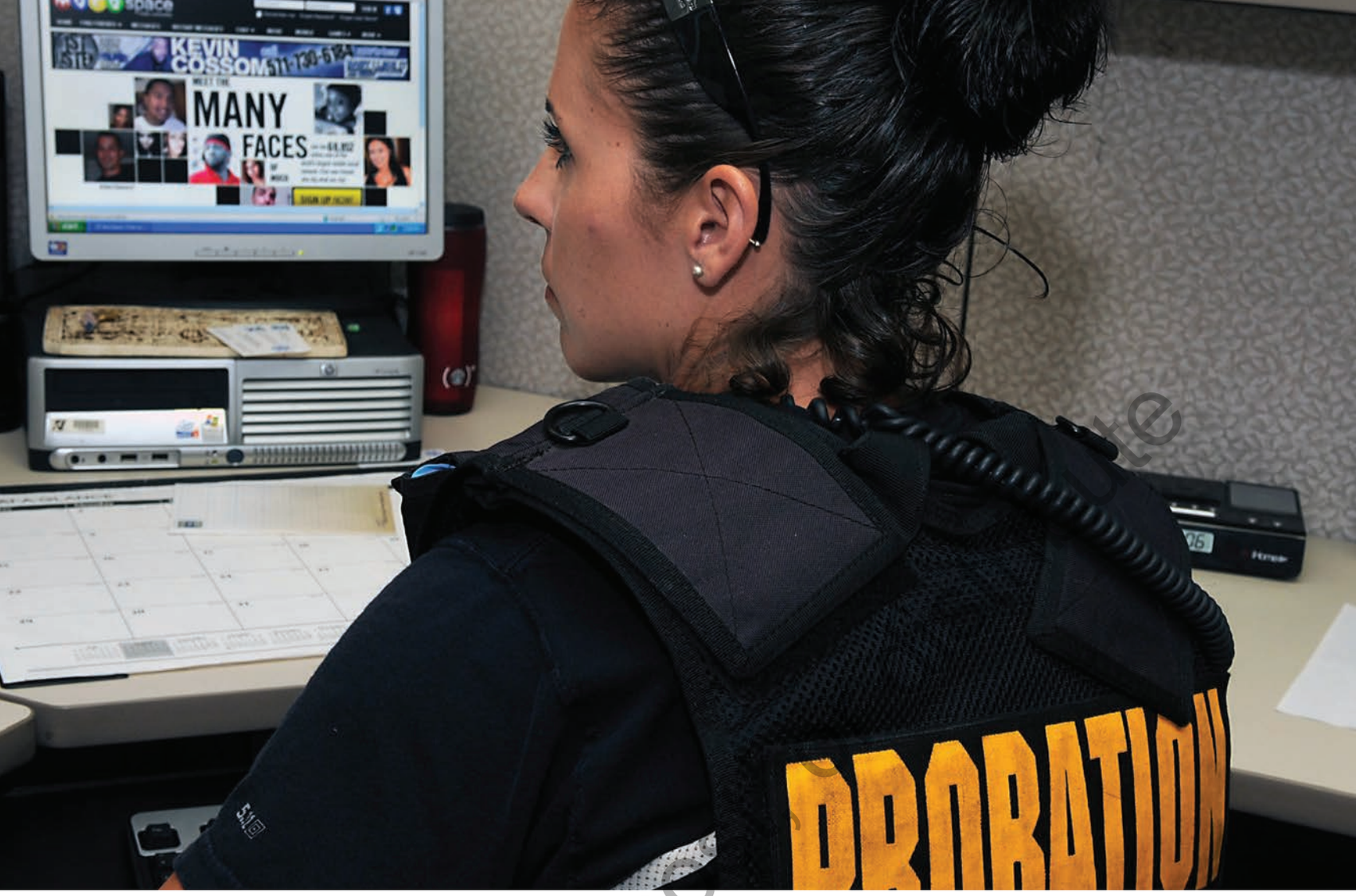


5 Probation and Alternatives to Incarceration

LEARNING OBJECTIVES

1. To be able to define probation, community corrections, and alternatives to incarceration.
2. To learn to explain the goals of probation and its role in the criminal justice system.
3. To understand the origins of intensive probation as well as its complexity.
4. To grasp the tension between law enforcement and rehabilitative approaches to probation and what leeway probation officers have to combine them.

