



1947

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Recommended Citation

Wilton H. Fair, *Probation: A Needed Development in the Administration of the Suspended Sentence*, 1 Sw L.J. 137 (1947)
<https://scholar.smu.edu/smulr/vol1/iss1/14>

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PROBATION: A NEEDED DEVELOPMENT IN THE ADMINISTRATION OF THE SUSPENDED SENTENCE

UPON conviction of a criminal defendant three possible methods of disposition of the offender have been made available to the courts by statutory provision in the majority of jurisdictions: (1) incarceration in an institution for a term prescribed by law; (2) discharge of the offender on recognizance without condition as to supervision—commonly referred to as a “suspended sentence”; and (3) discharge of the offender on recognizance with provision that he be under the supervision of a probation officer and follow certain conditions prescribed by the court passing sentence—frequently designated as “probation.” The first of these methods is so generally understood as a result of traditional practice that no further clarification or observation is required. This article will attempt to deal briefly with the second and third procedures, pointing out the difference between them as well as their interdependence, and to suggest changes and additions to the existing Texas law with regard to suspended sentence and probation.

I

Historically the idea of the suspended sentence may be traced back to the development, early in the thirteenth century, of the common-law procedure which became known as “benefit of clergy” and which in effect was but a means of suspending the imposition of sentence by the King’s courts. Under this practice, ordained clerks, monks and nuns—if accused of a crime—were delivered over to the ecclesiastical courts for such punishment as the church deemed necessary.¹ In successive centuries the scope of the “bene-

¹ See 3 HOLDSWORTH, HISTORY OF ENGLISH LAW (3rd ed. 1923) 294 *et seq.*

fit of clergy" was widened to include other classes of persons; but at the same time certain offenses ceased to be covered by it, and the scheme was finally abolished by statute in 1827.² But the idea of the suspended sentence had become well established in the common law and continued. Several American states, notably New York,³ have relied on this common-law basis as a precedent for suspension of sentence without statutory authorization. However, the majority of American jurisdictions have held that the courts have no such inherent power to suspend sentence and that any such practice by the judicial branch must be based upon statute.⁴ And the United States Supreme Court has held that the federal courts have no power to suspend either the imposition or execution of sentence indefinitely in the absence of statute.⁵ Similarly, in Texas the Court of Criminal Appeals has held in the case of *Snodgrass v. State*⁶ that trial courts have no inherent power at common law to suspend indefinitely the sentence of a convicted offender. The *Snodgrass* case is better known, however, for its decision that the first suspended-sentence statute in Texas, passed in 1911,⁷ was unconstitutional. The ground upon which the act was declared void was

² 7 & 8 GEO. IV, c. 28 (1827), cited in 3 HOLDSWORTH, HISTORY OF ENGLISH LAW (3rd ed. 1923) 294, 303.

³ *People ex rel. Forsyth v. Court of Sessions*, 141 N. Y. 288, 36 N. E. 386 (1894).

⁴ Courts of the following states have held that they have no inherent power to suspend sentence in the absence of statute: Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin.

Courts of the following states have held that they possess inherent power to suspend sentence: Florida, New Hampshire, New Jersey, New York, North Carolina, and Pennsylvania. The courts of the District of Columbia have also held that they possessed such power.

In the following states, the question has not as yet been directly passed upon: Connecticut, Delaware, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Rhode Island, Virginia and Wyoming.

In Michigan, cases have been decided both asserting and denying the existence of such inherent power in the courts of that state.

⁵ *Ex parte United States*, 242 U. S. 27 (1916).

⁶ 67 Tex. Crim. Rep. 615, 150 S. W. 162 (1912). *Accord*, *Clare v. State*, 122 Tex. Crim. Rep. 211, 54 S. W. (2d) 127 (1932).

