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Proposed Probation and Parole Legislation

By WILLIAM L. RICE

of the Denver Bar

Since enactment of the Probation Law in 1931 (Ch. 140, Vol. 4, 1935 C.S.A.), practically every session of the Legislature has had at least one amendment to the probation statute, or a new probation or parole bill to consider. All of these bills and amendments have been the brain children of a few individuals or of a single group, and consequently have met with sufficient opposition to be defeated, with the single exception of an amendment to the probation statute in 1939 (L '39, P. 462, Ch. 1).

That there is need for probation and parole legislation, and that to insure its passage will take the concerted effort of all persons and groups interested, became so apparent that in 1947 the Thirty-sixth General Assembly took the following action:

House Joint Resolution No. 8

"Be It Resolved by the House of Representatives of the Thirty-sixth General Assembly, the Senate Concurring Herein:

"That the Attorney General of the State of Colorado is hereby authorized and requested to make, before the convening of the next regular session of the General Assembly, a thorough and comprehensive study of the problem of probation and parole in this State, to formulate such plans and recommendations for the improvement of the handling of probation and parole as may be deemed advisable; and

"Be It Further Resolved: That the Attorney General is further authorized, in the making of such study, to make use of any assistance that may be offered by any organizations or persons engaged in a similar study or specially qualified to render such assistance, and

"Be It Further Resolved: That the Attorney General shall make a report of his findings and recommendations in writing to the next General Assembly within five days after the convening thereof. Said recommendations shall, in so far as possible, be submitted to the General Assembly in the form of proposed legislation; and

"Be It Further Resolved: That a copy of this Resolution be transmitted to the Attorney General." (L '47, P. 952)

At about the same time as the publication of the above resolution, a small group interested in probation and parole met and formed the "Colorado Probation and Parole Association." Since the first meeting March 13, 1947, the Association has grown to include numerous members of the Bench and Bar, the Wardens of the Penitentiary and Boys' Reformatory, probation officers throughout the state, and many laymen.

This association, together with the Colorado Bar Association's Committee on Parole and Probation, has assisted the Attorney General in pre-

paring bills to be submitted to the next General Assembly. The legislation in its present form consists of two bills, one on probation and the other on parole. Both bills were approved by the Bar Association's Board of Governors at their meeting on December 3, 1948.

The Probation Bill

The proposed probation act will repeal the present act; however, some sections of the present act will be re-enacted almost word for word. The major changes are: (1) mandatory appointment of probation officers, (2) pre-sentence investigations, (3) power to grant probation to second offenders, (4) authority for the court to require an applicant to submit to a mental and physical examination, and (5) elimination of the district attorney's approval in granting probation.

The following is a digest of the proposed probation act:

1. Appointment of Probation Officer

The Judge or Judges of the District Court of each judicial district shall appoint one or more probation officers and shall fix their salary commensurate with the time required to discharge their duties. If the officer serves more than one county his salary and expenses will be apportioned between such counties.

2. Pre-sentence Investigation

In felony cases, where there is discretion as to penalty, the court shall cause a pre-sentence investigation to be made by the probation officer and he shall make a written report to the court.

3. Application for Probation

Any person who has not been previously twice convicted of a felony, may upon conviction of a crime, except for murder in the first and second degree, make application for probation. When application is made the court shall defer sentence and cause the probation officer to make an investigation. Within a reasonable time the probation officer shall file a written report together with his recommendation as to whether or not probation should be granted.

4. Examination of Defendant.

The court may order any defendant on pre-sentence investigation or application for probation to submit to a mental and physical examination.

5. Records

Probation officers shall furnish copies of reports to the Director of Parole.

6. Granting Probation

The court shall have the power to suspend the imposition or execution of sentence upon such terms and conditions as he may deem best, and may

revoke or modify any condition of probation or change the period of probation, but the period of probation shall not exceed five years. The court may grant probation after a plea of *nolo contendere*.

7. *Restitution*

A defendant on probation shall be required, so far as possible, to make restitution and may be required to pay the costs of court and a reasonable sum for supervision.

8. *Duties of Probation Officers*

Probation officers shall make investigations and report to the court, and shall instruct, supervise and aid probationers. They shall keep records of their work and account for all money collected.

9. *Make Report to Court*

Probation officers shall report the conduct of probationers to the court and the court may terminate or extend the probation.

10. *Probation Officer May Arrest Probationer—Revocation of Probation*

The probation officer may arrest a probationer and shall within ten days make an investigation and take the probationer before the court or release him. Whereupon, the court may revoke the probation and impose any sentence which might have been imposed originally.

11. *District Judges to Make and Enforce Rules*

The District Judges shall make rules in conformity with this act to carry out its provisions.