The importance and complexity of probation work is underestimated and under-acknowledged.

U.S. Department of Corrections, http://www.bop.gov/inmates/custody_and_care/reentry.jsp

Probation has been an integral part of U.S. corrections for over a century. Today, probation is the most utilized correctional option, with more individuals on probation in the community than in prison, in jail, and on parole, combined. Probation and alternatives to detention are meant to satisfy the purpose of the public and the government in prosecuting crime in a way that avoids the harsh, costly, and in many ways counterproductive option of incarceration.

Although views of the usefulness of probation have evolved over the years, the basic purposes remain the same: to sanction lawbreakers through restrictions placed on their freedoms, to protect public safety by supervising probationers and responding to their violations or new offenses, and to help the probationer avoid more illegal activity through treatment, education, and other services.

The question of whether probation "works" is related to these purposes and several other issues. To measure the effectiveness of probation as a means of crime control, one can track recidivism rates and crime rates. Then there is the issue of whether probation satisfies the public's need for accountability on the part of the offender and whether the consequence is appropriate to the offense. Public opinion and political agendas both influence and are influenced by how justice is carried out. The public has its ideas about what is fitting punishment. Politicians often exploit and inflame the public sentiment for political purposes. At present, probation tends to be viewed as a lenient outcome, and the public at times questions whether the system is meeting its mandate. At the same time, people generally understand that not all offenders can or should be put behind bars. It currently appears that a large portion of the public currently supports probation, especially for low-level cases.

With the right practices and resources, probation can, in fact, fulfill the public's desire for a punitive response to crime and protect public safety. The recent trend toward

5. To gain a sense of what probation officers do to investigate and supervise their clients.
6. To understand the interactions between the court, the probation officer, and the probationer.
7. To be able to discuss different alternatives to incarceration and how effective they might be in increasing public safety.

"evidence-based practice" (EBP—practices that have been rigorously evaluated and found effective) has helped departments implement strategies that have the greatest potential for positive impact. Through EBP research, progressive ideas that have long been met with skepticism are now being validated and are becoming more accepted. The effectiveness of probation is connected to adequate funding, training, implementation of policies, and caseload size. Underfunded probation departments often demand that officers handle caseloads in the hundreds. These case burdens, among other factors, impact the quality of supervision that the probation officer (PO) is able to deliver.

What Is Probation?

The justice system encompasses a range of sanctions for criminal behavior, with degrees of severity and control. Prison and jail emphasize isolation, incapacitation, and punishment. Probation in its most progressive form emphasizes community involvement, rehabilitation, and a proportional response to crime. Depending on the severity of the offense and the risk the defendant poses to public safety, probation can be supplemented with tools and programs, referred to as alternatives to incarceration. These alternatives, such as electronic monitoring or specialized courts, can address the individual's risk factors.

Probation and alternatives to incarceration are forms of community supervision. They allow the defendant to maintain ties to family, community, and employment while being under correctional supervision. Community supervision restricts a defendant's liberties and monitors his or her activities. The court may determine that the probationer must fulfill additional conditions of probation, such as attending community-based treatment or other programs focused on the individual's needs and circumstances that contributed to the offense. These programs may include mental health counseling, substance abuse treatment, occupational training, or family therapy. The court may also put restrictions on the offender to protect public safety and to reduce the chances of recidivism, such as prohibiting the client from visiting certain neighborhoods or associating with known criminals or victims of the individual's crimes.

The threat of incarceration underpins this arrangement. A sentence of probation usually includes the suspension of a custody sentence. As part of monitoring behavior under probation supervision, the PO has regular contacts with the client, in the office and in the field. The officer visits the probationer's home and workplace, and speaks with family, friends, coworkers, and service providers. Should the probationer violate the court's conditions, he or she is subject to a probation revocation and custody.

A judge may impose a sentence of probation before or after the judgment of guilt or innocence in court, which is called adjudication. Sentencing a person to probation before trial is less common and allows the defendant awaiting trial to avoid a record of conviction. The defendant is released pending trial; however, if he or she fails to meet the conditions of release, he or she may be remanded to detention in jail until trial. Most commonly, the judge sentences a defendant after conviction.

Evidence-based practice: Practices that have been proven to be effective through rigorous and quantitative analysis.