⁷ Tex. Laws 1911, c. 44, § 1.

that it empowered the judiciary to exercise what was essentially the Governor's pardoning power. Following the decision in the *Snodgrass* case, the Legislature in 1913 enacted another law authorizing the jury to recommend a suspension of sentence and requiring the court to follow any such recommendation of the jury.⁸ This act was soon tested in the courts and was upheld as a valid exercise of the legislative power to define offenses and fix the punishment to be inflicted upon offenders.⁹ The present Texas suspended-sentence act, essentially the same as the 1913 act, was enacted in 1925.¹⁰ In 1931 there was added Article 776a, which provides that in cases in which the accused pleads guilty and waives jury trial, the court itself may suspend sentence inasmuch as the punishment is assessed by the court rather than by the jury.¹¹ As yet the constitutionality of this act has not been passed upon. In view of the adoption in 1935 of a constitutional amendment authorizing the Legislature to empower courts of original criminal jurisdiction to suspend imposition or execution of sentence,¹² it is unlikely that the constitutionality of Article 776a will be challenged.

Procedure under the present act requires that a defendant seeking a suspended sentence shall file a written sworn application with the court before the trial begins.¹³ In the event that the accused is not represented by counsel and requests a suspended sentence, the court is required to appoint counsel to prepare the application.¹⁴ An application once entered may be withdrawn with the consent of the court.¹⁵ Testimony as to the general reputation of the defendant may be introduced only at his request; similarly the question as to whether the defendant has previously been con-

⁸ TEX. CODE CRIM. PROC. (1925) arts. 776-81.

⁹ *Baker v. State*, 70 Tex. Crim. Rep. 618, 158 S. W. 998 (1913).

¹⁰ TEX. CODE CRIM. PROC. (1925) art. 776-81.

¹¹ Tex. Laws 1931, c. 43, § 4.

¹² TEX. CONST. (1876) Art. IV, § 11A, adopted August 24, 1935.

¹³ TEX. CODE CRIM. PROC. (1925) art. 776.

¹⁴ *Ibid.*

¹⁵ *Harmon v. State*, 119 Tex. Crim. Rep. 426, 45 S. W. (2d) 583 (1932).

victed of a felony may be submitted only at his request.¹⁶ The jury is not required to recommend a suspended sentence even though they find that the defendant has not been previously convicted;¹⁷ and where the trial is without a jury, the judge may likewise refuse to grant suspension even though the defendant's character and reputation are good.¹⁸ Inasmuch as a judgment suspending sentence is not considered a final judgment, no appeal can be taken from it;¹⁹ however, it will support a plea of former conviction.²⁰ When sentence is suspended, the defendant shall be released upon his recognizance in such sum as the court may fix.²¹ There is no further restriction placed upon him except that he shall enjoy such suspension during "good behavior," *i. e.*, so long as he "not be convicted of any felony, or any character or grade of the offenses of theft, embezzlement, swindling, conversion, theft by bailee, or any fraudulent acquisitions of personal property"²² during the time of such suspension.

The Texas suspended-sentence law has been severely criticized on several occasions.²³ Since the law has remained practically unchanged since 1913,²⁴ the criticisms heretofore voiced are for the most part still relevant. Worthy of consideration are several proposed changes which have been suggested for the purpose of making the Texas law more effective in achieving the intended result—

¹⁶ TEX. CODE CRIM. PROC. (1925) art. 778.

¹⁷ Skelton v. State, 84 Tex. Crim. Rep. 193, 206 S. W. 346 (1918).

¹⁸ Waldrop v. State, 129 Tex. Crim. Rep. 134, 83 S. W. (2d) 974 (1935).

¹⁹ Jones v. State, 103 Tex. Crim. Rep. 589, 281 S. W. 1072 (1926).

²⁰ Coon v. State, 97 Tex. Crim. Rep. 645, 263 S. W. 914 (1924).

²¹ TEX. CODE CRIM. PROC. (1925) art. 781.

²² TEX. CODE CRIM. PROC. (Vernon's Supp. 1942) art. 777.

