MINNESOTA CRIME COMMISSION REPORT

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REPORT OF THE MINNESOTA CRIME COMMISSION

PART ONE

The Minnesota Crime Commission submits the following report. What is now presented is Part One of the whole report of the Commission. It contains a summary of the activities of the Commission, its conclusions and recommendations and the reasons therefor. The Report will be completed by the separate presentation, as Part Two, of a summary of the investigations made by the staff of the Commission, with other supplementary matter.

I. THE COMMISSION

1. Origin of the Commission

This Commission was created by an order of the Governor of Minnesota, which reads as follows:

State of Minnesota
Executive Department
St. Paul
Theodore Christianson, Governor

January 6, 1926.

During the last decade a crime wave, increasing in volume and seriousness, has been sweeping over the world. Our country, far from being free from this general revolt against law, has perhaps more than any other suffered from lawlessness.

Minnesota, in common with other States, has a serious crime problem. This problem cannot be solved, unless every aspect of it is given serious and thoroughgoing consideration by men of judgment, experience and judicial poise. In the solution of that problem, it is necessary to sift the evidence, to separate facts from conjecture, to learn the truth, and then to follow that truth relentlessly.

The problem involves, among others, the following questions:

1. Does our criminal law adequately define the crimes that are being committed?

2. Does it provide penalties that are adequate to deter men from committing crimes?

3. What changes, either in law or court rules are needed to expedite the machinery of justice, to make justice quicker and more certain?

4. What changes can be made in our machinery of law enforcement, outside of the courts, that will insure a more general apprehension of criminals and closer surveillance of those with known criminal tendencies?

5. Should the system of indeterminate sentences be continued, or should imprisonment be for definite terms fixed by the Courts?

6. If the indeterminate sentence system is to be continued, should the composition of the Parole Board, which now consists of the senior member of the Board of Control, the warden of the prison, the superintendents of the reformatories and one citizen appointed by the Governor, be continued, or should the Parole Board be differently constituted?

7. What changes in the rules and methods of procedure of the Parole Board could be made, which would tend to remove possibilities of error?

Being desirous of having these questions answered by a body competent to consider and decide them, I, Theodore Christianson, Governor of Minnesota, hereby create the Minnesota Commission to Investigate Crimes, Procedure and Punishment, charging said commission with the duty of making full and complete investigation along the lines suggested by the foregoing questions, returning full and impartial answers thereto, and making suggestions and recommendations for submission to the next legislature for the correction of any evils found to exist.

I appoint the following members of said commission:

Judge Oscar Hallam, St. Paul, chairman.

Everett Fraser, Dean of the Law School, U. of M., Mpls.

Judge Andrew Holt, Justice of the Supreme Court, St. Paul.

Judge H. D. Dickinson, Minneapolis.

Judge O. B. Lewis, St. Paul.

Judge Bert Fesler, Duluth.

Judge W. S. McClenahan, Brainerd.

Judge Julius E. Haycraft, Fairmont.
Judge J. F. D. Meighan, Albert Lea.
Dr. C. A. Prosser, Minneapolis.
Mrs. T. G. Winter, Minneapolis.
Dr. J. A. O. Stub, Minneapolis.
Mrs. W. J. O'Toole, St. Paul.
Father Thomas E. Cullen, St. Paul.
Dr. Frank Nelson, Minneapolis.
Howard T. Abbott, President State Bar Association, Duluth.
Dr. Charles E. Locke, Bishop, St. Paul.
Joseph P. O'Hara, Commander American Legion, Glencoe.
Mrs. A. Ueland, Minneapolis.
E. G. Hall, Pres. State Federation of Labor, Minneapolis.
H. Z. Mitchell, President State Editorial Assn., Bemidji.
Hon. W. I. Nolan, Lieutenant Governor, Minneapolis.
Hon. John A. Johnson, Speaker of the House of Representatives.
Hon. F. E. Putnam, Chairman of Judiciary Committee, Senate, Blue Earth.
Hon. A. S. Pearson, Chairman of Judiciary Committee, House, St. Paul.

THEODORE CHRISTIANSON,
Governor of Minnesota.

2. NAME

For convenience, the name of "Minnesota Crime Commission" has been adopted.

3. MEMBERSHIP

The Commission has consisted of the persons named in the order, with two exceptions: Mrs. Ueland was unable to accept the appointment, and Mrs. Myra Griswold of Minneapolis was named in her place; continued illness obliged Judge McClenahan to resign, leaving a vacancy which has not been filled.

4. THE WORK OF THE COMMISSION

(a) *Meetings of the Commission.*

The Commission held its first meeting February 1st. Other meetings followed on March 1st, April 5th, June 7th, November 15th and December 18th. At the earlier meetings, committees were organized, offices and a staff secured, and general plans made to conduct the work of the commission. Hearings were also

held, at which officials charged with the administration of the criminal law appeared before the Commission. Later meetings were largely devoted to consideration of the reports of committees and of the investigations made by the staff, and to this Report.

(b) *Committees.*

At its first meeting, the Commission provided for four committees, as follows:

COMMITTEE ON DETECTION AND APPREHENSION OF CRIMINALS
Hon. J. F. D. Meighen, *Chairman*
Judge W. S. McClenahan
Dr. J. A. O. Stub
Lt. Gov. W. I. Nolan
Hon. E. G. Hall

COMMITTEE ON CRIMINAL LAW, PROCEDURE AND PRACTICE
Judge Bert Fesler, *Chairman*
Judge Julius E. Haycraft
Senator F. E. Putnam
Judge O. B. Lewis
Hon. A. S. Pearson
Justice Andrew Holt
Hon. Howard T. Abbott

COMMITTEE ON PUNISHMENT, PARDON AND PAROLE
Hon. Joseph P. O'Hara, *Chairman*
Dean Everett Fraser
Dr. Frank Nelson
Dr. Charles E. Locke
Judge H. D. Dickinson
Mrs. W. J. O'Toole
Mrs. Myra Griswold

COMMITTEE ON CRIMINAL RECORDS AND STATISTICS
Dr. C. A. Prosser, *Chairman*
Mrs. T. G. Winter
Father Thomas E. Cullen
Hon. H. Z. Mitchell
Hon. John A. Johnson

The work undertaken by the Commission was apportioned among these committees. Each committee considered the matters entrusted to it, and made report to the Commission. All com-

mittee reports were received and acted upon by the Commission. This report of the Commission embodies the conclusions of the several committees insofar as they have been adopted by the Commission.

(c) *Offices.*

The Commission has maintained an office at the State Capitol, making use of the office of the Chief Clerk of the House. We have also occupied a Senate committee room, and have held meetings in several other rooms at the Capitol.

(d) *Staff.*

Since February, the Commission has had an executive secretary. Professor Justin Miller of the Law School of the State University held this position until June, when he resigned because of his acceptance of an appointment for one year at the University of California. He was succeeded by Wilbur H. Cherry, likewise a professor of law at the State University. The secretaries have served without compensation. Because of University duties, they have given only part of their time to the work of the Commission.

One of the first decisions of the Commission was to obtain reports upon the actual administration of the criminal law. A staff was created for that purpose. The investigation of the records of police, sheriffs, prosecutors and courts was placed in charge of Mr. H. V. Plunkett, with a corps of assistants. The assistants were young lawyers and law students. In Mr. Plunkett we had the good fortune to secure the rare combination of legal training and experience as a statistician.

The records of the Board of Parole and of the Board of Pardons were examined, and report made thereof, by Mrs. E. L. Hanson, who had had experience and familiarity with some of the records involved. An account of the investigations made, disclosing their scope and extent, follows at pages 9 to 12. Part Two of this Report, to be presented separately, will contain a summary of the results obtained.

(e) *Finances.*

No office rent has been paid. The members of the Commission and its executive secretaries have served without compensation, and, indeed, have borne their own expenses. There have been, however, items of necessary expense, such as office supplies and

the salaries of a stenographer and of the staff above described. Governor Christianson placed his contingent fund, to the extent of $3,000, at the disposal of the Commission. More money being necessary, a Committee on Ways and Means was appointed, consisting of Dr. Prosser, Chairman, Judge Fesler and Father Cullen. This committee has received contributions amounting to about $4,000, most of it in small amounts. The total amount available to, and expended by the Commission in its work will thus approximate $7,000.

II. CONCLUSIONS

The Commission has reached certain conclusions which it considers of fundamental importance in dealing with the subject matter of this Report. The recommendations here submitted are made, and should be considered, in the light of these conclusions.

The most important of our conclusions may be stated in the form of the following propositions:

1. That the crime situation is a matter of statewide, as distinguished from local, concern.

2. That promptness, efficiency and vigor in the enforcement of the law are factors of the highest importance.

3. That a high degree of certainty of apprehension, conviction and punishment promises greater results than does provision for too drastic punishment.

4. That one of the most important means of promoting efficient law enforcement is an informed and active public opinion.

5. That this Commission could accomplish but a part of what is necessary to a complete understanding of the crime situation and the solution of its problems; and can therefore recommend only those things which it considers to be of most immediate concern.

6. That the crime situation presents many and perplexing problems, for the solution of which thorough study is indispensable.

III. THE CONCLUSIONS DISCUSSED

1. Scope of the Report

At the outset, it is essential to make clear the precise limits of our endeavors and the means employed within those limits.

Any serious attempt to treat the crime situation as a whole must consider the causes of crime. If there be at work forces of widespread importance in the making of criminals and in the incidence of crime, they must be taken into account in dealing with the situation. Many and various factors are currently discussed in this connection. Economic conditions, such as unemployment; social factors, such as changes in home-life and the weakening of parental authority; the lessening force of the religious sanction; effects, direct and indirect, of the World War; lack of attention to the principles of eugenics; the large numbers of unassimilated foreign-born—these, and many more, are suggested and debated as causes of crime and creators of criminals. Each such suggestion merits careful study. Society needs to have and to employ the results of such study. This Commission could not hope to make any worth while investigation of the sort suggested. We must therefore be content to note, in passing, some of the many suggestions commonly made and to record our recognition of the vast importance of careful study of such matters as a basis for dealing with fundamental causes of crime. For our purpose, it has been sufficient to know that, whatever the causes, crimes are committed, and are likely to be committed, in large numbers and with sad consequences to society. The work of the Commission, then, has of necessity been limited to the fields of the criminal law and its administration. Further, we are concerned only with the situation in Minnesota. Wherever possible we have endeavored to make comparison with conditions in other states; but accurate information is rarely obtainable and a reliable basis for comparison is usually hard to find. Whenever we have suggested a change in procedure or the adoption of new means or agencies, we have given consideration to what we could find in other states. With these exceptions, we have dealt only with Minnesota conditions.

2. The Investigations

As already stated, it was our purpose to secure accurate information of the actual working of the several agencies of the State which deal with crime and criminals. Opinions are frequently formed, and even publicly expressed, upon phases of the crime situation, with no basis except surmise or an occasional instance—the latter not seldom imperfectly understood, if not entirely misrepresented. Such opinions are usually of little or no value.

Opinions of persons of experience and with opportunities to observe the conditions which they discuss, are, of course, of great value. Where such opinions have been available, we have given them full consideration. Our main reliance, however, has been upon study and observation of the actual operation of the machinery of the criminal law. Accordingly, we have examined the work and the records of Police, Sheriffs, Prosecutors, Courts, Board of Parole and Board of Pardons.

The period covered, except in the cases of the two Boards, was the year 1924. The selection of that year was based on the belief that it would furnish the most recent period available whose cases would have reached final disposition, and so would be as nearly a present picture as we could obtain. Each instance of the report of the commission of a crime, or of an arrest, in the year 1924 was followed through to final disposition of the case. It was hoped to make a like examination of an earlier period, such as 1913 or 1914, in order that a comparison might be made, and conclusions drawn, concerning the increase of crime and the progress towards efficiency, or the reverse. Limitations of time and money have made that impossible. The biennial reports of the attorney-general summarize information received officially from county attorneys. These summaries show prosecutions and their results. They furnish an indication of the variations, from year to year, in the numbers of prosecutions for the several crimes.

Selection had to be made, and the study has included only 9 of the 87 counties, Ramsey, Hennepin, Beltrami, Kandiyohi, Winona, Polk, Mower, St. Louis, and Stearns. It will be noted, however, that we have included the three largest cities, Minneapolis, St. Paul and Duluth. The nine counties studied are in as many judicial districts. They are widely distributed geographically. They present a great variety of conditions, ranging from metropolitan areas to completely rural communities, with many cities and villages, large and small, between these extremes. We feel that a fair sample has been taken, that results obtained can reasonably be regarded as typical of those to be found throughout the state, and that the reports of these investigations furnish a fair basis for a picture of conditions, upon which may be predicated conclusions and recommendations of state-wide application. The selection of communities for study was made with no other purpose than that of obtaining data which might fairly be said to give the basis above stated. There

was no thought of investigation of any particular community or official with a view to discovery or criticism of local conditions. What was sought was a sufficient quantity and variety of conditions to make possible generalization concerning the situation in Minnesota as a whole. Accordingly, any use of the material obtained by these studies, except for this purpose would be unwarranted and might well work injustice, either to those officials and communities whose records were examined, or to others not studied, or to both. It is hardly necessary to add that our aim is, of necessity, not criticism of any particular community or of its officials, but a consideration of what is needed for the state as a whole in the improvement of the criminal law and its administration.

The records of the Board of Parole examined were of those cases where parole or discharge was granted between January 1, 1924 and April 1, 1926, a period of two years and three months. In the case of the Board of Pardons, we have examined records of all instances of pardon, reprieve or commutation between July 1, 1920 and April 1, 1926, a period of five years and nine months. In each instance, it was felt that the period covered was sufficient to furnish an adequate basis for the desired study. The larger period taken in the case of the Board of Pardons was due to two facts. Action taken by that Board concerns fewer cases, and the changes in the membership of the Board have been more frequent, than in the case of the Board of Parole.

A tabulation has been made of all convictions reviewed by the state supreme court during the three years from April 13, 1922 to April 17, 1925. The opinions are found in volumes 152 to 162, inclusive, of the Minnesota Reports.

A list has been obtained from the records of the State Prison and of the State Reformatory for men of all commitments to those institutions during the 5-year period from January 1, 1921 to December 31, 1925. This list gives the particulars of each case where a maximum less than the statutory maximum was fixed by the trial judge.

In all phases of these investigations, the original records were examined. Each case was followed through its entire course. Facts obtained were tabulated, case by case, under appropriate headings, on large sheets of paper. The tabulations so made were then summarized, and the summaries reported to the committees interested, and to the whole commis-

sion. Finally, there is now being prepared a series of reports containing the substance of the results of the investigations, which will constitute Part Two of this Report. It is a matter of regret that the whole Report cannot now be presented. We have felt it necessary to make report as fully as possible at this time because of the imminence of the 1927 legislative session. Part Two will be presented as soon as possible. Meanwhile, the results of the investigations will be available to legislative committees whenever desired.

The Commission wishes to record its appreciation of the courtesy everywhere extended to its investigators and of the cooperation uniformly accorded by public officials. We have submitted the reports concerning the records of the Board of Parole and of the Board of Pardons, respectively, to the members of the Board and have had the advantage of their comments and explanations.