Conditions of probation: The terms or requirements that an offender must meet to maintain his or her probation status and avoid incarceration. Conditions typically require the offender to keep in contact with a probation officer, maintain employment, avoid criminal behavior, and participate in any court-ordered programming.

Adjudication: A court's decision regarding the guilt or innocence of a defendant.

Who Is on Probation?

At the end of 2012, there were almost 4 million American men and women on probation—1 out of every 61 adults in the United States. The average length of stay on probation in 2012 was 23 months.[1]

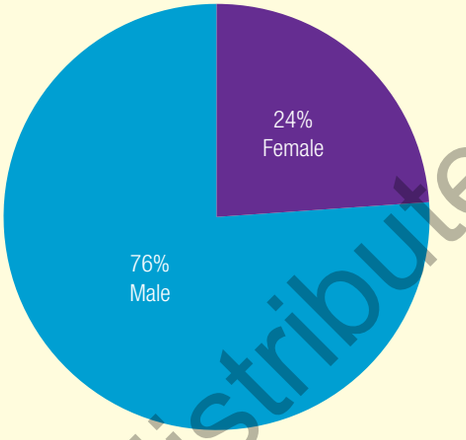
Historically, probation was reserved mainly for very low-level offenses—infractions and misdemeanors—but since the 1980s, the percentage of probationers with felony convictions, including those with serious crime histories, has risen.[2]

After rising every year since 1980—the year that the federal Bureau of Justice Statistics (BJS) began collecting these data—the total U.S. probation population started a decline in 2008, which continued through 2012. In that year, the total was just under 4 million (3,942,800)—about equal to 2001 levels (3,934,713). The probation *rate* (per 100,000 U.S. adult residents) also declined in this period, from 1,878 in 2007 to 1,633 in 2012.

Between 2011 and 2012, 31 states, the District of Columbia, and the federal system each reported a decline in probationers, while 19 states reported increases. Thus, despite a national decline, some states were moving in the opposite direction. It is often a few states that account for most of these changes. For instance, most of the recent decline in the national probation population was accounted for by just a handful of states, including California, Florida, Georgia, Michigan, New York, North Carolina, and Texas.[3] In several states that reported lower probation counts, state budgetary issues led lawmakers to intentionally reduce the number of low-level, nonviolent clients on their probation roles. These changes highlight several characteristics of probation in the 21st century. The very nature of probation has changed, as resources are usually insufficient to serve the low-level cases for which probation was originally designed. Probation rates are lower in part due to lower crime rates, increased use of pretrial diversion programs, shorter terms of probation (although the national average has remained consistent throughout this period of decline), and an easing of tough-on-crime attitudes.

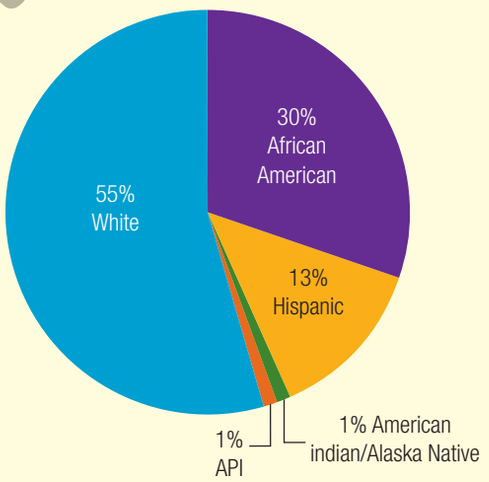
Efforts to decrease the number of people under state correctional supervision, including **early release** programs, have generally not resulted in a related rise in crime rates, suggesting that a careful reduction in the use of incarceration can protect public safety.[4] The effectiveness of probation is discussed later in this chapter.

Figure 5.1 Probationers by Gender, 2012



Source: Maruschak and Bonczar 2013.