²³ See Potts, *The Suspended Sentence and Adult Probation* (1923) 1 TEX. L. REV. 188. See also messages of Gov. Pat M. Neff to the Legislature, reprinted in HOUSE JOURNAL, 37 Leg., Reg. Sess. (1921) 316; HOUSE JOURNAL, 37 Leg., 1st and 2nd Called Sess. (1921) 15-17.

²⁴ The only major change was the addition of article 776a in 1931. Amendments to article 777 and article 779 were made in 1941 which somewhat enlarged their scope but did not materially change them.

restoration of convicted offenders as useful members of society. In the first place, there is no provision in the present act for supervision of the offender once his sentence has been suspended. No central bureau exists which maintains a record of offenders released on suspended sentence. As a result it is quite possible that an offender may violate the condition of his suspended sentence by being convicted of a subsequent felony during the time of such suspension and yet not be reported to the court which ordered the suspended sentence if he does not commit the second offense in the same county as the first or in close proximity thereto. Upon a finding by the jury in the second case that he has not been previously convicted of a felony, he may in fact be given a second suspended sentence, although the law expressly prohibits such a sentence under these circumstances,²⁵ due to the difficulty of proving the prior conviction or because of the second court's ignorance of it. Moreover, absence of supervision allows the offender to drift back into criminal conduct; in some cases such laxness in enforcement may encourage further criminality by making it highly probable that the offender's prior misdeeds will remain unknown and that he will have a chance for another suspended sentence, in direct contravention of the statute. Although in 1935 the people of Texas adopted a constitutional amendment empowering the Legislature to pass enabling laws for a system of probation,²⁶ by which such evils could be corrected, thus far no remedial legislation has been enacted. If suspension of sentence is to be effective in achieving in practice what it purports to do in theory—reform the criminal—it will require supervision to insure that the terms of suspension are carried out.

A second difficulty in the present act is that it is too restrictive

²⁵TEX. CODE CRIM. PROC. (Vernon, 1936) arts. 776, 776a, and 780. See *Bradshaw v. State*, 128 Tex. Crim. Rep. 345, 81 S. W. (2d) 83 (1935); *Whitlock v. State*, 123 Tex. Crim. Rep. 279, 58 S. W. (2d) 109 (1933).

²⁶TEX. CONST. (1876) Art. IV, § 11A, adopted August 24, 1935.

as to the classes of persons eligible for a suspended sentence. For example, offenders convicted of misdemeanors are not eligible for a suspended sentence.²⁷ This seems to be a great hardship indeed, since the stigma of a prison record is fastened to a man just as firmly by imprisonment for a misdemeanor as by commitment for a crime of the grade of felony. Moreover, there would seem to be greater possibility of reclaiming misdemeanants and restoring them to the status of useful citizens than in the case of felons. In the case of many misdemeanor convictions for first offenses or for minor offenses, the offender, if aided by competent supervision and afforded an opportunity for a new start, after being given a chance to see his error, would seize the opportunity gratefully. Under the present prison system, the misdemeanant is not segregated from hardened criminals, and is thereby afforded the opportunity to learn new methods of lawlessness and to acquire a more active and passionate disregard for the law. And the enforced idleness which is prevalent in many jails is certainly not conducive to reforming an offender, be he misdemeanant or felon. Certainly if anyone is worthy of a suspended sentence and the encouragement to make good which it affords, it is the person who has committed only a first misdemeanor. The practice of the federal courts of allowing the benefit of suspended sentence and probation to those convicted of misdemeanors²⁸ is believed to have proved highly successful.

Exclusion of certain offenses by the statute and its discrimination between offenders on the basis of the length of sentence imposed present a third feature of the present act which could perhaps be altered so as to allow a more judicious application of the law.

²⁷ TEX. CODE CRIM. PROC. (Vernon, 1936) arts. 776, 776a (refer only to felonies).