The scope and method of the investigations made have been here explained in order that the results may be considered with an understanding of exactly what is involved, and so that the argument and conclusions of this Report may have a clearly defined basis. We can only regret that severe limitations of time, money and instrumentalities have necessarily circumscribed the work of the Commission.

A complete survey of all conditions and of all agencies involved in the administration of the criminal law throughout the state would be of incalculable value. It would afford a basis for more nearly complete conclusions and recommendations than this Commission has been able to present. Such investigations as we have undertaken have been, in large measure, pioneer efforts. Much time was spent in devising methods of procedure and in formulating categories and classifications. There is a growing movement throughout the nation looking to a state-wide survey in each state. Several states have made provision for such a survey. The National Crime Commission recommends a commission for each state and stands ready to help all such commissions and to aid in co-ordinating their efforts. We hope that Minnesota may in some manner take part in this program and share in its advantages.

We are not prepared to make more specific recommendations in this connection. The work of this Commission is ended with the presentation of its Report. The problem of crime

remains,—a constant challenge to the state. The consequences of crime are so important that the situation cannot safely be ignored. The economic losses alone assume tremendous proportions. Computations in money of what crime costs society read like the figures of a post-war national debt. So great is the cost of crime that the cost of adopting recommendations which give reasonable promise of improving the situation is negligible by comparison.

Our experience has disclosed many phases of the situation which require most careful study and consideration. We may instance two matters. (1) The feeble-minded and other mental defectives are classes which furnish ready recruits for certain types of crime. The report in the office of the State Board of Control shows, as of November 1, 1926, 317 persons adjudged feeble-minded and committed to the care of the Board by courts, but not placed in institutions because existing institutions are already over-crowded. Similarly, some of the inmates of our penal institutions who leave at the expiration of sentence ought to be, but cannot now be, placed in other institutions because of their mental condition. (2) The first offender offers a problem for study with a view to such treatment of his case as will give the largest promise that he may not become a repeater. These two are but samples of the factors in the crime situation which require study. Others will occur in the reading of other parts of this Report.

The aim of the whole study should be to determine, upon the basis of all factors which can be considered and which are found to be important, a policy for the intelligent handling of the crime situation in all its phases.

Again the cost is insignificant, compared to the cost of crime. It is our earnest hope that appropriate means will be found to make the further study necessary. Whatever means may be adopted, the present Commission could not undertake the task.

3. The Picture as We See It: General Considerations.

Assuming, then, the basis for a picture of some, at least, of the most important aspects of crime and the criminal law, we proceed to present the salient points of the picture as we see it.

First of all, we consider it fundamental to realize that the crime situation is a matter of state-wide, as distinguished from local, concern. With only imaginary lines dividing the several states of the Union, it ought, indeed, to be said that it is a situation of national concern. This Commission can only deal with the Minnesota situation; hence we say it is state-wide. Those engaged in crime regard no local limitations. Criminals are increasingly a transient class. If a criminal remains at large, or, if captured, he avoids punishment, it matters not in what part of the state he resides, or where he has committed the crime, the whole state is affected by the failure of the agencies of the law. His *next* crime may be committed at a place far distant from the scene of the crime which has been allowed to go unpunished. Every failure, then, in the administration of any phase of the criminal law, in any part of the state, is of vital concern to all the citizens of the state. It is a matter of common knowledge that certain types of criminals who reside in the large cities habitually fare forth into the small city, village and country, to commit their depredations upon banks, shops, homes and farms. Crime and the criminal are mobile. Thanks to the automobile and to our good roads, they can go from one corner of the state to the other almost in a day. Whatever may have been the case in an earlier day, it is surely true now that a criminal at large anywhere in the state is a menace, and an imminent menace, to every part of the state.

Criminals are well organized, and make use of effective methods of attack. A bank or store robbery today is planned as a job for a band, each member of which is skilled and rehearsed in his particular role. Local conditions are studied in advance. The most favorable moment is utilized. Protection is provided for the operatives. Means of rapid departure from the scene of the crime are in waiting. Arrangements are perfected for advantageous disposition of the booty, and, no doubt, means of legal defence are prepared for emergencies.

The state, in its attempt to deal with crime, presents a curious contrast to this picture of organized efficiency. We have practically no provision for centralized effort. Each local unit of our government acts for itself. Each county has its sheriff, county attorney, etc. Each municipality maintains its separate police. State-wide organization, where it exists, is either casual or voluntary. Judges of the district court and

county attorneys meet annually, but for a brief session and with very limited purposes. Such co-operation as there is among sheriffs and among police units is voluntary. There is no head to any of these groups of officials, no agency for co-ordination of their work. Furthermore, even in a single locality, there is no provision for cooperation among the officials concerned with crime. Sheriff, police, county attorney, and judge may work together—or they may not. Nothing in our law compels them to co-operate. They owe responsibility to no common chief, except the rather vague one to the public. It is apparent from our investigations that frequently there is a lack of effective co-operation of the several agencies dealing with a single case. There is an unfortunate tendency for each agency to work in a water-tight compartment, because of failure of each to understand and to co-operate with the others. A further result is that each agency tends to exercise some of the functions properly pertaining to another. That means in practice, that persons are liberated who ought not—certainly at that stage of the proceedings, and who perhaps ought not at all—to go free. To illustrate: A police officer is charged with the detection and apprehension of offenders and the gathering of evidence of guilt. He has no further duty. Yet it appears that the police do sometimes decide whether the person in custody should be prosecuted, or, if he be prosecuted, they assume to arrange leniency of some sort. The illustration could be carried through the whole course of the procedure, to show the county attorney accepting a plea of guilty to a lesser offence than that indicated by available evidence, the judge suspending sentence or fixing a maximum less than that provided by law, where the case seems really to be one for an indeterminate sentence, and ending with overlapping jurisdictions of the Board of Parole and the Board of Pardons. Indeed, cases are not wanting where it seems clear that a criminal has received unduly favorable consideration from several of these agencies in succession, all in the course of a single prosecution.

The figure of society's agencies for dealing with crime as a sieve, through every hole of which guilty persons escape, has been aptly used. It must be borne in mind that the favorable action of any one of these agencies is final in behalf of the criminal. Truly, it is society, not the criminal, which runs the gauntlet!

To present the picture in a different light, what must the criminal think of society's efforts to deal with him? If he be familiar with the actual operation of the criminal law, he must know that he may escape arrest altogether; that if arrested, he may not be held by the police or sheriff; if held, he may not be indicted or have information filed for his prosecution; if prosecution be commenced, he may not be brought to trial, because the county attorney may nolle or dismiss, or he may be allowed to plead guilty to a lesser offence than that which he has committed; if tried, the trial may result in failure to convict; if convicted, he may have sentence suspended, or if committed, it may be for a maximum lower than that provided by statute; and if, finally, he should reach a state penal institution, he may be released by the Board of Parole; and, if that fails, he may still apply for a pardon.

He has not yet exhausted the possibilities in his favor. Appeal is open to every person convicted of crime. If successful, a new trial offers a better chance of escape from final punishment, since delay almost always favors the accused. If his case be indeed desperate, he has also the opportunity—if he can pay the fee of a professional bondsman—to secure liberty on bail at almost any stage of the proceeding, and to depart for parts unknown, frequently without serious consequences to the bondsman.

All this deals only with the *official* agencies of the state. An *unofficial* agency usually plays a part, often an indispensable part, in the procedure. That agency is the complaining witness. Many serious crimes cause money or property loss to a citizen. The victim is anxious to obtain restitution. If he can secure that, in whole or in large part, he will often lose interest in the prosecution. Without his active assistance there can be no successful prosecution: it must end without punishment for the criminal. For illustrations, take the cases of bad checks, automobile thefts, shoplifting, embezzlements. In many cases of these types, it is found that recovery of what is lost is fairly common, successful prosecution of the criminal much less frequent.

To sum it all up: If a criminal can secure favorable action by any one person or agency involved in his case,—complaining witness, police, or sheriff, prosecutor, grand jury, petit jury, judge, appellate court, board of parole or board of pardons,—

he can escape the punishment solemnly provided by the law for his offence. Each person, each agency can forgive and society has forgiven. If only one be weak, the utmost strength of all the others will avail nothing. Verily, a chain is no stronger than its weakest link.

Our investigations have shown weakness in several of these links, which will appear from the figures to be presented in Part Two hereafter. Some phases of the situation will here receive special consideration in the discussion of the specific recommendations of this Report.

One important fact, however, needs to be noted at this point. All our officials are subjected to pressure. Pressure is frequently very great in behalf of the person accused of crime. If that pressure should succeed in the case of any one agency, the consequence is, as already noted, favorable to the accused, and final against society. It is important here to note that in many cases there is no corresponding pressure in behalf of society. In some situations, indeed, such pressure is provided by organized effort. The bankers, the surety companies and similar organizations, take an active and effective part in securing convictions where they are concerned. Except in times, or concerning cases, in which public interest is greatly aroused, there is no such pressure in the interest of society in other criminal cases. We provide no basis for public information concerning the actual administration of the criminal law. Without such information, the public can not be expected to exert any effective pressure in its own interest.

Recent events furnish a definite basis for a statement of the criminal's view of the situation. It is not an uncommon occurrence for a criminal to state, sometimes in open court, that he has paid his attorney or other agent a substantial sum to be used for bribery. Such an avowal is produced by the failure to secure the results hoped by the criminal and probably promised by his agent; but it affords clear evidence that the criminal thinks of the whole system as providing numerous means of possible escape. So long as our procedure continues as already pictured, there must be room for the belief among criminals that such favorable action may be bought or secured by some kind of pressure. We are firmly convinced that belief that freedom from punishment can be bought is wholly unfounded. Its mere existence, however unfounded, is surely an encouragement to crime.

What has been said must not be taken as any charge of wrongdoing against any official. We make no such charge, nor do we find evidence to support any. What we do find is a system which seems woefully weak and inefficient. It is a system which makes vigorous action by officials in behalf of the state very difficult. Such action means resisting pressure, making enemies. The official who resists all pressure and performs his whole duty operates under a system which gives no reward in the form of public recognition and approval, because we have provided no means of informing public opinion of the facts. We get much better results from our officials than we have any right to expect, considering the conditions with which we surround them. It is ground for surprise, not that our administration of the criminal law fails to operate satisfactorily, but that it functions as well as it does.

IV. RECOMMENDATIONS

What, then, is now proposed for the improvement of the conditions described? A summary of our recommendations will be found at pages 72-76. They may here be grouped under three heads:

(1) Those designed to obviate particular difficulties observed in the law and its administration.

(2) Those calculated to secure complete and accurate information concerning each agency of the law in its actual operation, and concerning the state of crime in Minnesota, for the information of the citizens and for the guidance of the agencies themselves and of the legislature.

(3) The recommendation for further and complete study of the whole crime situation.

This last has already been presented and discussed. It remains to consider in detail the other recommendations.

V. THE RECOMMENDATIONS PRESENTED AND DISCUSSED

The procedure of the Commission has already been described (pages 5-7). The work was apportioned among four committees. Each committee considered that part of the crime situation which came within its province, and made report thereon to the Commission. All committee reports were received and

considered by the Commission. The recommendations now submitted embody the results of the action of the Commission, which action was based upon the reports of its committees.

We now present and discuss our recommendations. The order followed is that suggested by the procedure of the law in dealing with crime,—Detection and Apprehension; Criminal Procedure; Punishment, Pardon and Parole; and finally, Records and Publicity which affect all parts of the process.

1. Detection and Apprehension of Criminals

The first step is the capture of the criminal. A crime has been committed. Efficiency in prosecution and in punishment cannot avail, if the crook is not caught. The old saying "First catch the hare" is applicable. It is important, therefore, to consider what machinery we have in Minnesota for this first act, and how it functions.

We have, in each county, a sheriff, and in each municipality a police, with such personnel and assistance as the community may have provided. Each sheriff's office, each police department, is a distinct unit, acting to all intents and purposes independently of the others, and sometimes mutually jealous. There is no state supervision and no state aid. True, a certain cordiality exists among the peace officers of the state and a willingness to co-operate; but there is lack of interchange of information regarding criminals, lack of co-ordination in following the trail of the criminal across local and county lines, and lack of central direction and control of operations which are not local.

In most of the counties of Minnesota the public machinery for the apprehension of wrong-doers has remained practically unchanged for the past fifty years. Physical equipment is lacking or inadequate. In some cases there is no knowledge of scientific identification methods. We have no schools or other means for training police. A new sheriff enters upon his duties often without training for or experience in his work, and is left largely to train himself. He is charged with a multitude of important civil duties, such as serving process, making levies and sales, and many others, which take much of his time and make it impossible for him to go far in search of criminals.

While we have largely failed to improve the machinery for capturing crooks, these gentry have made rapid advance in their own methods. They are migratory, while our peace officers re-

main very local. In a day when the stolen automobile takes the thief speedily across several counties, and when stolen tubs of butter are by next morning in a distant part of the state, we commonly leave our local sheriffs and police with the equipment of the horse and buggy era. Indeed we, the people of the state, furnish the good roads which speed the criminal to and from the scene of his crime. We do not so plan our agencies for protection against the criminal that we can use those roads to our own advantage against the criminal.

Criminals use scientific methods in committing crime and in escaping detection, and profit by the latest inventions. The state, in attempting to cope with them, pursues methods largely inherited from our ancestors. Science and invention are available to the state as well as to the criminal; but we have failed to extend their aid to our local peace officers.

In our consideration of this phase of the crime situation, we have had the results of the investigations made by the commission's staff, which have already been described (see pp. 9-12). We have been greatly aided by material gathered by the State Federation of Labor, by letters from police chiefs throughout the country, by the written expressions of the greater part of the sheriffs and county attorneys of Minnesota, and by reports from several states where central machinery for the apprehension and detection of criminals has already been set up. The State Bankers Association, Bar Associations, and other organizations, and individuals, have given us the benefit of their information and recommendations.

With this assistance, we have given consideration to the problems involved in the Minnesota situation briefly outlined above. We proceed to a statement of our recommendations and the reasons for them.

RECOMMENDATION 1. **We recommend the creation by statute of a central state authority to co-ordinate the work of peace officers, to furnish them state assistance and to work constantly for greater efficiency in apprehending wrong-doers without wasteful expense. We recommend that this authority should have the following powers, among others:**

(a) To organize and maintain a State Bureau of Criminal Identification and Information.

(b) To require (1) Modus operandi reports from all peace officers of crimes committed within their respective jurisdic-

tions, and (2) such other reports from local and state officials concerning the apprehension, prosecution, probation, punishment, pardon and parole of criminals as it considers necessary.

(c) To employ such reasonable number of trained investigators as are needed to supply expert help to sheriff's offices and police departments and to follow trails of serious crimes where peace officers cannot well leave their local jurisdiction. This does not contemplate, and is to avoid, any form of state constabulary or state police.

(d) To arrange police schools for training peace officers in their powers, duties and modern methods of detection and apprehension.

(e) To provide a system of uniform blanks and records, and to fully index all criminal data received.

We recommend that this central authority be charged with the following duties, among others:

(a) Of broadcasting to peace officers such information as to wrong-doers wanted, property stolen, property recovered, and other intelligence as may help in controlling crime.

