

*A PROBATION SYSTEM IN THE UNITED STATES COURTS.

On March 3rd the President signed an act of Congress "To provide for the establishment of a probation system in the United States Courts, except in the District of Columbia." The act which is now effective provides briefly as follows:

The United States District Courts are authorized to suspend sentence and place offenders on probation "after conviction or after a plea of guilty or *nolo contendere* for any crime or offense not punishable by death or life imprisonment." The act does not apply to the courts of the District of Columbia, for which a special probation law was enacted by Congress in 1910. The courts may fix any terms and conditions of probation and may revoke or modify these at pleasure.

Judges of District Courts may appoint volunteer probation officers, and each judge may appoint one salaried officer, the salary to be approved by the Attorney General in each case. Salaried probation officers are to be appointed under the United States civil service.

Probation officers are required to investigate cases referred to them by the courts and to report thereon in writing. They are to receive persons placed on probation and to enforce the conditions of probation. They "shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvement in their conduct and condition." They are given police powers and are authorized to arrest probationers who violate the conditions of their probation.

This act is based on probation laws now in effect in a large majority of the states. In fact, today every state has a probation law, and in all except 12 states the law applies to adults as well as juveniles. The terms of the new Federal law are similar to the probation laws which have been in force for many years in all state courts in New York and Massachusetts.

A majority of the United States judges and attorneys endorsed this measure while it was before Congress. They have been keenly aware of the restrictions placed upon the Federal courts by a decision of the United States Supreme Court rendered in 1916 in the so-called Killits case (242 U. S. 52). This held that in spite of the decisions of the highest courts in many states that the power of the courts to suspend sentence was inherent under the common law, in the United States courts such power was not inherent but must be conferred by act of Congress. Previous to this decision, a great many Federal judges had suspended sentence, in some cases instituting a probation system of their own for the supervision of those released under suspended sentence. At the time of this decision over 2000 persons were out under suspension of sentence, and in 1917 President Wilson did the unprecedented thing of issuing a blanket pardon to these men and women. Had he not done so, all of these persons, many of whom had reformed and were entirely rehabilitated in society, would have had to be returned to court for sentence.

The law will enable the Federal courts to exercise a sound discretion, especially in the cases of youthful and first offenders, where the method of suspending sentence, fixing reasonable conditions and providing helpful supervision by a probation officer are just as applicable as to similar cases in the

State courts. It is not always realized that the Federal courts handle all classes of offenders. A study made in 1919 indicated that approximately 1000 children under 18 years of age were dealt with at that time by the Federal courts yearly. Since then the number has doubtless increased. Without any probation law, United States judges have frequently resorted to subterfuge rather than to commit or fine youthful offenders where such a course seemed obviously inhumane and anti-social. An example of this is the following case cited by a United States judge:

“A young girl 19 years of age, brought up on a farm by parents in very meager circumstances, went to a city to take training as a nurse in a hospital. Seeing other girls well dressed, the desire for fine clothes led her to order under a fictitious name articles of clothing from mail-order houses. She was caught and indicted. Investigation proved her to be of good family, not of vicious habits, and to be succeeding exceptionally well in her training. To have imposed a fine would have been utterly useless, as neither she nor her parents or relatives had anything with which to pay. To have sent her to prison would have blighted her life. I thereupon sentenced her to three years' training in the hospital, requiring that she report to me personally four times a year, and that the head nurse and the chief surgeon report to me as to her progress twice a year. Very much to my delight this girl has more than made good. She has the reputation of being the most careful, painstaking nurse in the institution. Her efforts have brought her promotion to head night nurse. Every patient coming from the hospital speaks of her in the highest terms, and although two years have passed she has never made a misstep.”

Another judge makes the following observation:

“Many cases come under my observation where it would be for the best interests of the offender and also of society that the sentence be suspended and the offender placed on probation. Only last week I had a case of that kind. A World War veteran came before me charged with making a false affidavit in regard to compensation claimed. He had been badly wounded and was receiving compensation and vocational training, part of his compensation going to his mother. His mother married and for one or two months he continued to file his application. The money was in fact paid over to his mother when he received it; and on demand by the Government, the total amount was repaid to the United States. A suspended sentence would have been proper in that case, in my opinion. I was without authority to impose it, so on his plea of guilty I postponed the imposition of sentence until he had the opportunity to raise the amount of a fine. I have had occasion to take similar action in a number of cases; but that of course, is unsatisfactory, and a judge would not feel at liberty to postpone sentences for more than two or three terms, if that long. The result is that purely on the grounds of mercy, sentences inadequate to the crime considered technically only are imposed and unfortunate precedents are thus created, which if they do nothing else, arise to plague the judge when similar cases are presented.”

It may be said that these cases are exceptional, but in a very real sense every criminal case is exceptional and differs from any other. It has not been the thought of the advocates of the extension of probation to the United States courts that such a measure will be used only in special cases, but rather

that an adequate system may be established which will aid the courts in a great many cases to impose just and reformative sentences. As pointed out by a number of United States attorneys who favor this measure, the probation system, wherever properly applied, has always been found to be an aid to justice. One Federal attorney makes the following statement: "In addition to the humanitarian considerations which have brought about the probation systems in the state courts * * * I believe that the practical administration of the United States courts would be assisted and the ends of justice advanced if the power to place upon probation and to release under suspended sentence were granted." In the discussions of the measure before the House of Representatives it was emphatically stated by several representatives that the power to suspend sentence and place on probation under strict conditions for a year or more might be and often is of far more disciplinary and corrective value than the imposition of a small fine or even a short jail sentence.

The law in question contemplates the gradual development of machinery for probation work in the Federal courts under the supervision and guidance of the Department of Justice. It provides that the appointment of paid probation officers shall be under the supervision of the Attorney General. It also provides that probation officers shall report as required to the Attorney General. The Department of Justice has been consulted and approved the bill before passage. It is taking steps at the present time to supervise and assist in putting the law into effect in practical fashion in the several district courts throughout the country.

*By Charles L. Chute of New York City.