²⁸ 43 STAT. 1259 (1925), 18 U. S. C. § 724 (1940): "The courts of the United States . . . , shall have power, after conviction . . . for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon probation"

Murder,²⁹ perjury, robbery, incest, abortion, seduction, arson, bigamy, and burglary of a private residence at night are specifically excluded from the present Texas statute,³⁰ as are the offenses of insulting the national flag,³¹ being disloyal to the United States during wartime in writing,³² and possessing the the flag of an enemy nation in wartime.³³ During the era of prohibition, violators of the state prohibition law over twenty-five years of age were denied the benefit of a suspended sentence.³⁴ In no event can the offender claim the benefit of the suspended-sentence law if his assessed punishment is more than five years.³⁵ It would seem that if an offender is worthy of suspension at all, he should not be deprived thereof merely because in his case the jury is influenced to assess punishment for a term longer than five years, when another offender convicted of the same crime may be sentenced to a shorter term. Likewise there is apparently some inequality in allowing the benefit of the law to a man convicted of rape but denying it to the bigamist or to one convicted of seduction or incest. And it may be doubted whether the denial of a suspended sentence to a person convicted of perjury, when it is available to one convicted of false swearing, really effectuates the purpose of the law when the criminal motivations of the two offenses must necessarily be similar. While the suspended-sentence law should probably not be made applicable to all classes of crimes, it does seem that perhaps only

²⁹TEX. PEN. CODE (Vernon, 1936) art. 1257a provides that persons convicted of felonious homicide whose assessed punishment is not over five years may receive the benefits of the suspended-sentence law. Art. 1257b provides that punishment for murder shall not exceed five years' imprisonment unless the jury shall find that such murder was committed with "malice aforethought."

³⁰TEX. CODE CRIM. PROC. (Vernon, 1936) arts. 776 and 776a.

³¹TEX. PEN. CODE (1925) art. 152.

³²*Id.*, art. 153.

³³*Id.*, art. 154.

³⁴*Id.*, art. 689 (Repealed in 1935, Tex. Laws, 2d Called Sess. 1935, c. 467, art. 1, § 49).

³⁵TEX. CODE CRIM. PROC. (Vernon, 1936) arts. 776 and 776a.

crimes punishable by death or life imprisonment should be excluded.³⁶ The federal act excludes only crimes so punishable.³⁷

A final criticism of the law which has frequently been offered is that the judge has no discretion in suspending sentence but must follow the recommendation of the jury. This condition has been somewhat alleviated by the enactment of Article 776a,³⁸ which allows the judge to suspend sentence in cases where the accused pleads guilty and waives jury trial. Prior to such enactment in 1931, and at present in jury cases, the judge has not been permitted to suspend sentence as a matter of discretion in cases of proper application. From 1913 to 1935 there was a constitutional obstacle to the reform of this situation, but since the adoption of Article IV, § 11A, the Legislature undoubtedly has the power to grant such authority to the judge. More than eleven years have elapsed since the adoption of this amendment, and yet no enabling legislation has been passed. It may be noted that a majority of the states having suspended-sentence laws have allowed the judge to suspend sentence in his discretion.

II

Supervision of the offender following suspension of sentence, usually referred to as "probation," is not new, although it is of recent origin in comparison to other types of penal and quasi-penal treatment. A Massachusetts court allowed what amounted to probation as early as 1831.³⁹ The first probation legislation in America

³⁶ Under such a provision the following crimes would probably be excluded: Third conviction for felony, TEX. PEN. CODE (Vernon, 1936) art. 63; second conviction for capital offense, *id.* art. 64; treason, *id.* art. 84; perjury in capital case where accused is convicted and executed on basis of perjured testimony, *id.* art. 309; causing mutiny or riots in penitentiary or prison farm, *id.* art. 318a; kidnapping for extortion, *id.* art. 1177a; rape, *id.* art. 1189; destroying unborn child, *id.* art. 1195; murder, *id.* art. 1257; burglary of private residence at night, *id.* art. 1391; burglary by explosives, *id.* art. 1398; robbery (with or without firearms), *id.* art. 1408.