(b) Of making sure that officials concerned with crime and criminals, keep proper records as to apprehension, prosecution, punishment, probation, pardon and parole.

(c) Of tabulating and publishing (so far as practicable) its data, and of making recommendations to the legislature at each session as to the better control of crime.

(See also Recommendations 42 and 43, pp. 68, 69).

RECOMMENDATION 2. We recommend that, as rapidly as practicable, all of the machinery of the state for the apprehension and detection of wrong-doers be centralized under this one state authority.

RECOMMENDATION 3. Any new official agency having anything to do with detection and apprehension of criminals should be placed in proper relation to the central agency, to insure the fullest possible usefulness of the proposed central agency.

Our recommendation, in one phase, is for a state agency to co-ordinate the efforts of all the local agencies now charged with duties concerned with detection and apprehension of offenders.

We have noted, briefly, that our system is at present local, scattered and without a chief; that it affords antiquated machinery for dealing with increasingly complex problems and problems no longer local or of purely local significance. In other affairs of our state, co-operation and central direction are provided in Minnesota. Tax assessors now have the instruction and supervision of the State Tax Commission. Highway building and maintenance throughout the state is co-ordinated through a central authority and the office of the county highway engineer is filled with up-to-date plans and information from the state commissioner. Public schools have the benefit of central inspection and guidance. The troubled county superintendent has the aid of a state superintendent. But new sheriffs enter office without experience in catching or handling criminals and are left to train themselves without the benefit of the accumulated experience of fellow officers.

Thus, we have recognized the importance of dealing with many matters of state-wide concern by agencies created by the state for that purpose. What is here proposed is a similar state agency, designed to enable the state of Minnesota to deal effectively with one of the gravest matters of concern to all the people of the state—the apprehension of violators of the law.

In a number of states provision has already been made for such a central agency. The form varies somewhat with the several states; but the purposes and functions of all are very similar.

Whether this central state agency be an individual called a Commissioner of Public Safety, or whether it be a bureau or board, perhaps under some existing department, is not vital. It is vital that there be a central state agency, vested with such powers and charged with such duties as we have listed.

We have indicated in a measure, by the list of powers and duties appropriate and necessary to such a central agency, the several functions and purposes planned for it. Summarized, it is intended to provide efficient means of dealing with the solution of crimes, with the identification of suspected or arrested persons, and with the apprehension of offenders. While there are several recommendations included, they will, because of their adaptation to a single general purpose, be treated together, in what follows.

Experience of other states with central agencies has shown that they are capable of the highest utility.

Workable plans are found in the present statutes of California, Ohio, New York, Michigan, Oklahoma, and other states. The bureau in California has operated the longest. It is a clearing house for the criminal records of that state.

The California bureau has three managers appointed by the governor, and serving without compensation other than the repayment of travel expense. One must be a chief of police of an incorporated city, another a county sheriff, and the third a prosecuting attorney of some county. This is to correlate those three important agencies for maintaining public safety.

It chooses a full time superintendent and the needed staff of office help. It collects, indexes and tabulates fingerprints, photographs, measurements and other data identifying both convicted and arrested or suspected criminals, in convenient form for effective use. It obtains and files comprehensive questionnaires covering all serious crimes committed in the state, regardless of whether or not the wrongdoer is apprehended.

It is made the duty of the sheriffs and police chiefs in California to furnish, daily, to the bureau, copies of fingerprints on standard 8"x8" cards and description of all persons arrested for serious crimes or who are found with concealed firearms, burglar outfits, high-power explosives or the like, believed by the peace officer to be intended for unlawful purposes. It is also the duty of these peace officers to furnish the bureau with prompt information as to property stolen and crimes committed.

Out of the first 48,000 fingerprints received by the California bureau, 7,500 were identified as having prior criminal records, unknown to the arresting departments. Many habitual delinquents, when confronted with the records of their prior conviction, plead guilty and thereby save the state the expense of jury trial.

In Ohio during May, this year, out of 1246 fingerprints from arresting officers within the state, 555 were identified as prior delinquents.

No instance has yet been discovered where two different persons have identical fingerprint measurements. The patterns of these little ridges on the hand remain the same from birth until death. They are recognized by the best police departments of Europe and America as most trustworthy evidence; but in at least eighty of the counties of Minnesota, there is no equipment for arresting officers taking fingerprints, photographs

or Bertillon measurements and no persons trained in that sort of work.

The Ohio bureau uses prison labor. In addition to identification, it regularly sends to all peace officers lists of stolen automobiles, of stolen goods, of escaped prisoners, of rewards offered and of persons wanted. We have the following information from the superintendent:

"The appropriation for the Bureau has been $8,500 a year, out of this there are two salaries to be paid; supt. $3,600 and his assistant, $1,800 per year; there is no rent to pay and the work is carried on by eighteen convicts assigned from the Ohio Penitentiary, under the supervision of the superintendent and his assistant."

In California the bureau covers a larger field. It includes a Lost, Stolen and Pawned Property Division, and a division for handwriting verifications, photographic and miscroscopic investigation, etc. A recent letter from the superintendent gives the list of employees and their salaries as follows:

"There are fifteen employees in the bureau: 1 Superintendent, $300 per month; 1 Handwriting Expert, $225 per month; 3 Identification Experts $225 per month each; 1 Finger Print Clerk $150 per month; 1 Finger Print Clerk $100 per month; 2 Stenographers $90 and $125 per month; 2 Typists $100 per month each; 4 Typists $90 per month each."

The expense of the California bureau is about $30,000 a year. Against this it sets forth in a typical biennial report:

"Stolen property valued at approximately one million dollars was recovered and returned to the original owners through information furnished directly or indirectly by the bureau.

"616 of the arrests were fugitives escaped from penal institutions outside of this state. The identification and subsequent extradition eliminated the expense of prosecution and confinement in California. . . .

"2949 forged checks submitted to the handwriting division and 431 forgers and fraudulent check operators were thereby identified. These identifications enabled police officials to effect immediate apprehension of the operators, thereby checking a serious menace to all lines of business."

In several states the assembling and indexing of modus operandi reports has been of great service in detecting wrong-doers. This is particularly true with reference to automobile thieves, check operators, bank robbers and hold-ups. For example, a burglar enters a home after midnight and takes only the silver and jewelry. At least three points of identification are here

noted; first, that the man enters after midnight, second, his method of entry, third, that he confines his attention to a certain type of property. If the criminal has a previous record, through this method of operation an identification is quickly made at the state bureau which greatly aids apprehension as he moves from city to city in the state. We do not mean to clutter the state records with details of traffic offenses or minor crimes, but to vest in the central authority the right to require such reports as it finds necessary. At present there is no available data in Minnesota from which we can determine how much money is taken by holdups, how much property is stolen at night from shops and stores, how extensive are operations of chicken thieves or butter thieves. Then too, there is no central office where one can compare the results and operations of the various law enforcing agencies of the state.

Reference has been made to the difficulty experienced by local officers in leaving their local jurisdictions to follow trails, an important matter in these days of migratory criminals. There is another difficulty. In most of the counties of Minnesota there is no one trained in taking fingerprints from glass or other objects, no one trained as a handwriting expert, no one trained in the use of the microscope or of chemical aides or in the various standard methods of detection.

One of the strongest arguments in favor of a system of state constabulary or a state police is that its members receive careful training in their duties and powers. They have a working knowledge of what evidence is admissible in trials, which gives greater efficiency in gathering evidence. They are well trained in methods of communication, which enables the entire force to work as a unit when occasion requires.

In some states police schools have been had for the training of peace officers not included in any constabulary. These schools have been a marked success. There is one county in Minnesota where the county attorney has annually called together the peace officers for a conference concerning their problems and powers. It has worked successfully. The State Voluntary Organization of Police Chiefs and Sheriffs has accomplished commendable work. Police schools mean much for co-operation as well as for information. The taking of fingerprints, Bertillon measurements and standard photographs, requires training, a type of training that can readily be given at police schools.

The successful business enterprises of today keep a constant picture of their business before every executive. Success in combatting crime requires the same type of picture. Sporadic instances mislead. The merchant cannot focus his attention on the profit of one sale. He must have the profits and losses of his entire business in mind.

We recommend that this central authority have power to provide a system of uniform blanks and records and to fully index all criminal data received. Further, that it be charged with the duty of broadcasting to peace officers such information as to wrongdoers wanted, property stolen, property recovered, and such other intelligence as may help in controlling crime. Further that it be charged with the duty of making sure that officials concerned with crime and criminals keep proper records as to apprehension, prosecution, punishment, probation, pardon and parole; and of tabulating and publishing (so far as practicable) its data and of making recommendations to the legislature each session as to the better control of crime.

By the term "broadcasting" we do not have in mind only the radio. We have in mind the printed bulletin, the message by wire, the radio and every other available means of communication that can be used to give the peace officers of the state information as to wrongdoers wanted, automobiles stolen, property recovered, new methods of professional criminals and the like.

The whole matter of adequate and properly kept records, as affecting agencies dealing with any phase of the crime situation, is hereafter treated, in our discussion of Records and Publicity (pp. 64-72). We here recommend provisions for central direction and control of records, and for gathering and using information from such records, all as a part of the work of the proposed central agency.

RECOMMENDATION 4. **We recommend that, in cases of persons arrested for felony or who are found with concealed firearms, burglary outfits, high-power explosives, or the like, believed by the peace officers to be maintained for unlawful purposes, such peace officers be authorized to fingerprint and otherwise measure and identify persons arrested, without waiting for conviction.**

We have carefully considered the constitutional questions involved in taking fingerprints and measurements on arrest and

before conviction. The authorities are gathered in the American Bar Association Journal of March, 1926. The great weight of authority is that no constitutional objection exists, and that the rule against self-incrimination applies only to testimonial evidence. Where fingerprints are taken to ascertain if the prisoner has a criminal record, in order to determine the advisability of bail or to have a means of recapturing him should he break jail, no constitutional problem is involved. If the accused voluntarily has his fingerprints recorded or measurements made, any possible privilege has been waived.

A few courts have held that a prisoner cannot be required to face the jury that they may judge his age, nor to stand up so that a witness might identify him by his appearance standing, nor to place his feet in a track for purpose of comparison. The great majority of the courts hold otherwise. Writers on Evidence have aptly suggested that identification by fingerprints has no element of self-incrimination. It is comparable to identification by looking at the face of the accused, or by noting a scar on his cheek or the absence of an eye.

Some states have provided that all measurements, photographs and prints taken before conviction be destroyed or returned if the prisoner be not convicted.

This extension of the use of the best means of identification, coupled with the provisions for gathering all records together and for making them available to all officials, both central and local, could not fail to work definite improvement in the facilities throughout the state for intelligent, prompt and efficient dealing with crimes and criminals.

So far we have discussed the proposed central agency as a factor in coordinating and strengthening the efforts of local peace officers, sheriff and police, as a means whereby the state as such can fulfill its duty of protection to its citizens and to their property; and as a method of securing proper records and their most advantageous use. It is proper to add that other purposes in the administration of the criminal law can be well served by the machinery here recommended. For example, the suspension of sentence by judges is elsewhere treated in this Report. (See pp. 41-43, 48, 49). It is there pointed out that suspension of sentence, (and the fixing of maximum sentences, as well) frequently is done without adequate information. Instances are not uncommon where the trial judge, at the time of sentence, has been led

to believe that he is dealing with a person who has been misled for the moment by bad company, a mere catspaw for some older criminal and a first offender,—only to have it later develop that the judge has had before him a regular boarder in penal institutions. The provisions we have recommended would enable the judge to know all that any local peace officer knows, and all that the central agency can find, about the man he is to sentence, and to deal with him in accordance with the facts rather than, as he now too often must, on statements made by or in behalf of the criminal.

To sum it all up: We here recommend measures which are designed to place at the disposal of all peace officers modern scientific methods of performing their tasks; to provide for their training in the use of such methods; to coordinate the efforts of scattered and local officials; to direct and to supplement those efforts; to gather all available information of value concerning crime and criminals, and to provide for its widest possible usefulness to all agencies having to do with the crime situation anywhere in the state.

We feel that the adoption of the recommendations we have submitted in this connection will make life and property substantially safer throughout Minnesota, without the additional expense of providing for any form of state constabulary or state police.

2. Criminal Procedure

Current discussion of the crime situation is replete with criticisms of procedure. It is commonly charged that the processes of the law are slow and that the path of the prosecution is beset with unnecessary difficulties.

Criminal procedure generally in the United States stands in need of revision. In considerable part, it is an inheritance from the common law of England. It developed in an age of tyranny. At one time rules of procedure afforded almost the only protection against oppression masquerading as justice. They served to prevent unjust conviction and to mitigate the rigors of a harsh penal code. The system evolved under such conditions was over technical. It created safeguards which then seemed necessary. The necessity for many of those safeguards has disappeared; but they remain, to serve only as undue advantages to the accused and as improper handicaps to the state. It is an ironical

development that English procedure has been largely rid of the "safeguards" no longer necessary to protect the accused, while in this country, where the conditions which gave rise to them never existed, the same "safeguards" are part of our present procedure.

Minnesota is by no means so unfortunate as are many of the states. Delay is not so serious as it is frequently found to be in other states. Major offences are here tried in the district court, with but one appeal, direct to the supreme court. We are also fortunate in the attitude of our supreme court. That court many years ago announced the principle that convictions should not be reversed except for substantial reasons. Our investigations show that the principle is applied by the court.

There is, however, need for still further improvement in our procedure, both through legislation and by rules of court. We note, with interest, that the lawyers of Olmsted County plan to seek legislation which will make possible the continuous session of their district court, in place of the present provision for two trial terms a year. The purpose is to expedite the handling of cases, particularly criminal cases. This is a promising effort to improve conditions affecting criminal procedure.

A complete revision of the criminal procedure of Minnesota would be highly desirable. The American Law Institute has undertaken the preparation of a model code of criminal procedure. The result of this work may be confidently expected to afford a basis for intelligent revision of the procedure in Minnesota.

We have not attempted a revision; but we do present specific recommendations for changes in procedure. Those recommendations are such as seem now feasible. Each is aimed at a definite phase of the procedure which experience has shown to require attention. None is a rash experiment. Most of the measures recommended have been successful in other jurisdictions; the others are such as our conditions strongly suggest. They are offered in the conviction that their adoption would definitely improve the administration of the criminal law without in any wise impairing the right of the accused to a fair trial.

The recommendations are as follows:

RECOMMENDATION 5. **That the power of the county attorney to file information be extended to include all offenses**

the maximum punishment for which does not exceed twenty years.

This recommendation proposes an amendment to G. S. 1923, Section 10667.

There are only two methods by which a person charged with a serious offense can be brought to trial. One is by a written charge made by a grand jury and called an indictment. The other is by a written charge made by the county attorney and called an information. The present statute gives the county attorney power to file an information in cases where the maximum sentence is not more than ten years. In the case of graver offenses there must be an indictment by the grand jury. The power of the county attorney to file informations has been found useful in expediting the prosecution of offenders. Sometimes very considerable delay is avoided when a prosecution is thus initiated without waiting for a session of the grand jury. For this reason it is proposed to enlarge the power of the county attorney to file informations so as to increase its usefulness.