The Parole Bill

Before digesting the proposed parole legislation, it may be well to comment that the only system of parole in Colorado is the automatic parole earned by good behavior or those special cases called to the attention of the Governor, who is the only one empowered to grant paroles. There is no question that Colorado needs a parole board, but it has been the general consensus that the only type of a board that will function properly is a full-time paid board. However, the cost of a parole system, including such a board, has caused everyone to hesitate in recommending it at this time.

Under our present system, when a person is released from an institution on parole he is entirely on his own, with no supervision except in rare cases where present probation officers go out of their way to help a parolee. Supervision of parolees is necessary if the theory of rehabilitation of criminal offenders is to be carried out. The most recent example of what happens without supervision occurred in Denver on Saturday, December 4. Two youths staged a hold-up on Larimer Street and a store owner was shot and killed. A few days later a nineteen year old boy was apprehended and

allegedly confessed to the murder. It was reported in the press that he had been released on parole from the State Reformatory on November 20, only fourteen days before the commission of the crime.

Supervision will help protect the lives and property of our citizens and will aid in the rehabilitation of offenders, and with this in mind the proposed parole bill was drafted. If this bill is enacted, a bill providing for a parole board should be considered at a later date.

Colorado, being a member of the interstate compact on probation and parole (L. '37, P. 770, Par. 2), is obliged to supervise probationers and parolees admitted to the state under the compact. Consequently, provision has been made in the parole bill for this supervision.

Digest of the Parole Bill

1. Director

The Governor shall appoint a director of parole who shall be experienced in criminology, parole and probation work.

2. Parole Officers and Employees

The director shall appoint officers and employees to supervise parolees released from the State Penitentiary, State reformatories, the criminal insane released from the State Hospital, and persons to be supervised under any interstate compact. Parole officers shall not be required to supervise more than seventy-five persons. (It is estimated there will be a need for fifteen parole officers.) The parole officers shall be at least twenty-five years of age and selected because of their character, ability, training, and their capacity to influence human behavior. The director and officers shall be under Civil Service.

3. Powers and Duties of Director

The director, whose office shall be in Denver, shall supervise the officers and establish parole offices at such places in the state as the need requires. One officer shall be stationed at the penitentiary and one at the State Reformatory. The director shall make investigations and recommendations for the Governor for paroles, reprieves, commutations, and pardons. He shall, with the approval of the Governor, make rules governing supervision and conduct of parolees.

4. Cooperation of Wardens

Wardens of the penal institutions shall cooperate with the director in the administration of this act.

5. Procedure for Revocation of Parole

Parole officers shall have the right to arrest a suspected violator, and must complete their examination within ten days and either release the parolee or, if it is determined that a violation has occurred, file a written report and recommendation with the Judge of the nearest District Court.

The District Judge shall, within fifteen days, conduct a hearing in the nature of a review, and the Judge may release the parolee, or, if he determines that there has been a violation of parole, he shall within five days submit his findings and recommendation to the Governor. The Governor shall within ten days either revoke or continue the parole. The District Judge may admit the parolee to bail until the final order of the Governor. If the parolee is out of the State of Colorado and the Governor has reason to believe that he has violated his parole, he may forthwith revoke such parole.

6. *Appropriation*

The General Assembly shall bi-annually appropriate funds for the administration of this act.

7. *Records*

The office of the director shall act as a clearing house for all information on interstate and intrastate probationers and parolees, and shall prescribe uniform forms for parole and probation.

Copies of the proposed probation and parole bills may be secured from Frank C. Dillon, Chief Probation Officer, West Side Court Building, Denver, Colorado.

The State Bar Act—Another Major Objective in the 1949 Legislature

By SYDNEY E. SHUTERAN,
of the Denver Bar, Chairman of the State Bar Act Committee

A long form bill to incorporate the bar of the State of Colorado will be introduced in the legislature when it convenes in January. All lawyers are solicited to give their active aid and cooperation to obtain the passage of this bill.

A copy of the bill has been sent to every lawyer, whose address is available in the State of Colorado, whether they are a member of the Colorado Bar Association or not. Thus, all lawyers will have an opportunity to study the bill and submit to the committee such additions, deletions or changes which they deem appropriate.

A State Bar Act, synonymously referred to as an Integrated Bar Act, has for many years had the approval and support of the Colorado Bar Association and an overwhelming majority of the lawyers in this state. So numerous are the outstanding lawyers who have devoted a great deal of time and effort during the developmental stages that we cannot here give them due credit; but as a result of their assiduous efforts we are now at the threshold of realization of the valuable services which can be rendered by a unified bar association. Naturally, a unified bar reacts to the general benefit of the public and of the individual lawyer.