³⁷ 43 STAT. 1259 (1925), 18 U. S. C. § 724 (1940).

³⁸ Tex. Laws 1931, c. 43, p. 65.

³⁹ 2 ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES (1939) 19, citing Commonwealth v. Chase, Thacher's Criminal Cases 267 (1831); recorded in vol. XIX of the Records of the Old Municipal Court of Boston, p. 199.

was passed by Massachusetts in 1878⁴⁰ and similar legislation has been enacted by forty-two other states and for the District of Columbia. In 1925, Congress passed the Federal Probation Act giving the federal courts the power to suspend sentence and to place offenders on probation.⁴¹

In Texas, which is one of the five states remaining without adult probation,⁴² there was a constitutional bar to probation legislation until 1935 when Article IV, § 11A of the Constitution was adopted. Bills providing for adult probation were introduced in 1937⁴³ and in 1941⁴⁴ but failed of passage. A proposed Texas probation law, embodied in bills introduced in the Fiftieth Legislature,⁴⁵ is based to a large extent on the Federal Probation Act, which several states have previously used as a model for their probation legislation. The proposed act provides for administration of the law by the Board of Pardons and Paroles.⁴⁶ This fact hardly seems a basis for criticism, as a majority of the states have provided for a similar administration and the federal probation officers also supervise parolees. Some of the provisions of the proposed Texas act are believed worthy of enumeration and comment.

Section one provides that courts having original jurisdiction of criminal actions shall have the power to suspend imposition or execution of sentence for *any* crime or offense where the punish-

⁴⁰ Mass. Acts 1878, c. 198.

⁴¹ 43 STAT. 1259, 1260 (1925), 18 U. S. C. §§ 724-27 (1940).

⁴² States, other than Texas, remaining without adult probation are: Alabama, Mississippi, Nevada and South Dakota.

⁴³ House Bill No. 351, SEN. JOURNAL, 45th Leg., Reg. Sess. (1937) 1796. Senate Bill No. 65, *id.* at 72.

⁴⁴ Senate Bill No. 116, SEN. JOURNAL, 47th Leg., Reg. Sess. (1941) 170.

⁴⁵ House Bill No. 120, introduced by Representatives Parkhouse of Dallas and Moore of Harris; Senate Bill No. 32, introduced by Senator W. Lacy Stewart of Harris.

⁴⁶ It may well be pointed out that the terms probation and parole are often used interchangeably but that actually they refer to very different procedures. Parole is release of an offender from prison under supervision after he has served a portion of his sentence. Probation, in the true sense of the word, is predicated upon the idea that the offender never enters an institution unless he violates the conditions of suspension placed upon him by the court, at which time he is no longer a probationer but is incarcerated in the same manner and for the same period that he would have served had not the execution of his sentence been suspended.

ment assessed is not the death penalty or life imprisonment, and to place the defendant on probation. This section would conflict with the present provision of Article 776 limiting the benefits of a suspended sentence to offenders whose terms have been fixed not to exceed five years. The proposed act makes no provision concerning prior convictions and their effect upon the placing of the offender on probation; however, present Articles 777 and 779 would presumably continue operative not only to prevent a second suspended sentence but also would require revocation of an earlier suspended sentence without probation. The proposed act would permit under such circumstances a revocation of an earlier suspended sentence with probation. In practice, this section would probably be construed with Article 776 to the effect that the defendant would still have the right to request a suspended sentence, the only difference being that the court could grant or refuse such request regardless of the recommendation of the jury.