RECOMMENDATION 6. **That, whenever possible, informations and indictments be drawn under the Second Offense Act, G. S. 1923, Section 9931.**

This recommendation involves no change in the statute, but emphasizes the importance of having county attorneys and grand juries make the fullest use possible of its provisions. It is an existing piece of machinery for dealing with the habitual criminal or repeater, labelling him as such and providing a longer sentence for him than for a first offender.

The handling of the repeater is further considered and another recommendation made on the subject in connection with the discussion of punishments (pp. 40, 41).

RECOMMENDATION 7. **That the court have the power to amend indictments and informations at any time, provided that such amendments shall not prejudice substantial rights of the defendant, and provided further that the defendant be afforded reasonable notice and opportunity to make his defense.**

This recommendation contemplates a new statute. Its purpose is to allow the court to make good defects in the indictment or information which is the basis of the prosecution, to the end that a prosecution may not fail because of mere irregularities.

Necessary safeguards of the rights of the accused are provided. It is believed that, armed with this power, trial judges could prevent unnecessary delays and reversals on account of defects in the statement of the charges against the accused, without preventing a fair trial.

RECOMMENDATION 8. **That whenever an indictment or information is dismissed, or a nolle prosequi entered, a written record shall be made of the reasons therefor.**

There is here proposed a new statute. Present procedure permits the termination of a case, at the instance of the county attorney, without any record of the reasons prompting the action which frees the accused. Our investigation shows frequent use of this power. It is undoubtedly a necessary power. Prosecutions which ought never to have been instituted, or which cannot with any fair chance of success be carried forward, ought to be discontinued when any such fact becomes evident. In only one of the nine counties studied does it appear to be the practice to have a written motion. Even there, no record is made of the reasons for the motion. We deem it important that the exercise of this power should be safeguarded by a requirement for a written record of the reasons for its use in each case.

RECOMMENDATION 9. **That whenever a plea of guilty is accepted for an offense less than that charged, a written record shall be made of the reasons therefor.**

This is another proposal for a new statute. Its purpose is very similar to that of the preceding recommendation. Again a necessary power of the county attorney, found to be frequently exercised, requires the safeguard of a written record, in each case, of the reasons for its use. Where there are good and sufficient reasons for the acceptance of a plea of guilty to an offense less than that charged, they can be stated for the record. Otherwise no compromise should be made.

RECOMMENDATION 10. **That whenever a sentence is suspended by a court, a written record shall be made of the reasons therefor.**

This recommendation is for a new statute. The purpose, like that of each of the two preceding proposals, is to have a contemporaneous record of action favorable to the defendant, and thus

to make sure of full consideration of all factors involved in the decision. Where there exist good and sufficient reasons for suspending sentence, they can be stated by the court for the record. Otherwise the sentence should not be suspended.

There are thus three measures proposed, Numbers 8, 9 and 10, each designed to secure a contemporaneous written record in cases of official action in favor of the accused. Such records would serve an additional purpose. They would make possible a better understanding of the actual operation of the particular parts of the criminal procedure here involved, and would form a basis for study and public information, elsewhere in this Report advocated, and which other recommendations there made seek to accomplish. (See pp. 70, 71).

RECOMMENDATION 11. **That, in the discretion of the Court, those jointly indicted (or affected by one information) may be tried jointly.**

The proposal is to amend G. S. 1923, Section 10707, which gives to those jointly accused the right to separate trials. What is here recommended is the existing rule in the federal courts, where it has been found to work well. It is designed to avoid the necessity of several trials where one would serve. Again the rights of the accused are protected, since the trial judge would have the power and the duty to order a separate trial for any person who could not have a fair trial if he appeared as one of several defendants.

RECOMMENDATION 12. **That the Court and the county attorney have the right to comment on the failure of the defendant to testify.**

In Minnesota, as in all the states except two, the state constitution protects the accused against self-incrimination. A statute—G. S. 1923, Section 9815—provides that the defendant may testify if he so desires, but that he may not be compelled to do so. It further provides that if he fail to avail himself of his opportunity to be a witness in his own behalf, that fact shall not be alluded to by the prosecuting attorney or by the court.

This recommendation would leave the constitutional provision intact. It does not seek to force the defendant to take the stand, even in his own behalf. It would provide merely, by amendment of the statute, that comment on his failure to offer

himself as a witness might be made by the county attorney and by the court.

In civil cases comment has long been permitted concerning a party who fails to become a witness in his own behalf. Indeed, in civil cases, he may be compelled to testify.

The aim of all trials, whether civil or criminal, is the determination of the truth. There appears no good reason for permitting a guilty person on trial for his crime to conceal the truth.

The universal horror of unjust conviction justifies the continuance of the constitutional guaranty against self-incrimination. The state must sustain the greatest burden of proof known to the law—proof of guilt beyond a reasonable doubt. It cannot, and we do not propose that it should, prove its case from the lips of the defendant.

If the state fails to make out a case warranting a jury in returning a verdict of guilty, the prosecution will be dismissed, upon motion of the defendant, without a word of defense of any kind. In other words, before there can arise any occasion for the defendant to be a witness, there must have been produced definite, strong evidence of his guilt. Should he not *then* be ready to help make clear the facts of the case by his own testimony?

If he becomes a witness, he has all the protection given by law to any witness. His lawyer is present to claim his rights. The judge is charged with the duty of securing him complete protection. Each of the twelve jurors must agree to a verdict which excludes all reasonable doubt of his guilt, before he can be convicted. If county attorney, trial judge, or jury, should err to his prejudice, a full record of the proceedings lays the case before the supreme court for review.

With all these safeguards, he might still refuse to become a witness in his own behalf, notwithstanding the enactment of this recommendation. The only change would be to permit comment to the jury by county attorney and by trial judge upon his decision not to avail himself of the opportunity to tell what he knows about the charge of crime brought against him. He chooses to withhold information when he is, of necessity, well informed. We submit that it is proper that this fact should be considered for what it may be worth, in the light of the whole case, in determining whether he is guilty.

RECOMMENDATION 13. **That the state have the right to reply to the argument of the defense to the jury.**

Our present statute, G. S. 1923, Section 10711, gives to the defense the right to make the closing argument to the jury in criminal cases. It is here proposed, by amendment to that section, to give to the state's attorney a reply or rebuttal argument.

This change would not constitute a reversal of the order of argument to the jury. The prosecution would still be required to make the first argument. There would follow the argument for the defense. The new feature would be a short reply or rebuttal argument in behalf of the state.

Under present procedure, if a fallacious argument be made by the defendant's attorney, an unwarranted appeal to sympathy, a misstatement of the evidence, no answer by the state is possible. Should defendant's attorney say what would be ground for reversal if uttered by the county attorney, not only is it unanswered, but, if an acquittal results, no reversal is possible to correct the error, because a verdict of not guilty is final.

Moreover, the present practice is peculiar to Minnesota. In all other states, the final word of counsel to the jury is given to the prosecution. That rule is based upon the logic of the situation. The party having the burden of proof is regularly accorded the final argument. It is submitted that this rule is particularly apt in criminal cases, where, as already said, the state has the burden of proof beyond a reasonable doubt, the greatest burden of proof known to the law.

RECOMMENDATION 14. **That the hearing and determination of motions, dilatory pleas and appeals, after verdicts of guilty, be expedited.**

This recommendation proposes a new statute. The purpose may be stated generally as the prevention of delay after conviction.

Under present procedure, there are often delays in making, hearing and deciding motions for new trials after conviction, and in taking appeal to the supreme court. It is proposed to provide a definite time for each step of this procedure, in each instance giving sufficient time for the protection of the defendant, but preventing unnecessary delay in the final disposition of the case.

One of the most frequent occasions of the delay here involved is encountered in securing from the court reporter a transcript of the trial proceedings. To remedy this defect, it is proposed to have such transcripts ordered only if the trial judge finds them necessary for determination of a motion for new trial, and to make provision for prompt action in getting the transcript when one is ordered.

It is believed that serious and unnecessary delay can thus be avoided.

RECOMMENDATION 15. **That if, on appeal, the Supreme Court finds that the evidence does not sustain a conviction of the offense charged, but does sustain a lesser degree of the same offense, the Supreme Court may reduce the sentence accordingly and thus make final disposition of the case.**

A new statute is here recommended. It would provide a method by which the supreme court could avoid sending back for a new trial a case whose only flaw is that the crime found by the jury's verdict is of greater degree than that which the evidence would support. The defendant is guilty, but of a lower degree of crime than that found by the jury.

The present practice is to order a new trial. Such cases are not numerous, but when they do occur, greater expedition and certainty would be attained by the use of the proposed procedure than is now obtainable.

RECOMMENDATION 16. **That all bail bonds where the surety justifies as the owner of real property, contain a legal description of such property, and that they be filed and indexed in the office of the Clerk of the District Court; and that similar provisions be made applicable to recognizances.**

Admission to bail is guaranteed by our state constitution. When a person is released on bail, the security for his due appearance in court is a bond or a recognizance. We now have no requirement by statute that the proposed surety give a list of his property. Nor is there any requirement for a record of bonds or recognizances. There is frequently no sufficient basis for county attorney or judge to determine whether the bond proffered by the defendant furnishes any real security.

It is here proposed that the instrument itself contain a list of the surety's property, and that all such instruments be filed and indexed in the office of the clerk of the district court.

It is hoped that there will thus be greater assurance of a valid security. Further discussion of the bail bond situation is found on pp. 65, 66.

3. Punishment, Pardon and Parole

The Commission has made as careful a study as time and available material would permit of the penalties provided by the statutes; suspended sentences and probation by the courts; sentencing, discharges and paroles by the Board of Parole; and pardons, commutations and reprieves by the Board of Pardons.

Members of the Commission have sat with the Board of Parole during hearings in the penal institutions. We have studied material supplied at our request by the Board of Parole and by the Board of Pardons. We have also considered reports on the records of the Board of Parole and of the Board of Pardons and reports on suspended sentences and probation. The Commission has been supplied with valuable material from other states. Conferences have been held with members of the Board of Pardons and of the Board of Parole and with Judges, and correspondence had with the heads of the penal institutions. Every officer has given all the information and assistance requested.

The Commission is agreed upon the principle that the primary aim of punishment is the protection of society; that reform of the criminal is secondary, and that the safety of society must not be sacrificed to the reform of the individual. This principle has guided us in all our deliberations. All the recommendations made herein are, in our best judgment, in accord with it.

The criminal law emphasizes the importance of punishment. The whole machinery of the law,—the instruments of detection, apprehension, indictment, trial and conviction—is employed to the end that criminals may be punished. If after conviction punishment be not inflicted, then this large expenditure of money and effort to convict is largely wasted.

Statutory Penalties

Our recommendations for changes in penalties are as follows:

Recommendation 17. **A general revision of the penalties now provided in the criminal code.**

The penalties now provided are not well graded. The criminal code was adopted many years ago. New crimes have been added, and new penalties provided, without sufficient consideration of their relation to the penalties for other crimes. Like crimes should be punished by like penalties. For example, robbery first degree has a minimum penalty of five years, bank robbery is punishable by imprisonment for life, burglary first degree by a minimum of ten years. It is submitted that there is no sufficient reason for such wide differences.

We do not think that it is within our province to recommend specific penalties for the different crimes; but we do submit a statement of the principles upon which, we believe, penalties should be based.

Penalties should be moderate. Speedy and certain punishment are the best preventives of crime. Extreme penalties hinder punishment. The history of the criminal law proves, and our study confirms, that when extreme penalties are provided, the agencies charged with the administration of the law will mitigate them or even prevent their infliction.

When death was the penalty for minor felonies in England, the records show that it was, in the later period, rarely inflicted. The judges found errors in the indictment or in the record. These precedents are the source of the technicalities in our criminal law today.

It is significant that there have been very few convictions for burglary, first degree, in Minnesota in recent years. The records show that the crime was really committed but that the criminal was convicted of a lesser degree, or of a different crime, entailing a lower penalty. This statement holds true of other major crimes.

When the penalty shocks the sense of justice of the average man, complainants will forbear, police will not report, prosecuting attorneys will reduce, juries will not convict, and appellate courts will find flaws in the record. It is no use to criticize these officers for making themselves judges of the law. The law must be administered through human beings, and it must not shock their human sense of justice in the concrete case if we are to secure speedy and certain punishment.

Extreme penalties lead to bargaining by the criminal (or his attorney) with the officers of the law. He may be permitted to plead guilty to another crime, in return for immunity for the crime actually committed, because the officer believes the penalty too severe, or impossible to obtain. The records show burglars and robbers convicted of petit larceny. The result is that the criminal is sentenced to 30 to 90 days in the workhouse, instead of to an indefinite term in the penitentiary as the law provides. He thus suffers less punishment than he would have got had the penalty provided by statute for his crime been moderate. He is also led to believe that immunity can be procured for him in some way by his criminal lawyer. These practices cause distrust of, and disrespect for, the law and its administration.

The penalties provided should be such as will meet public approval at all times. Penalties should not, in a period of public excitement, be increased to a degree that will shock the same public when the excitement has passed.

Speedy, certain, firm infliction of moderate punishment, without bargaining or favors, is the best deterrent. The terms of imprisonment provided by law in England and in Canada are moderate in comparison with ours. Speed and certainty are hindered, not helped, by severe statutory penalties. If we keep severity out of our statute book, we shall have greater assiduity in our officials,—and this we need most of all.

Our laws now provide maximum penalties. Farther on, we recommend that minimum penalties be also provided.

The minimum penalty should be low. It should be appropriate to a first offender and to extenuating circumstances. It should be so moderate as to create no occasion for the Board of Pardons to reduce it.

The maximum penalty should be reasonably high. There should be a wide spread between minimum and maximum, to enable the sentencing agency to vary the punishment to the deserts of the prisoner, to hold the worst criminals in the penal institution for an adequate time, and to keep them on parole a sufficient time after release. This sentence spread should be sufficient to take care of repeaters whose prior convictions were unknown at the time of conviction, prisoners of a mentality dangerous to society, and prisoners whose conduct in prison does not indicate repentence and probability of

respect for law after release. A spread of several years is necessary for this purpose. The responsibility of protecting society from such persons rests on the sentencing (Parole) Board. That Board should have a sufficient sentence spread available to enable it to discharge this responsibility.

In this connection question is raised, although no recommendation is made, whether the different degrees of the several crimes are necessary. The division of crimes into degrees, with different penalties, was made when the crime alone was the basis of punishment. Under the indeterminate sentence, all criminals are required to serve a minimum as a deterrent to others and to the criminal himself. Beyond this minimum, not only the crime, but also the past record of the criminal, his character, his mental state, and his conduct in prison are taken into account in deciding how long he should be held in order to insure that he will not be a menace when released. The criminal convicted of the lowest degree may, on these considerations, require the longest incarceration. A sufficient sentence spread is at present often not available under low degree penalties to enable the sentencing (Parole) board to hold the prisoner long enough.

Attention is here called to the table on page 52, which shows the maximum sentences of all prisoners admitted to the three state penal institutions in the two year period ending June 30, 1926.

