, character of associates and surroundings, references, including persons who might help—as well as records of previous convictions. Informed by such an investigation the judge can intelligently determine whether the case is a suitable one for probation. He is dealing with the offender rather than the offense.

A "Probationer's Card" must be furnished to each probationer. On it are printed 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.

"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 "Probation History" card records the dates of letters received from and those sent to probationers, of his personal calls upon the officer and the latter's visits. It also states the "Results of Probation;" giving a brief detailed statement of the officers visits and his efforts in behalf of the probationer. This card is designed to give a complete and comprehensive history of each case during the term of probation.

The Act of 1908 vests in the commission no authority to appoint or remove officers, and does not, in terms at least, empower the commissioners to enforce on the part of probation officers the work indicated by these blanks. Such authority may be conferred later if found necessary for the effective application of the probation system. But the commission early issued to the officers certain "Recommendations," indicating the proper methods of probation work. Among them are the following:

"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 person should be allowed probation, but also suggest to the officers 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.

"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.

"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.

"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.

"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.

"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 temptation; should aid and encourage them by friendly advice and admonition, and take an active interest in reclaiming them from evil courses.

"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.

"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."

During the year ending September 30, 1909, there were placed on probation in the lower courts 12,713 persons, and in the Superior Court 1,239, a large proportion being adults, and the offenses including felonies and misdemeanors. Further, the probation officers collected \$45,023.36—as follows: Restitution, \$5,958.06; non-support payments, \$24,507.33, and fines, in suspended sentence cases, \$14,557.97. These figures indicate the growth of the probation system in Massachusetts.

To the practical American mind, the question naturally occurs—what is the result of this probation work? Theoretically at least it has certain advantages. It guards the young offender from the contamination and stigma incident to prisons, however well conducted. It disciplines him in a "reformatory without walls," without depriving his family of support—and at a large saving to the State. The extent to which the possibilities of probation are in fact realized depends chiefly upon the personality of the probation officer. From an experience of more than seven years, I have found that the results were good in fully three-fourths of the cases when entrusted to officers who possessed sound judgment and tact, humane instincts, patience and devotion to their work.

The method of such an officer in dealing with his charges cannot be formulated by any mechanical rule; it must be such as each individual demands. As Aristotle long ago said: "To measure the indefinite, you require an indefinite rule, like the

lead rule of Lesbian architecture, which adapted itself to the form of the stones."

Upon the judges, too, depend largely the results. They must not discredit the system by placing on probation persons who cannot be reasonably expected to reform without punishment. Here, as in the domain of criminal punishments, there is need of standardization.

That probation is now generally recognized as an efficient practical measure in the treatment of crime is evident from the fact that probation laws have been enacted in thirty-four of our States, in the District of Columbia, and in Great Britain, Canada and Australia. The *Fürsorger* appointed by the Court of Guardianship (*Vormundschafts Gericht*) in Germany since 1907, has duties practically corresponding with those of the American probation officer; and in Hungary, lads who leave the reformatories before twenty are placed under the care of a similar officer. The *Sociétés de Patronage* in Holland, Belgium, France and Switzerland are authorized private organizations with like functions, and similar to our volunteer probation officers.

It is not within the scope of this article to treat of the further extension of the probation system to cases of discharged prisoners on parole, the more general collection of fines under suspended sentences, and the application of probation often times as a substitute for the objectionable short-term imprisonment. The feasibility of such expansion must be decided by the practical experiences of judges and officers, rather than by the theories of doctrinaires who are wedded to the "criminal type" theory, and exaggerate the influence of heredity and environment to the exclusion of the whole notion of personal responsibility. Probation will be improved and developed in a truly scientific, sane and practical way, as we shall solve the kindred problems of the indeterminate sentence, reformatory discipline, and needed reforms in criminal procedure and prison administration.

It is a source of satisfaction to know that eminent lawyers and judges are recognizing the duty of the profession to take a leading part in the solution of these problems, that are legal as well as sociological. No man is entitled to more credit for this awakening than Yale's distinguished son, President William H. Taft. The American Prison Association and the National Conference of Charities and Corrections have striven

to arouse public interest; but the Bar was not largely represented in their meetings. By far the most promising movement at present is the organization of the American Institute of Criminal Law and Criminology, the result of a conference called last June under the auspices of Northwestern University. By forming local branches and actively co-operating with the objects of the national organization, American lawyers can do much to formulate practical reforms that will make our criminal law and procedure worthy of public respect and confidence.

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