Section three provides that the court shall determine the terms and conditions of probation and may alter or modify them at any time during the period of probation. The proposed act further provides that the court shall include, among the terms and conditions, the following, as well as any others: probationer shall (a) commit no offense against the laws of Texas or any other state or the United States; (b) avoid injurious or vicious habits; (c) avoid persons or places of disreputable or harmful character; (d) report to the probation officer as directed; (e) permit the probation officer to visit him at his home or elsewhere; (f) work at a suitable employment; (g) remain within a specified place; (h) pay his fine, if one be assessed, and make restitution or reparation in any sum that the court shall determine; and (i) support his dependents. This section, or a similar provision, is to be found in the laws of most states and also in the federal law. Apparently (b) and (c) are intended to preclude criminal behavior by probationers under the influence of alcohol or narcotics or under the influence of old criminal acquaintances; and (h) would seem a particularly

noteworthy provision, as it, if properly administered, can be relied upon to bring home to the offender that for which he is being punished, as well as to prevent the person victimized from suffering a complete loss.

Section two provides for pre-sentence investigation whenever possible, including a physical and mental examination if practicable. The court can certainly more nearly do justice in each individual case if it knows something of the defendant's background, education, social and economic circumstances and personality characteristics.

Under section four, the period of probation is to be determined by the court and may at any time be continued, extended, or terminated by the court. This section further provides that upon expiration of the probationary period the court shall discharge the defendant and also shall set aside the verdict (or in case of a plea of guilty, allow the withdrawal of the plea), dismiss the indictment and release the defendant from all penalties and disabilities resulting from the offense or crime of which he was convicted or to which he pleaded guilty. A proviso is made, however, that such conviction or plea of guilty shall be made known to the court if he is again convicted of any criminal offense.

The requirement of a formal hearing before revocation of probation is found in section five, which follows the federal act,⁴⁷ with an additional provision that revocation proceedings may be had in other counties or districts in order to save the inconvenience of returning the probationer to the court which granted him probation. The section provides that such court may then continue probation or may revoke it and deal with the case as if there had been no probation. No part of the time that the defendant is on probation is considered as any part of the time he shall be sentenced to serve.

Section thirty-three would repeal such statutes or parts of statutes as are in conflict with the act. This would affect Article 776 as to the requirement of a jury recommendation and as to the five-year

⁴⁷ 43 STAT. 1260 (1925), 18 U. S. C. § 725 (1940).

period, but probably would not change the procedure requiring a request by the defendant for a suspended sentence. Article 777 would also be changed somewhat insofar as section six of the proposed act would allow revocation of probation and suspended sentence for probation violations, which would be an addition to the offenses provided for in Article 777. Generally speaking the effect of the bill would be a retention of control by the courts over the probationer at all times. Thus, even though the probation officers would be appointed by the Board of Pardons and Paroles, they would be assigned to the court at its request and subject to its approval to serve as officers of the court.

III

Although a relatively new penal development, probation has now been in use for over one hundred years and has been supported by statute in various jurisdictions for almost seventy years.⁴⁸ No longer an experiment, it is now a recognized method of dealing with offenders. However, few records of the number of persons on probation were kept by the various states until the past few years and even these records have not been released during or since the war; therefore, it is impossible to obtain a complete statistical picture of the operation of the various state probation systems. The federal system has maintained rather adequate records, however, and these indicate that the number of its probationers has risen steadily from year to year. In 1940, there were 28,501 persons on probation in the federal system;⁴⁹ this number increased to 29,303 in 1941⁵⁰ and to 30,153 in 1944,⁵¹ the last year for which figures are currently available. During 1941, 12,945 of 33,429 convicted offenders were placed on probation, or

⁴⁸ Mass. Acts 1878, c. 198.

⁴⁹ See REP. ATT'Y GEN. (1941) 203.

⁵⁰ *Id.* at 203, n. f.