RECOMMENDATION 18. **That the law provide a minimum penalty of five years for every felony, or attempt at felony, in which a gun or other dangerous weapon is used in the commission of the offence.**

While we regard five years as a severe minimum, we recommend this term for the crimes which are inherently dangerous to human life.

RECOMMENDATION 19. **That causing injury to any person through driving an automobile while intoxicated, under circumstances such that if the person had died the crime would be manslaughter, be made a distinct felony with an adequate penalty.**

We understand that such acts are now only misdemeanors punishable by not exceeding 90 days in the workhouse.

RECOMMENDATION 20. **That the present Second Offense Law, G. S. 1923, Section 9931, which provides that every person convicted of a crime who has been previously convicted of a felony in this or any other state, shall be sentenced to imprisonment for a "term not less than the longest, nor more than twice the longest term prescribed for a first conviction" be amended so that the penalty shall be "not less than twice the minimum nor more than twice the maximum term prescribed for a first conviction."**

Arguments have been made against any drastic penalty for a second crime, which does not take into account the nature and seriousness of the crimes. These arguments have less force upon our recommendation than upon the present law. We do not think it undue severity that the criminal who has previously been convicted of another felony of any kind should be required to serve twice the minimum for his second crime.

RECOMMENDATION 21. **The passage of an habitual offenders' act providing that any person convicted of a felony who has been previously convicted three or more times of felonies in this or any other state, shall receive an indeterminate sentence without maximum; and to provide that if any such person shall be sentenced without regard to this act, he may be resentenced in accordance with it.**

Repeaters commit a very large part of all crimes. They have been punished and released repeatedly only to continue to prey upon society. When crime becomes a habit, reform is unlikely. The inducements held out to prisoners to become law abiding citizens are lost upon repeaters. Their release is to them a license. They are a menace to society and should be restrained without regard to the cause of their criminal inclinations. They have become adepts in crime, probably escape detection longer than the novice, and commit many crimes every time they are released before they are again caught.

The sentencing (Parole) Board can only keep such persons for their maximums. There are prisoners in our penal institutions who have served three, four, five, six and more terms. A society that is so stupid as to set such persons free deserves to be preyed upon.

Let it be known that if habitual criminals are caught in Minnesota their criminal careers are at an end, and they are likely to keep out of the state. Such a sentence is not unduly severe for such persons, and should have the support of public opinion. We believe that the crime record of the state would be substantially reduced by the perpetual incarceration of a few such criminals.

England and Australia have had such a law for some years. In England prisoners incarcerated under it may be relieved from some of the rigors of ordinary imprisonment. They are treated as persons segregated from society for its safety, rather than as persons being punished. The Baumes law, enacted in New York in 1926, is being attacked by some judges of that state because it makes life imprisonment imperative, regardless of the nature of the felonies. Such persons will come under Recommendation 20, and must be kept for twice the minimum for their last crime. After this time is served, the sentencing (Parole) Board will be free to release them or to detain them indefinitely. The Board can take into account the nature of the previous crimes and all other factors, although it should not release them unless there are compelling reasons for believing that they will no longer be a menace.

The provision for resentencing is necessary because the previous crimes are often unknown when sentence is passed by the judge. The sentencing (Parole) board can keep a repeater for the maximum penalty for his last crime without resentencing; but to keep him longer will necessitate another trial on the charge of being an habitual criminal.

Suspended Sentences and Probation

Under the present law, courts of record may suspend sentence and place on probation, immediately after conviction, any person convicted of a misdemeanor, and also any person convicted of a felony for which the maximum penalty does not exceed ten years. The court may also, at any time, parole any prisoner who has been committed to the workhouse, work farm, or county jail. The County Farm Commissioners may also parole any person serving time on the county farm. The court has no power to parole a prisoner once he has been committed to one of the state penal institutions. This power belongs to the Board of Parole and will be dealt with hereafter.

We believe in the principle expressed in the law that probation may be granted "whenever the court shall be of the opinion that by reason of the character of such person, or the facts and circumstances of his case, the welfare of society does not require that he shall suffer the penalty imposed by law for such offense so long as he shall thereafter be of good character." We nevertheless realize that there are objections to probation, and to the manner of its administration, that do not apply to parole.

So far as the criminal is concerned, probation under suspended sentence may be as effective as incarceration. But as a deterrent to other potential criminals, is it effective?

Under the parole law every criminal receives a measure of imprisonment. A term of two years has probably little less deterring effect on other potential criminals than a longer term. But when there is no punishment at all, may not the law lose its deterring efficacy? May not the probation law, unless carefully administered, becomes a license to commit *one* crime? And if probation be granted to repeaters, may it not be an encouragement to the criminal to persist in crime?

The fact that it is administered by so many separate agencies creates an additional difficulty. Its administration is an occasional incident in the onerous duties of municipal and district court judges. Can so many busy officers be expected to study thoroughly, and to grasp, the principle of probation and to apply it with uniformity?

The tabulations so far available of the studies made of the records give weight to these misgivings. In one county, in the year 1924, we find, that in the municipal court, out of 149 workhouse sentences imposed for petit larceny, 99 or 66% were suspended; out of 94 assault and battery, 64 or 86% were suspended; and out of 407 of all misdemeanors, 236 or 58% were suspended. In the district court of the same county, for the same year, out of a total of 182 sentences to imprisonment in the state penal institutions, 76 or 42% were suspended, and of 53 sentences to the workhouse 31 or 58% were suspended. It must be noted that 31 of these 182 sentences to state penal institutions were for murder, robbery, first and second degree, and manslaughter, all crimes for which the maximum penalty exceeds ten years. Such sentences the law does not permit the judge to suspend. Deducting these 31

cases, therefore, we have a total of 151 sentences to state penal institutions in the district court of that county in the year 1924 which could have been suspended. Of these 151, the judges suspended sentence in 76 cases, or 50%. The percentages of suspensions by the several judges who tried 5 or more cases were 21, 22 per cent (9 cases), 23, 33, 53, 59, 60, 100 per cent (5 cases).

There is evidence, also, that in some of these cases the crime actually committed was one for which suspended sentence and probation are not permitted, but the conviction was for a lower degree, or for another crime, which admitted of probation. Moreover, in some cases, this was not the probationer's first crime.

The Commission suggests that the probation law was intended by the Legislature to provide for the exceptional case, usually a first offense with extenuating circumstances. It can scarcely suppose that one half of the cases are of that sort. We question whether such liberal use of probation is serving the ends of justice, and whether the probation law can continue to endure unless its use be more conservative. We recommend that probation be continued, but we advise its curtailment. We also recommend that means be provided to improve the use made of it.

RECOMMENDATION 22. **That a probation officer be appointed for the state. It shall be the duty of this officer to consult and advise with the judges upon the principles of probation, to keep records of all probations and the crimes of the probationers, showing the total number and percentage of probations granted in each county and judicial district, the number and percentages by each judge, to make reports of tabulations thereof available to each judge in the state, to keep copies of all these records in one central office, to make periodical summaries and reports covering the whole state.**

His consent shall be necessary to the appointment of all probation officers, he shall have active superintendence of all such officers and instruct them in their duties; he shall secure suitable persons to supervise probationers where no full time probation officer is available, and shall have power to impose such duties upon parole agents. He shall have power to require the keeping of adequate records and reports by all such officers.

He shall make continuous study of probation and its results here and elsewhere, and make reports and recommendations from time to time as to desirable changes in practice and in the law, and as to number and character of staff.

Further suggestions with respect to this officer will be found under Recommendation 37 (pp. 58, 59).

RECOMMENDATION 23. **That provision be made for complete reports by the state probation officer to any central bureau or agency of the nature of the proposed State Bureau of Criminal Identification and Information which may be established, and for mutual co-operation of such bureau with all officers charged with the exercise of probation. (See pp. 20, 21).**

RECOMMENDATION 24. **That probation and the reasons therefor be made a part of the record in all cases.**

RECOMMENDATION 25. **That before any sentence be suspended, the judge shall have a report of the record, history, and other pertinent matter concerning the person convicted; such report to be had from such offices as may be available, and particularly from the State Bureau of Criminal Identification and Information, or such other central organization as may be established.**

RECOMMENDATION 26. **That sentence shall not be suspended in any case of conviction for felony of a person who has previously been convicted of one or more felonies in this or any other state.**

RECOMMENDATION 27. **That sentence for felony shall not be suspended in any case when a gun or other dangerous weapon was used in the commission of the offense. It should not be necessary to charge this fact in the indictment or to find it by verdict.**

Under the present law, probation cannot be granted when the maximum penalty is over 10 years. Consequently, persons convicted of robbery, first and second degrees, burglary, first degree, murder, manslaughter and some other crimes, cannot now be given probation. But this restriction is sometimes avoided by allowing the defendant to plead guilty to a lesser degree or to a lesser offense, entailing a maximum not over ten years.

We propose to make the exception effective—to deny probation—in all felonies committed with a gun or other dangerous weapon, regardless of the degree of crime for which the defendant is convicted.

RECOMMENDATION 28. **That the statutory provisions which permit the trial judge to modify or to suspend sentence after commitment to the county jail, workhouse or farm be repealed; that the statute enabling county farm commissioners to parole from the farm be repealed; but that in case of any person sentenced to the county jail, workhouse or farm, the court be empowered, when passing sentence, to sentence such person to commitment to the institution for any part of the term fixed by law, and at the same time to sentence him to serve any part or all of the remainder of such term on parole, the court to be empowered to revoke this parole at any time, and to recommit to the institution for the balance of the sentence.**

The judges testify to the continuous pressure brought upon them to release persons already committed to these institutions. The pressure for probation at the time of conviction cannot be avoided; but the judges should be relieved from the repetition of it throughout the period of commitment. Statements have been made that the inmates of these institutions are canvassed by persons offering to secure their release for a consideration. It is not improbable that the confidence of the judges is abused by such persons.

The judge can learn all that is favorable to the person before him at the time of sentence. He can thus make an immediate decision as to the proper minimum term to be served in the institution. Reasons may later appear for keeping the person longer in the institution, hence power to do this is recommended. The result will be that the judge will have no power to mitigate the sentence once it is pronounced, but he will have power to increase it.

The Indeterminate Sentence and Parole

The indeterminate sentence and parole system originated in Michigan and New York about fifty years ago. It was first adopted in Minnesota for the Reformatory when that institution was established in 1889. It was partially introduced into

the prison in 1893, but was not applied in its present completeness until 1911. It now applies to the three state penal institutions. The system is now in use in about two-thirds of the states. Other states have parole without the indeterminate sentence, in which form it is also found in England and in Canada under the name of "ticket of leave."

The nature of the indeterminate sentence and the function of the Board of Parole are generally misunderstood. The idea is prevalent that criminals are sent to prison under definite sentences fixed by the judges, and that the Board of Parole acts as a board of clemency. The sentencing function of the Board is lost sight of. For these reasons, a brief statement is here made of the nature and purpose of the law and of the manner of its administration.

There must be some agency to fix punishment.

Neither before the enactment of the indeterminate sentence law, nor since, have the statutes fixed definite terms of imprisonment for the several crimes.

Formerly, the penalties provided were that the sentence should not exceed a specified term. For some crimes there was also a minimum provided. As examples, for forgery, first degree, the penalty was not exceeding 20 years; for robbery, first degree, 5 to 40 years.

The indeterminate sentence law, operating as an amendment to the earlier laws, did away with the minimums prescribed, so that at the present time the statutes fix a maximum but no minimum. Thus, the penalty for robbery, first degree, is, in effect, not exceeding 40 years.

Before the indeterminate sentence law, it was the duty of the judges, in passing sentence, to specify a definite term within the limits set by law. The judge fixed such a term as fitted the particular case.

The indeterminate sentence law took this duty from the judges and directed them to sentence to the indefinite term set by statute. The judge's sentence for robbery, first degree, has since been, in form, "5 to 40 years," and in effect "not exceeding 40 years." The duty of making this term definite, taken from the judges, was transferred to the Board of Parole. It follows that, in this phase of its work, the Board is really a sentencing board. The common failure to grasp this fact is no doubt due, in large part, to the form of the sentence

imposed by the Board. It sentences by denying release until the prisoner has served the time he deserves, instead of by specifying, in advance, the exact term.

The Board of Parole *sentences* every prisoner who comes under the Indeterminate Sentence law. It *paroles* only about 41% of them. We recommend that the name of the Board be changed, and that it be called the Board of Punishment, a name more descriptive of its functions and therefore less likely to lead to misapprehension. (See Recommendation 36, page 58).

Many persons assume that if there were no parole criminals would serve the maximum time set by the law and named by the judge in passing sentence. This assumption is wholly erroneous. The law sets a maximum, not a term. The law never intended that all criminals should serve the maximum. If the Board did not have power to decide the length of the term, the power must obviously be vested in the judges to make the term definite in the beginning. The judges would certainly not sentence all criminals to the maximum term. They did not do so when they had the power. Indeed, the average time served under definite sentences fixed by the judges before the indeterminate sentence law was less than that now served under sentences indeterminate at the beginning and made definite by the Board of Parole.

Some agency must fix the term of imprisonment, but why a Board rather than the trial judge?

First, terms fixed by a Board are more uniform for each type of case. Criminals are tried before many judges all over the state. The judges differ in their attitudes towards crime in general and towards different crimes. Some judges will mete out heavy sentences for one crime, light sentences for another. Other judges reverse the penalties. This statement is not a reflection on the judges. Their sentences are imposed in good conscience, but their consciences differ. The convicts meet in the penal institution and compare their records and their sentences. Those leniently treated feel that they have escaped due punishment. Those who have been severely treated regard their sentences as an injustice, become rebellious in prison and are more likely to take vengeance on society when their time has expired. Both groups lose respect for the law. If all sentencing were done by one judge, many of these diffi-

culties would be obviated; but a board of three is still better, as the number tends to eliminate the effect of prejudices of any one person.

Second, the measure of punishment can be more intelligently fixed after the convicted person has been in the penal institution for a time than at the time of conviction. Under the prevailing theory of punishment, the question in each case is: What punishment of this particular criminal is necessary for the protection of society? The answer to this question calls for a great deal of information that is available after imprisonment but not at the time of conviction.

Under the present practice, when a convict enters one of the institutions, an investigation of his past history is made by agents of the Board of Parole. Under the rules made by the Board itself, he cannot appear for parole for eleven or twelve months after he has been committed. (There will be found at page 57 our Recommendation 31, that the law prescribe a minimum which must be served before he can appear). Within this time, a description of him is sent to the National Identification Bureau in Washington, and to other bureaus, in an effort to find whether he has a prior criminal record. Correspondence is carried on with his teachers, employers, clergyman, etc., to obtain information about his past conduct. He is under observation in the institution. The county attorney is required by law to furnish the information in his possession relating to the history and character of the prisoner and the crime of which he has been convicted. The factors considered by the Board in determining the period of punishment include the crime, the convict's conduct in prison, his past history, his character, habits and attitude, the report of the prison physician and of the psychologist where there is one. All this matter is made up into a record, and it is upon a study of this record and interviews with the prisoner that the Board determines what time he should serve in the prison.