⁵¹ See Chandler, *Probation in the Federal System of Criminal Justice* (1945) 9 FED. PROBATION, No. 1, p. 5.

approximately 38.7 percent⁵² and in 1944 of 36,705 convicted offenders, 12,005 or 32.7 percent were placed under the supervision of federal probation officers.⁵³ In 1944, only 1,296 persons out of 37,073 on probation during the year violated their probation, with the result that in that year only 3.5 percent of all probationers were returned to court for revocation of their probation.⁵⁴ As figures for other years indicate that approximately the same percentage was returned, it seems that the results which have been obtained by the federal probation system have been highly successful. Federal offenders convicted in Texas during 1941 numbered 2,810, of whom 681 or 24.2 percent were placed on probation.⁵⁵ The apparent reason for the great lag by the state as a whole was the small percentage of probationers in the Western District of Texas, due to the great number of its convictions for illegal entry and other violations of the immigration laws as to which probation is in practice seldom granted.

Although the primary concern of the public in any probation system is its effectiveness in rehabilitation and restoration of the persons over whom it has supervision, its financial attractiveness cannot be entirely overlooked. That probation is economical in operation is indicated by the fact that while prisons generally cost from \$300 to \$500 per inmate per year to operate, the cost in salaries, etc., of supervising a man on probation generally is between \$30 and \$50 or about one-tenth as much.⁵⁶ In 1941, in the federal system, the cost was \$1.32 per day per prisoner whereas only \$0.09 per day was needed to defray the costs of supervising a probationer.⁵⁷ The cost per day in 1944 was approximately the same—\$1.30 for prison maintenance and \$0.09 for probation.⁵⁸

⁵² See REP. ATT'Y GEN. (1941) 313, Table 4-K.

⁵³ See Chandler, *loc. cit. supra* note 51.

⁵⁴ *Id.* at 6.

⁵⁵ See REP. ATT'Y GEN. (1941) 313, Table 4-K.

⁵⁶ See Evjen, *Federal Probation in PROGRESS IN PRISON* (1942) 110.

⁵⁷ *Ibid.*

⁵⁸ See notes 51 and 53 *supra*.

Not only is the maintenance cost per man of a probation system far less than that of prison facilities, but expenditures for construction of prison buildings are eliminated to whatever extent the offenders are permitted to live, as under the probation system, in their own homes or at places of their own choosing. Moreover, complexities and inconsistencies of institutional administration would be greatly reduced if those individuals whose requirements can best be met by probation are not sent to prison. A further advantage to the state is that the probationer can remain self-supporting and can probably maintain his family or dependents who might require charitable or governmental assistance if the offender were committed to an institution. A more significant economy, however, is its conservation of human resources in accordance with the most advanced knowledge of criminology. The probationer, who will in most cases be a first offender, is not confined with hardened criminals and further schooled in crime. At the end of his period of probation he will probably go his way and never again be an expense to those agencies responsible for administering criminal justice. On the other hand, it has been estimated that approximately one-half of the offenders in prison at any particular time will be recommitted within five years after their release. Moreover, the probationer also escapes the prison stigma which unfortunately follows so many offenders and reduces their economic productivity through life, regardless of the nature of their offense.

Another advantage of probation is its elimination of the readjustment problem which generally faces prisoners upon their discharge. After a man in prison has been governed in his every move and has done only what he is told, he has become so dependent upon authority that in its absence and in the emotional struggle of reorientation in a free society he may drift back into crime simply because it is the most familiar pattern of behavior to him. If, however, he is placed on probation and continues to live under normal conditions, the problem of readjustment never arises.

When the shortcomings of the suspended sentence without supervision are contrasted with the advantages of supervised probation which has proven effective in the experience of numerous jurisdictions, then the wisdom of the people of Texas in adopting Article IV, § 11A and in expressing thereby their willingness to undertake such a program seems manifest. In that Article is a vehicle for far-reaching improvements in the Texas system of administration of criminal justice. It may be hoped that the Legislature will not remain indifferent to its opportunity to put such a system into effect within the near future.

Wilton H. Fair.