The judges at the trial lack much of this information. They know little of the criminal's character and record. A criminal may act a part during a trial which he cannot sustain through a year or more in prison. Persons often appear before the courts who are strangers in the locality. They conceal their former delinquencies. The court in Hennepin

County may not know of a prior conviction in Ramsey County, or of prior terms served in the state prison. For this reason repeaters would often escape with light sentences. Many cases are found in the records in which the judges, fixing maximum sentences less than those set by law (as they may do under the amendment passed in 1917) have limited the maximum to short terms, only to have it later develop that the criminals had previously served several terms in prisons.

Third, it is an advantage that the Board performs its duties at a place removed from the locality where the prisoner has lived. It is there less subject to pressure from relatives and friends of the criminal.

The transfer of the sentencing power to the Board of Parole has not resulted in lessening the average term of imprisonment. The records show that the average term is longer than it was when the judges gave definite sentences. The following table compares the average time served by prisoners who were released from the State Prison in the five year period, 1907 to 1911, inclusive, prior to the operation of the indeterminate sentence law, and the average time served by prisoners released by the Board, 1920 to 1924 inclusive.

	Average time served for all degrees of					
	Robbery yr. mo. da.	Larceny yr. mo. da.	Burglary yr. mo. da.	Forgery yr. mo. da.	Assault yr. mo. da.	Against Chastity yr. mo. da.
1907-11	3 11 13	1 9 25	2 0 21	1 8 19	2 2 0	2 11 23
1920-24	4 1 10	2 7 18	2 7 2	2 11 12	2 6 2	3 1 10

The amendment of 1917, allowing the courts to fix a maximum below that set by law, was passed because of complaints that the Board was too severe. Observation of the maximum sentences fixed by the judges under this amendment, and of probation by the judges, does not encourage us to believe that the terms of imprisonment would be better fixed by the courts than they have been by the Board of Parole.

Even if parole were wholly abolished, it would be desirable to have a board to fix all sentences after commitment to the penal institutions.

The Board uses four methods in releasing prisoners.

1. It may require them to serve in the institution the maximum time set by the law or fixed by the court under the 1917 amendment. These prisoners are never paroled. When the maximum is served, the Board has no further power over

them. Of 1417 persons released from the three penal institutions between January 1, 1924, and March 31, 1926, 416 or 29% were required to serve the maximum.

2. The Board grants conditional discharges outside the state; 290, or 20%, were released in this manner. This method is used with prisoners whose homes are in other states. They are not on parole. They can be kept on parole only within this state, and paroling such persons has been found unsatisfactory. They have nothing to hold them within this state and are consequently more likely to violate parole. They are kept in the institution somewhat longer than prisoners whose homes are within the state, and are then discharged on condition that they go to their home state and do not return to Minnesota until the maximum sentence has expired. If they return within this time, they are recommitted to the institution to serve the remainder of the maximum term. Later we recommend a modification of this practice. (Recommendation 33, p. 57).

3. Prisoners are paroled; 586 or 41% were releaesd in this manner. They are prisoners whose homes are within the state. Parole means that they are released from the institution under supervision. They are still prisoners liable to be returned to the institution if their conduct outside it proves unsatisfactory to the Board.

4. Prisoners are discharged either absolutely or to the legal authorities of other states or of the United States; 125 or 9% were released by discharge.

Thus it appears that as to all except the third class, that is as to 59% of all released, the Board of Parole does not act as a parole board at all, but only as a sentencing board fixing the term of imprisonment. As to the other class, 41%, the Board acts in two capacities, in the one fixing the term of imprisonment, in the other specifying the conditions and term of parole.

Should the Board keep the last three groups, prisoners who have not served their maximum, longer in the penal institutions?

We first consider the average time served. We have pointed out that prisoners are kept longer on the average than they were formerly imprisoned by the courts. But perhaps both the courts and the Board have been too lenient. We hesitate to

say that all prisoners should be kept longer than they are now. The Missouri Crime Commission report states with disapproval that the average time served by prisoners paroled from the Missouri Reformatory was 11½ months. The time served in the Missouri Penitentiary was longer, but the time is not stated. The average time served by all prisoners released in Minnesota before their maximum expired, from January 1, 1924, to March 31, 1926, was 2 years, 5 months. The average term served by all prisoners released, including those who served their maximums, was longer, as appears in the table, supra, for 1920-1924. An average term of two and one-half to three years seems fairly substantial.

Certainly all prisoners should not be required to serve the maximum. The primary function of the Board of Parole is to adjust the punishment to the particular case. No court would sentence every prisoner to the maximum. It is intended for the worst cases. The Board sentences 29% of all prisoners to serve the maximum. It should sentence the others to terms varying according to their deserts. The Board must fix such a term in each case as, in its opinion formed after the study of the prisoner's record, the particular prisoner should serve.

We pause here to point out the prison capacity that would be necessary if terms of imprisonment were lengthened or the maximum required in all cases. The number of prisoners has grown rapidly in recent years. The increase in the population of the three institutions during the two years ending June 30, 1926, was 370. All three institutions are now full. The prison has a capacity of 1044, and a population of approximately 1250. A statistician has advised the Commission that an increase of one year in the term of all prisoners would necessitate another institution of the capacity of the prison at once. From January 1, 1924, to March 31, 1926, 1005 inmates were released from the three institutions before their maximums had expired. The average time left to serve was 3 years 5 months. If the addition of one year to the term would necessitate one additional institution, it is easy to calculate what would be necessary if the maximum were required in all cases.

One possibility remains to be considered. Granting that the average penalty is reasonably high, and that the maximum

should not be required in all cases, are the penalties being meted out so as to secure the greatest protection to society? The merit of the indeterminate sentence law is that penalties may be intelligently admeasured to suit the particular case. If penalties are not graded so as to fall lightly upon the best persons and heavily upon the most dangerous, the law is failing in its purpose. Our study shows that repeaters are being kept longer than first offenders, but we doubt that the worst criminals are being kept as long as they should be. We are recommending that the law provide imprisonment without limit for habitual criminals. (Recommendation 21, p. 40). We fear that they are not being kept as long as they might be.

The following tables, taken from the report of the Board of Control just issued, for the biennium ending June 30, 1926, show, for all persons admitted to the three penal institutions, the maximum sentences set by the law or fixed by the judges and the duration of stay of prisoners paroled or discharged.

MAXIMUM SENTENCES OF PERSONS ADMITTED

Maximum period:	Number
6 months or less	31
More than 6 months but not over 1 year	132
More than 1 year but not over 2	146
More than 2 years but not over 3	117
More than 3 years but not over 4	25
More than 4 years but not over 5	412
More than 5 years but not over 6	154
More than 6 years but not over 7	83
More than 7 years but not over 8	36
More than 9 years but not over 10	221
More than 10 years but not over 15	117
More than 15 years but not over 20	19
More than 20 years but not over 25	2
More than 25 years but not over 30	16
More than 30 years	40
Life	35
Total admissions	1586

DURATION OF STAY OF PRISONERS PAROLED OR DISCHARGED

Less than 6 months	18
6 months but less than 1 year	97
1 year but less than 2	532
2 years but less than 3	360
3 years but less than 4	207
4 years but less than 5	41
5 years but less than 10	33
10 years but less than 15	8
Total paroled or discharged	1296

The two tables do not cover exactly the same group, but they will serve to indicate trends. Also the maximums in the first table were subject to reduction for good conduct. Again the second table includes prisoners discharged by expiration of their maximum sentences.

The significant fact shown by the first table is that out of 1586 there are 451 persons (more than 7 years but excluding life) liable to serve five years or more after making full allowance for good conduct. The second table shows that only 41 persons out of 1296 released served five years or more, and only 8 of these ten years or more.

The fact that 29% of all persons released have served their maximum loses its significance in the light of the first table. The maximum for 451 out of the 1586, or 28% of all, was not over 4 years, or with time off for good conduct not over 3 years.

There are no gunmen now in the State Prison for robbery who were admitted before 1917. Of the gunmen now there for robbery, one was admitted December 1917, one in 1918, and seven in 1919.

In this connection, we question the practice of the Board of Parole in allowing every prisoner to appear every six months after the first year until he is released. The Board has all the information, available at the first hearing, necessary to classify the prisoner. It might determine at that time that he belongs to a class that should serve a certain term irrespective of his conduct in prison. His further appearance would then be unnecessary until that term was served. We question the psychological effect upon the Board of repeated appearances through a long term of years.

The first table above shows the cumulative effect of low statutory penalties, convictions for lower degrees or lesser crimes, and maximums set by judges. It will be noted that out of 1506 persons received, 1017 had a maximum sentence of six years or less. Among these were many dangerous criminals. It must also be remembered that all of these sentences are subject to a statutory reduction for good conduct in prison.

We are recommending longer minimum penalties for gunmen and second offenders, indefinite incarceration of habitual criminals, that probation be denied to all of these, and generally used more sparingly, that the statutory reduction of the term for good conduct in prison be abolished, that no prisoner be eligible for parole until the statutory minimum is served, that dangerous criminals be kept for the maximum terms, and that no pardon, commutation or release be granted by the Board of Pardons where release might be given by the Board of Parole.

These recommendations, if enacted, will send more criminals to the penal institutions, and will keep some of them there considerably longer than they now serve. They will raise the average length of term. How much they will increase the population of the penal institutions we do not know. We believe, however, that the increase will not be negligible. Possibly relief may be had by earlier release of the least dangerous persons after experiencing imprisonment for the minimum term. We, of course, indulge the hope that some relief may ultimately be had from the effects of a vigorous administration of the law with the amendments suggested by this Commission.

We leave this rather startling and baffling problem here with the remark that it shows the compelling necessity of an intelligent, continuous study of the whole problem of punishment and the rehabilitation of criminals, while still amateurs and before they have become professionals beyond hope of salvation. To this suggestion we shall return in another place.

We turn now to parole.

It should be clear from the foregoing that all prisoners should not, and with our present prison capacity cannot, be kept in the institution until their maximums are served. We find that 41% of all prisoners are paroled. Since some prisoners must be, and should be, let out of prison anyway, it is better that they go out under supervision than absolutely free.

Many discussions of parole lose sight of the very important difference between parole as a *substitute* for imprisonment and parole as a *supplement* to imprisonment. In so far as parole displaces imprisonment, it must be shown to be an efficient substitute. But in so far as parole is a supplement to imprisonment, any benefit society has from it, that would not be had from absolute freedom of the criminal, is all gain. If the criminal has served all the time in prison that he would serve if there were no parole, as seems to be true on the average in this state, then it would be necessary to prove that more crimes are committed by paroled criminals than by discharged criminals, in order to condemn parole.

As a supplement to imprisonment, parole would appear well worth while. The person on parole has the balance of his term hanging over him, but after discharge he cannot be recommitted unless convicted of another crime. No one is released on parole until a job has been found for him. His employer is told in confidence what the Board knows about him. He must live according to rules laid down by the Board, and report to the parole agent monthly. If he violates these conditions, he is returned to the institution to serve the remainder of his sentence. If his conduct on parole is good, he is discharged after a time, usually about one year.

Comparative statistics of parole successes and failures are worthless unless attention be paid to the time spent on parole. Only failures while on parole count against the record. If the time spent is short, there will be few parole failures; if the time is long, there will be many more. Of the persons paroled from Concord Reformatory, Massachusetts, during a certain period, nearly one-half violated parole in various ways. But the releasees were kept on parole several years. In this state, where they are kept on parole approximately one year, the proportion of violations of parole is of course comparatively small. Out of 444 persons paroled from July, 1924 to February 1926, 75 violated parole, 28 of them by committing another felony, prior to February 15, 1926.

The Board of Parole every month sentences on the average about 220 prisoners either to further incarceration or to some form of release. There were 2,379 appearances before the Board in 1924, and a decision was recorded in every case. The number is larger now. The Board is charged with the responsibility of

protecting society, and of doing justice to these prisoners. It must decide who are worthy of parole, who can be paroled with safety to society. Its duties are onerous and its responsibility great.

Two things are essential to obtain the best results from the indeterminate sentence and parole system. They are ability to choose the right persons for parole, and means to continue them on parole under intelligent and adequate supervision for a sufficient time. From the very nature of the task, mistakes cannot be wholly eliminated. The wisest Board will err. But the Board should be so constituted, and such assistance furnished, as to reduce mistakes to a minimum.

RECOMMENDATION 29. **That the amendment of 1917 which permits the Courts to fix a maximum sentence less than the maximum set by the law be repealed.**

The records show that the courts have, in many cases, fixed low maximums for repeaters because the courts did not know at the time that they were dealing with repeaters. The result is that these habitual criminals cannot be kept in prison or on parole for a sufficient time because the sentence-spread is too narrow. The reasons for transferring the duty of fixing sentences to the Board of Parole apply with equal force to the duty of fixing maximums.

RECOMMENDATION 30. **That the statute providing for reduction of sentence for good conduct in the State Prison and in the Reformatory for Women be repealed.**

This law, first passed in 1869 for the State Prison, now applies also to the Reformatory for Women, but has never been applied to the Reformatory for Men. The deductions are 6 days per month for the first year, 7 for the second, 9 for the third, and 10 for each year thereafter. A five year sentence is thus reduced to 3 years, 7 months, 18 days; a ten year sentence to 6 years, 11 months, 18 days. Good conduct is now given due weight by the Board of Parole in fixing sentences and the automatic reduction is unnecessary and a hindrance to the operation of the indeterminate sentence and parole laws. Repeaters learn to be good in prison and thus get their terms reduced, when the Board might thing good conduct outweighed by other factors. It reduces the sentence spread which the Board needs to suit the treatment to the case.

RECOMMENDATION 31. **That the indeterminate sentence law be amended to require every person committed to a state penal institution to serve the minimum sentence provided by law; and where no minimum now exists, that one be provided, by statute; and that where no specific minimum is provided, the minimum be one year.**

Under the law at present there is no minimum. The law allows every prisoner, except those committed for life, to be released at any time. The rules of the Board of Parole itself require 11 or 12 months of service before a prisoner may appear before it to ask for release. The law in many states requires that the minimum for the crime be served, and in some states requires more.

This change would not add much to the minimum time actually required by the Board of Parole in the administration of the present law. But its certainty might have a good effect on the minds of potential criminals. It would be well that it be known that prisoners could not even appear for release for one, two or five years, according to the crime committed. It would also lessen the work of the Board by reducing the number of possible appearances.

This recommendation is closely related to No. 17 for a revision of penalties.

RECOMMENDATION 32. **That there be provision for complete co-operation by the Board of Parole and its staff with any central bureau or organization of the nature of the proposed State Bureau of Criminal Identification and Information, which may be established, and particularly that complete information be furnished as to all discharges and paroles.**

(See Recommendations 1 and 42, pp. 20, 21; 68).

RECOMMENDATION 33. **That the Board of Parole should not make conditional discharges to other states without notice to the authorities of such states.**

Conditional discharge to other states is given to prisoners whose homes are in these states. They are not on parole. The condition is that they do not return to this state until their maximum sentence has expired. If they return, they are recommitted to serve the remainder of their terms.

RECOMMENDATION 34. **That the Board of Parole should keep prisoners known to be repeaters for the maximum possible under the law, and should carefully consider whether its practice of permitting such persons to reappear every six months is conducive to the best administration of the indeterminate sentence law.**

RECOMMENDATION 35. **That the Board of Parole should consider the desirability of keeping paroled prisoners longer on parole before discharge.**

The normal time on parole is now one year. Releasees appear to commit fewer crimes while on parole than after discharge. Every one of them knows that while on parole he has the balance of his maximum sentence hanging over him and that he may be recommitted to serve it. After discharge they cannot be recommitted until tried and convicted for another crime. The recommendation is expressed tentatively because the ability of the Board to keep releasees longer on parole with any degree of success will depend upon the availability of parole agents to supervise them. Well supervised parole for one year may be better than ill supervised parole for a longer period.

The Board of Parole and Its Staff

RECOMMENDATION 36. **That the name Board of Parole be changed to Board of Punishments.**

The chief function of the Board is to fix sentences. The change would result in better understanding of, and greater confidence in, the work of the Board.

RECOMMENDATION 37. **That the membership of the Board of Parole be as follows: Three members, of whom one shall be designated in the appointment as Chairman. The Chairman shall give his full time to the duties hereinafter described. The other members shall be appointed and shall serve as now provided in the case of the one citizen member. The membership shall not include any officer charged with official responsibility for the maintenance or superintendence of any state penal institution.**

The chairman shall be the probation officer for the state with the powers and duties stated in Recommendation 22.

He shall also act as advisor to the Board of Pardons.

He shall have active superintendence of all parole agents and instruct them in their duties and require adequate records and reports by them.

He shall keep records of persons released from the state penal institutions, by discharge, or on parole, of all persons pardoned, persons whose sentences have been commuted and of those reprieved. He shall make periodical reports showing the numbers of persons discharged, paroled, or pardoned, the offenses of which they were convicted, the time served, distinguishing between first and second offenders, and all other matters which it may be in the public interest to have classified and published.

It shall be his duty to co-operate with the authorities of other states in respect to conditional discharges and pardons, to make continuous study of punishments, paroles, etc. here and elsewhere, and to make reports and recommendations, from time to time, as to desirable changes in practice and in law, and as to number and character of staff.

The Board of Parole is now composed of five persons. Four of these are ex-officio members; the fifth is a citizen appointed by the Governor for a term of six years. The ex-officio members are the senior members of the State Board of Control, which has general charge of state institutions, and the heads of the three state penal institutions. The head of each penal institution sits on the Board only for cases within his own institution, so that only three members sit at one time. These four members have enough other public duties to absorb their time, and the citizen member gives only a few days each month to the work of the Board, and is paid only a small amount per day for the time he gives.

The membership suggested involves discontinuance of the present plan of ex-officio members. We wish to make it clear that this recommendation is in no wise prompted by any cause for complaint of the present personnel of the Board. No criticism of that personnel is intended. They have done their duty conscientiously and as carefully as the time at their disposal and the assistance available would permit. The state has reason for gratitude in that political considerations, so harmful to the parole system in other states, have had no place here. But we believe that the public will have greater confidence in a Board which does not include any person with official responsibility for the main-

tenance or superintendence of the penal institutions. The experience and advice of the head of the institution where the applicant is confined ought to be, and will continue to be, at the disposal of the Board in every case.

We believe it of the greatest importance that the Board should have at least one member who will give all his time to this work.

The Board of Parole is the state sentencing agency with respect to all persons committed to the state penal institutions. The court's sentence is only a matter of form. The Board is now sentencing about 220 prisoners each month either to longer incarceration or to release in some form. All the forces engaged in the administration of the law work to the end that criminals may be punished. The Board determines the amount of punishment. Insofar as this work is unintelligently done, the money spent is lost, and life and property are endangered. The cost to the state and to society from mistaken decisions at this point are incalculable. The task calls for one man, at least, who will give his whole time and energy to the work.

Probation, sentencing, paroling and pardoning all involve the same considerations. The study and administration of all of them should be correlated. The several agencies which determine or remit punishments, to each of which the criminal may appeal in turn, should have one general supervision.

The whole problem of punishment and its mitigations demands intelligent observation and study. Every year hundreds of youths make their first appearance in the courts. The home, the school, the church, social relations, the forces which teach self-restraint and self-control are failing with them. They have entered the kindergarten of crime and may be on their way to higher grades. If they persist, they will cost society a pretty penny. It has been estimated that only 25%, or less, of prisoners are habitual criminals, but that they commit 75%, or more, of all crimes. More thought should be given to ways to build up the self-control and to arouse the self-respect of the new pupils. We might rest this suggestion on the interest of humanity, but it will stand as well on the basis of a provident economy.

The chief value in the recommendation of this full time officer depends upon the type of man selected. He must be a good executive, of the highest ability, with a liberal education, large experience, and an interest in study and research. The country should be scarched for the best man and the salary necessary paid

to secure him. The manner of his appointment should be such that he will be free from even the suggestion of political interest or influence.

RECOMMENDATION 38. **That there be made available to the Board of Parole the advice of an expert in mental diseases; that one report, and as many more as necessary, of such an expert be made to the Board before any prisoner be released.**

The records in the Reformatory for Men contain the results of intelligence tests, and these are now being made in the Prison; but no reports of an expert on mental diseases seem to be available anywhere. The best authorities now place considerable reliance on such reports. A study of the records in the Massachusetts Reformatory showed that they were the most reliable of all data for determining fitness for parole. It is highly probable that the mistake in the Sciban case would have been avoided had such a report been available to the Board.

RECOMMENDATION 39. **That the Board be provided with more parole agents.**

(See Recommendation 35, p. 58).

There are now five, one at the Reformatory for Women, who looks after paroled women, one for the Reformatory for Men and persons on parole in the nearby districts, one for the Prison and near-by districts, one for the Twin Cities, who keeps the records of the head office, and one for all the rest of the state.

Besides supervising parolees, the agents investigate cases where state aid is asked for families of prisoners.

RECOMMENDATION 40. **That in recognition of the fact that parole, probation and conditional pardon involve the same problems, the law provide that officers having supervision of any persons paroled or on probation, may have assigned to them cases of the other classes, and that the chairman of the Board, acting as state probation officer, be authorized to make necessary and proper arrangements with County Commissioners to this end.**

Pardons, Commutations and Reprieves

The constitution provides that the governor, the attorney-general and the chief justice of the supreme court shall constitute

a Board of Pardons, "whose powers and duties shall be defined and regulated by law."

The statutes provide that the Board may grant pardons and reprieves, and commute the sentence of any person convicted of any offence against the law of the state, in the manner and under the conditions and regulations prescribed, and not otherwise.

The statutes provide that if an application be denied on the merits, no further application shall be filed without the consent of two members of the Board indorsed thereon.

The record in each case contains the information required by statute, the applicant's reason for asking clemency, a synopsis of the facts of the case as found in the record in the penal institution, the report from the institution, the number of times before the Board of Parole, if any, and the recommendations of the trial judge and prosecuting attorney in response to the notice to them required by law. The files of the Board of Parole are available to the Board of Pardons.

The following tables give the pertinent figures for five years, 1921 to 1925 inclusive.

APPLICATIONS CONSIDERED

Year	Rehearing Applications	Rehearings Denied	Rehearings Granted	New Cases	Total Cases	Relief Granted
1921	177	117	60	386	446	44
1922	169	151	18	365	383	22
1923	235	220	15	313	328	18
1924	230	167	63	385	448	71
1925	258	229	29	370	399	25
	1069	884	185	1819	2004	180

SUMMARY OF RELIEF GRANTED

Year	Full Pardons	Conditional Pardons	Conditional Commutations	Straight Commutations	Reprieves
1921	2	2	14	26	4
1922	2	1	10	9	5
1923	0	0	7	11	0
1924	2	0	27	42	13
1925	0	0	19	6	8
	6	3	77	94	30

The conditions were, in some cases, that the person report to the Board of Parole, in others that he leave the state, and in the majority that he lead a law abiding life.

To understand the function of the Board of Pardons, it is necessary to know the relation of its powers to those of the Board of Parole.

The Board of Pardons has power to release any prisoner from any penal institution in the state at any time. This includes prisoners in county jails, workhouses and work farms, as well as those in state institutions.

The Board of Parole has power to release from any of the three state institutions any prisoner except those with life sentences.

The Board of Parole may parole prisoners for life after they have served 35 years, less diminution for good conduct which reduces the time to 23 years, 7 months, 18 days, but only by the unanimous consent of the members of the Board of Pardons.

In practice the Board of Parole makes another exception. It will not release a prisoner on the ground of unjust conviction. The Board of Parole refuses to go back of the record and refers applicants to the Board of Pardons in such cases.

Only the Board of Pardons can give relief to life prisoners. It may give such relief in four ways, first, by pardon, second, by conditional pardon, third, by commutation to a term of years, which brings the prisoner under the jurisdiction of the Board of Parole, fourth, by consent to parole after 35 years service, less diminution for good conduct.

All other prisoners in the three institutions may be released either by the Board of Parole or by the Board of Pardons at any time.

In practice, only the Board of Pardons gives relief from unjust conviction.

All persons convicted of crimes entailing a maximum sentence of not over ten years have three chances for mitigation, first, probation by the judge, second, release by the Board of Parole, third, release by the Board of Pardons.

All persons convicted of a crime entailing a higher sentence for years have two chances, the Board of Parole and the Board of Pardons.

All life prisoners must get first relief, at least, from the Board of Pardons.

In practice, prisoners who are denied relief by the Board of Parole appeal to the Board of Pardons. In a large proportion of the cases in which relief was granted by the Board of Pardons, the same relief might have been given by the Board of Parole.

It is difficult to think of any good reason for the exercise of clemency by the Board of Pardons that should not be equally potent with the Board of Parole.

The officers who constitute the Board of Pardons have many other public duties. They cannot give the time and attention necessary for the adequate consideration of so many applications.

RECOMMENDATION 41. **We recommend that the jurisdiction of the Board of Pardons, as to prisoners in the three state institutions, be confined to such cases as cannot be considered and acted upon by the Board of Parole; and that accordingly the Board of Pardons be restricted to two functions: (1) Mitigation of life sentences, and consenting to parole of life prisoners according to statute; (2) The release of prisoners, upon grounds which cannot be considered by the Board of Parole, as, for example, unjust conviction; and the release of prisoners during any time the Board of Parole is unable to release them, as, for example, during the minimum term if Recommendation 18 (p. 39) be adopted.**

4. RECORDS AND PUBLICITY

The studies made by the Commission brought us into intimate contact with the official records kept by many public agencies dealing with crime. In the nine counties studied, the records of sheriff, police, county attorney and courts were examined. We also examined the records of the Board of Parole and of the Board of Pardons.

Under appropriate heads, we have already presented and discussed the conclusions drawn from our study of these records, and the recommendations which we submit. So far in this Report we have made use of the information derived from the records. It remains, now, to consider the records themselves. As indicated in the heading of this division of the Report, we are here concerned with the records and with publicity founded upon the records.

The handling of crime is, or should be, a matter of business. It is an important business. Every successful business keeps ade-

quate records and keeps them properly. A private business enterprise which failed to do so would surely fail.

When any business is scattered, so that it operates through many agencies and in different places, the necessity for such records increases. The State of Minnesota is engaged in the vast enterprise of providing protection to its citizens, and to their property, in 87 counties. This business is carried on through many and scattered agencies. Without adequate records of this business, properly kept, efficient conduct of its affairs is not merely difficult, it is impossible.

Records are kept for many purposes. The scope and nature of any record and the manner of its keeping should depend upon the purpose or purposes for which it is kept. We consider that there are three main purposes for criminal records:

(1.) To promote the efficient handling of the case recorded.

(2.) To provide a basis for estimating the efficiency of each agency of the law dealing with crime or criminals.

(3.) To furnish material for the study of the crime situation as a whole, and for intelligent consideration of changes in methods of dealing with it.

With these considerations in mind, we conclude that the present records are generally deficient in respect of each of the three purposes listed.

We shall not attempt a complete statement of the deficiencies we have noted, but rather seek, by illustration, to explain the situation with regard to records.

Considering the first purpose named,—that of promoting the efficient handling of the particular case—we are here dealing with the important duty of any agency of the law to do its particular job as well as possible. To illustrate the part played in that function by records, we present two illustrative examples —bail bonds and warrants.

Release from confinement is procured by a person awaiting trial, or convicted of crime, by giving a bond. The bond is signed by two other persons as sureties. It is security for the prompt appearance of the person released when he is wanted by the court. When an individual citizen signs the bond as surety, he binds himself thereby to pay the amount of the board upon failure of his principal so to appear. The whole machinery of the law is powerless to try or to punish the defendant in his absence. Accordingly, the bond which guarantees his coming

into court is a vital part of the process of dealing with the criminal. We have already noted a present defect in such bonds, and recommended statutory provision that they be filed and indexed in the office of the clerk of the District Court. (See page 35). What is here important is the further consideration that official records of bail bonds are now inadequate. We find no record kept of the property listed by the surety as a basis for his acceptance as such. Furthermore, no record is kept of how many times a single person may have made use of the ownership of one piece of property as a basis for bail bonds. It is now not uncommon to find, when a defendant has disappeared, that there is no real guarantee for his appearance in court. Suit against the bondsman would be of no avail. The defendant is gone, and no one will suffer because he is gone. This sort of result, sufficiently common, would make conveniently possible the escape of many criminals of the worst types.

Warrants are issued for the arrest of persons accused of crime. The usual procedure is for a police officer or deputy sheriff, who receives such a warrant for execution, to keep it until he succeeds in performing that duty. Commonly, no record is made of the issuance of the warrant or of its execution, or of the failure to execute it. The same is true of bench warrants. Unless some person, official or private citizen, should follow up the matter, there is nothing to call for further action, since no record is required or kept.

Instances could be multiplied, but perhaps the two given will serve to show both the importance of records and that, at present, we do not have necessary records.

The examples given equally well illustrate the situation with reference to the second purpose of criminal records,—that of furnishing a basis of estimating the efficiency of the particular agency of the law. Without records, no one can say whether the bail bond situation or the handling of warrants is being efficiently managed by a particular agency. To take only one further instance of this difficulty: Police departments have, commonly, no record of the number of crimes reported. Without such a record, it is impossible to know how far a police department is successful in solving crimes or in apprehending offenders.

The third purpose of records, likewise, largely fails of accomplishment under present conditions. Here, perhaps, the deficiencies of existing records are most marked. We hear on all

sides of the menace of crime to society—a menace which, we are told, is increasingly serious. It is important to know whether, and how far, that is true, in what respects it is true, and what should be done to meet the situation. Regardless of the existence of crime waves or emergencies of any sort, the crime situation presents many and perplexing problems. The present Report indicates some of these problems and attempts to deal with them as best it can. This Commission has found that data necessary to an intelligent consideration of many phases of the crime situation cannot now be obtained. Records are not now kept with a view to giving such information. Without careful study of the facts we, as a State, cannot hope to make important progress in dealing with crime and criminals.

Existing records, then, may be said to be inadequate, judged upon the basis of each purpose for which they are kept. It is equally true that those records which are kept are frequently not well kept. In both particulars, there is great difference in the several agencies whose records we have studied. It remains true that the best records observed measurably fail of what might reasonably be expected of them.

We do not intend in what we say of the records to criticize adversely the officials who keep the records. We find no records which suggest any purpose of concealment. Further, the records are probably as nearly adequate and as well kept as those of many states. But they do not meet the requirements. They do not accomplish highly desirable results of which we believe good records capable.

The causes of the present condition are, we believe, these: First, each official is busy with a particular task, and the keeping of records is often a mere incident, for which he has no special training; second, no official or agency is charged with the duty of considering the records, devising what is requisite and arranging for proper keeping of the necessary records; third, there has been no general recognition of the need for records or of the important uses to which they can be put.

Granted, then, the great need for adequate records of the agencies of the criminal law, how are such records to be obtained? Three possible methods appear.

(1) To recommend that each agency keep better records, at the same time indicating what reforms are necessary.

(2) To provide, by detailed legislation, what records should be kept and how; with, perhaps, appropriate penalties for failure to comply.

(3) To give to some central state authority the duty and power of securing adequate records, properly kept, by all officials and agencies concerned with crime and criminals.

The first plan is futile. As already indicated, officials are accomplishing practically all that can be expected of them as keepers of records, under existing conditions.

The second plan is impossible. The records are those of many and diverse agencies which operate under a great variety of conditions. Legislation to cover the whole situation would be impracticable. Moreover, were such legislation possible, it would be a rigid system, incapable of easy and natural development as conditions change and new requirements and possibilities are realized. Our Recommendations 8, 9, 10 and 16 propose specific records; but they cover only four items. There remains the great mass of records needed.

The third plan alone is feasible and sufficient.

Accordingly, we make three recommendations.

RECOMMENDATION 42. **That there be provided a central state authority with the power and the duty to require from each local and state official or agency in any way dealing with crime or with criminals an annual report furnishing information with regard to offenses against the law, the detection and apprehension of offenders, the prosecution and disposition of criminal cases, punishment, pardon and parole, the acts of public officials, and all other data which he may find necessary for the discharge of his duties, and**

That this central state authority prescribe what records shall be kept, and how kept, by each agency or official concerned, and

That he be given the power to inspect, when necessary, the records kept by such officials and agencies, in order to see that they contain the information which he needs for the discharge of his duties.

RECOMMENDATION 43. **That the central state authority publish an annual report, containing information about crime and the handling of crime by state and local officials, together with his interpretation of the information and his comments**

and recommendations. Such report should include recommendations to the legislature. He should also have the duty of keeping the legislature and the people of the state informed of the conditions and policies of other states in dealing with crime.

RECOMMENDATION 44. **In order that there may be local knowledge of local conditions, it should be provided that all local officials concerned shall file a copy of their report to the state authority with the Board of County Commissioners, and that the Board shall make such reports public records in its office.**

The central state authority here proposed has already been recommended in connection with the discussion of detection and apprehension of offenders. (Recommendation 1, pp. 20, 21). What is now recommended is that the agency already described shall have charge of the duties here discussed and outlined.

We have briefly stated some of the deficiencies of the present records in the light of the purposes of such records. We submit the following statement of the reasons for the recommendations above set out and of what we believe can be accomplished by their adoption.

It has already been indicated that the present situation with regard to records is largely due to two causes, the lack of training and of time of many officials, and the absence of any direction of the whole matter.

The Commission is convinced that both causes point to the need of a state authority. Such a central authority can consider all the phases of records and all purposes which they may be made to serve. He can devote the necessary time to preparation of proper forms and to classification of information desired. Only a state official can procure the necessary uniformity of records. He will be charged with duties concerning the whole crime situation and its handling; hence he will be able to make each record bear such a relation to the others as will make all of the greatest possible value. Above all, he will be charged with the duty of continuous study of the crime situation, and will be able to bring to bear upon any problem which presents itself all available information.

In all the particulars mentioned, a state authority is necessary. In addition, only an authority of statewide powers and scope

can possibly correlate the efforts of the many agencies now operating as independent and unrelated factors. Their tasks are all parts of one state enterprise. They must function as parts of the state's organization for this purpose, if anything like efficiency is to be obtained. In order to take such a place in the business, they must perform their several tasks with due regard to their relations to each other and to the whole. Throughout this Report, evidence is presented that they now fail to do so, and that they fail for want of central direction of their efforts. The Commission submits this recommendation as one well calculated to provide the means for such direction and correlation.

There are other aspects of records and record-keeping which must be noticed. In our recommendations for changes in criminal procedure we have included three which provide for a record where none is now made. (Recommendations 8, 9 and 10, pp. 31, 32). We there recommend the requirement of a record of the reasons for the dismissal or nolle prosequi of prosecutions by county attorneys, for the acceptance of pleas of guilty to a lesser offence than the one charged, and for the suspending of sentence. It was there urged that where good reasons exist for such actions, they can easily be stated in the record and that they should be so stated.

Such a record serves two purposes: (1) It helps to secure well-considered action by the very fact of requiring a written statement of the reasons for the action in each instance. (2) It provides a record which can be used for each of the several purposes of records, already mentioned.

We have provided for the gathering of information from all agencies dealing with crime or criminals, for its study and for its interpretation and publication. The records just referred to, and a few others elsewhere mentioned, are capable of specific recommendation. The great bulk of the records is better left to such an authority as we recommend for consideration and plan.

The instances given, however, may be taken as illustrating the several phases of records and their significance. Thus, by the plan here proposed, all records of dismissals, nolles, acceptances of lesser pleas and suspended sentences would be contained in the reports made to the central authority. He would thus have available full information concerning all criminal cases which, by official action, result in reduced punishment or in none at all. He would have the reasons assigned by each official who

took such action. What a flood of light all this information, carefully considered, could throw upon the working of our criminal procedure! It must be borne in mind that this light would be made available to the people of the state and to the legislature.

Comparison of the results obtained by Minnesota procedure, in this particular, with the situation in sister states would be readily made, since the central authority is charged with the duty of obtaining available information from them.

Another feature of publicity is here involved. Provision is made for making public record in the office of the County Commissioners of the annual reports of all local officials. The operation of this feature can be suggested by reference to one set of figures presented elsewhere in this Report. We refer to the number and percentage of sentences for felony found to have been suspended by the district court in one county in the year 1924, (See pages 42, 43). Under this plan the people of that county would know these facts. They would know that over 50% of all sentences which could be suspended were suspended. If they thought such a practice ill-advised, the full force of public opinion would be brought to bear upon the practice, and we cannot doubt that it would change.

An informed and active public opinion is, the Commission believes, of the highest importance in the reform of the law and in securing its effective enforcement. The public now has no means of accurate information about the criminal law or its operation. It has no reliable basis of judgment of the efficiency of the several agencies dealing with crime and criminals.

The plan recommended provides for accurate and complete information and for its dissemination. The Commission is convinced that this plan would furnish one of the greatest possible helps to the betterment of our criminal law, and one of the most effective means of securing its enforcement.

What is here recommended is, of course, not the gathering of useless facts or the keeping of needless records. The Commission does not contemplate the overburdening of local officials or the cluttering of offices with meaningless figures. We do urge the vital importance of adequate records, properly kept. Our recommendation is no larger than the needs of the situation.

To summarize our present topic: We here propose a central authority, whose function it will be to secure to the people of this state accurate and complete information of all phases of the

criminal law and of its administration, and all available information concerning the crime situation, to these ends: (1) the improvement of the administration, state-wide and local, of the criminal law; (2) bringing to the notice of the legislature, and of the courts, those phases of the situation which need attention and change; (3) making possible careful study, and hence understanding, of the problems involved; and (4) providing the basis for an intelligent public opinion upon all questions, whether of law or of its administration, so that the people can, and will, demand and secure better laws, better administered.

VI. THE RECOMMENDATIONS SUMMARIZED

1. Detection and Apprehension of Criminals

There is need for better organization of the machinery for the detection and apprehension of criminals, to cope with the modern development of crime. To that end we recommend:

The creation of a central state authority to coordinate the work of peace officers, to furnish them state assistance and to continuously endeavor to secure their greater efficiency.

The creation under this central authority of a state bureau of criminal identification and investigation.

The establishment of quick means of communication between the central authority and local peace officers throughout the state, prompt report of all serious crimes to the central authority by all local peace officers, and the immediate communication and broadcasting of such information by the central authority to local officers.

This central authority to employ such reasonable number of trained investigators as may be necessary to supply local peace officers and prosecutors with expert assistance to follow the trail of serious crimes. This does not contemplate the establishment of a state constabulary or state police.

This central authority to be empowered to arrange for police schools for the training of peace officers in their powers, duties and modern methods of detection.

That all peace officers have the power to fingerprint and to take other necessary measurements of persons arrested for felony, or found with concealed firearms, burglary outfits, etc., believed to be maintained for unlawful purposes, without waiting for conviction.

2. Criminal Procedure

We believe that our criminal procedure gives too great advantage to the accused and too great disadvantage to the state and entails too great delays.

We recommend:

That the right of the county attorney to dispense with indictment by a Grand Jury, and to commence a prosecution by an information filed by him, be extended to include all cases where the maximum punishment is twenty years (now ten years) in state prison.

That whenever possible, informations and indictments against repeaters be drawn under the second offence statute.

That the court shall have power to amend informations and indictments as to all matters not affecting the substance of the offense charged.

That in the discretion of the court, those jointly indicted may be tried jointly—as in U. S. Courts.

That if the defendant fails to take the witness stand in his own behalf, the county attorney and the trial judge have the right to comment on that fact.

That the state have the right to reply after argument of the defendant's attorney to the jury.

That where on appeal the supreme court finds that the evidence does not sustain conviction for the offense for which the defendant was convicted but does sustain a lesser degree of the same offense, that court shall have the power to reduce the sentence accordingly and dispose of the case.

That dilatory pleas and motions for new trial after conviction be expedited, and that the time for taking an appeal and for perfecting an appeal to the Supreme Court be shortened.

That bail bonds and the real estate owned by the surety be listed and indexed by the clerk of the district court; and that bail bonds be more vigorously prosecuted in case of forfeiture of bail.

We approve the proposal made by members of the Bar of Olmsted County to extend terms of court so that the trial of important criminal cases may be had at any time.

Other suggested changes in procedure are bound up in some of the recommendations to follow.

3. Punishment, Pardon and Parole

We believe there should be more adequate and effective punishment of the graver offenders, and that there should be greater difference than at present between the punishment of first and minor offenders on the one hand and repeaters, gunmen and mental defectives with criminal tendencies on the other.

We therefore recommend:

The repeal of the statute of 1917, which permits the trial judge to fix a maximum sentence less than the maximum fixed by statute.

The fixing by law of a minimum sentence for all offenses, and in all cases where no minimum is now fixed, that the minimum time for felony shall not be less than one year.

The repeal of the statutory allowance for good time while in prison.

That on a second conviction for felony the minimum punishment shall be twice the minimum for first conviction.

That on a fourth conviction for felony, unless a fixed term is provided by statute, the maximum indeterminate sentence shall be for life.

That the minimum penalty for felony in case a gun is used in the commission of the offense, be five years.

Drunken Drivers

We recommend that the conduct of a drunken driver of an automobile resulting in injury to any person, be made a distinct felony if the circumstances are such that the crime would be manslaughter had the injured person died. It is now only a misdemeanor.

Restriction on Suspended Sentences

We recommend:

That the power of the court to suspend sentences be restricted, so that no sentence be suspended in any case where a gun or other dangerous weapon is used in the commission of the offense.

That no sentence be suspended in any case where the offender has been previously convicted of a felony in this or any other state, and that the judge before passing sentence procure

such report as is practicable of the record of the offender and particularly a report from the State Bureau of Identification.

That the power of a trial judge to modify or remit a sentence after commitment be abolished.

Restriction of the Power of Parole and Pardon

Some of the recommendations above made restrict the power of discharge and parole; we further recommend:

That there be no power to parole a person sentenced for a felony until he shall have served at least the minimum sentence provided by statute.

That there shall be no discharge of a convict by pardon or parole on condition that he go into another state, except to the authorities of that state or after notice to the authorities of that state.

That the state shall maintain a medical expert in mental diseases who shall be consulted before any convict shall be pardoned or paroled, or discharged before the expiration of the maximum of an indeterminate sentence, to the end that it may be determined whether the applicant can be released with safety to society.

That the function of the Board of Pardons shall be confined to such cases as do not come within the jurisdiction of the Board of Parole.

Reorganization of the Board of Parole

We believe that the policy of composing the Board of Parole of the heads of the penal institutions and the chairman of the Board of Control is not a wise policy. We recommend:

That the Board of Parole be constituted as follows:

Three (3) members, of whom one, the chairman, shall give full time to the duties of his office; two citizen members appointed as now provided by law.

That the chairman shall be the most capable and experienced man whose services can be obtained. That he shall have the superintendence of all parole agents and probation officers of the state. That he be the advisor of the Board of Pardons and of trial judges when desired.

That the name of the Board of Parole be changed to Board of Punishments.

4. Records and Publicity

We believe that publicity of record of all criminal proceedings is of the highest importance, to the end that the light may be thrown in at all times, and we recommend:

That a public record in writing be made of the nolle or dismissal of an indictment or information, giving the reasons therefor.

That a public record in writing be made of the acceptance of a plea of guilty of an offense less than that charged, giving the reasons therefor.

That a public record in writing be made of each suspended sentence, giving the reasons therefor.

That a public record in writing be made of the parole or discharge of any person from any penal institution in the state.

That all peace officers be required to keep a record of reports of crime, of warrants for arrest and the execution of them, of arrests and of the disposition made by them of the persons arrested.

That county attorneys keep records showing all proceedings in criminal cases handled by them, and files of all papers necessary to show a full history of the case.

That clerks of courts be required to keep a complete record and file showing every step in every criminal case, and of every bail bond and of the action taken thereon in case of forfeiture of bail, and

That reports be made by these officers in such manner as to give their proceedings proper local publicity.

That annual reports be made, by all officials dealing with crime or criminals, to a central state authority, who shall summarize, interpret and publish the facts for the enlightenment of the people of the state and for the guidance of the legislature and the courts.

VII. IN CONCLUSION.

We recognize the importance of consideration of other subjects in their bearing on crimes, particularly such subjects as juvenile delinquency and the control and custody of those mentally defective. We have not had the time to enter upon these fields. We recommend them as subjects already deserving careful consideration and action.

In closing our labors and submitting this our final report, we recommend further study and quickened activity on the part of legislative, executive and judicial officers of the state, and also on the part of the general public.

The recommendations we make will not solve the crime problem. If adopted, we trust they will help. Some may think we should have recommended more drastic measures. Experience in the United States and also in England and Canada has shown that the most drastic punishment is not always the most effective, but we do believe in more drastic punishment for the more desperate crimes and criminals. The investigations we have made suggest other measures that might be taken. We might have outlined a larger program. We have not thought it wise to fill the hopper too full and have endeavored to make reasonable selection. After careful consideration, we have recommended these as a substantial improvement, as we believe, of present conditions. Other measures should be taken as circumstances may demand. The measures suggested will cost some money. But crime is expensive and is demoralizing to society. It will pay us to give it continuous consideration and the best treatment we can command.

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