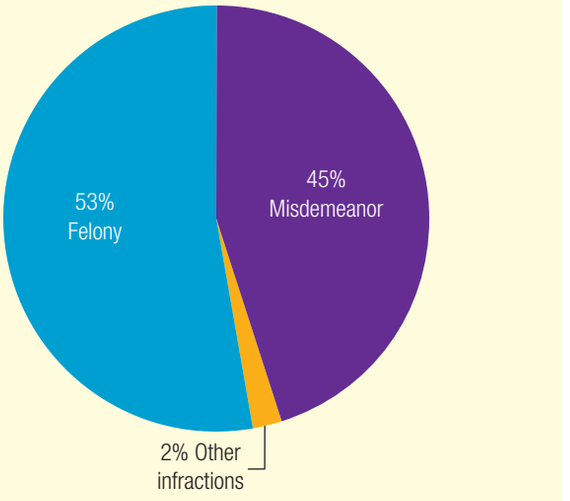
Figure 5.2 Probationers by Race and Ethnicity, 2012



Figures 5.1 and 5.2 show that three quarters of those on probation in 2012 were male, and just under half were White (55%). *Source: Maruschak and Bonczar 2013.*
Note: API = Asia-Pacific Islander.

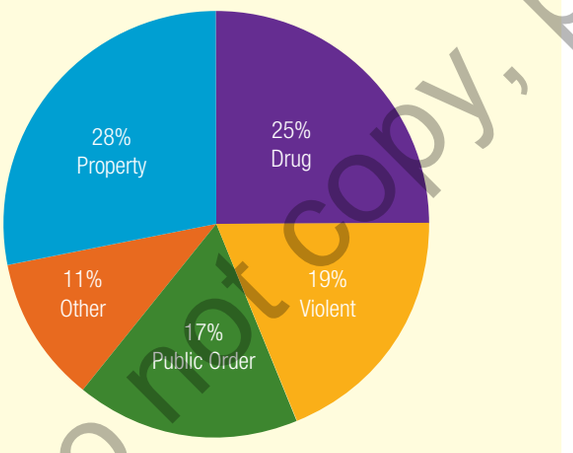
Early release: Release from custody or supervision prior to completion of original sentence, often due to good behavior or to relieve facility overcrowding.

Figure 5.3 Probationers by Offense Level, 2012



Source: Maruschak and Bonczar 2013.

Figure 5.4 Probationers by Most Serious Offense, 2012



Figures 5.3 and 5.4 show that probation cases in 2012 were of all types, with almost one fifth violent, and just over half felonies. *Source: Maruschak and Bonczar 2013.*

A Brief History of Probation

Many of the elements of today's probation stem from its 19th-century roots. In the Western world, its roots go back centuries, perhaps to England of the 1200s, when lawbreakers might have received the "benefit of clergy" by reciting a psalm in front of a judge. This was often little more than a way for the educated and connected (to the church, in particular) to avoid the plight of commoners. Still, the practice continued into the 1800s. A practice called **judicial reprieve**—popular in England and then in the United States of the 1800s—was a more formalized process by which judges could use their discretion to suspend incarceration or not impose it at all, as long as the offender continued to toe the line. The U.S. Supreme Court eventually decided that judicial reprieve inappropriately took the power to respond to crime away from the legislative and executive branches, mainly because there were no requirements for judges to set an end point to the probation period.

Some judges continued to look for ways they could use their discretion to mitigate punishments they felt to be unduly harsh. Releasing offenders on recognizance was one such method developed in the 1800s. Similar to today's practice of releasing those accused of crimes on bail until their court date, recognizance is also the basic concept underlying today's probation. It allowed judges to release convicted persons if they promised to meet some condition, such as commit no more crimes or pay a debt. Usually this included a payment—a precursor to today's bail—to the court that would be returned only if the individuals held up their end of the bargain. If they did not, they forfeited the money and typically went to jail. Thus, by the mid-1800s, there was precedent for the court to use discretion in administering the penal code and to maintain jurisdiction over persons released to the community.

In 1841, a cobbler named John Augustus convinced a Boston court to put a man charged with public drunkenness in his charge instead of in jail. He promised the court he would help the offender stay straight or else the court could reinstate the sentence. Over the next 18 years, Augustus helped hundreds of would-be inmates and established the underpinnings of modern probation. Augustus not only gave probation its name (from the Latin *probatio* for testing or showing to be fit or worthy), but his philosophy and the methods he developed still guide the practice of probation today. Still an integral part of the modern job, Augustus's methods included building rapport with his clients,

Judicial reprieve: An early form of probation where, at the discretion of a judge, lawbreakers could avoid time behind bars if they avoided further criminal behavior.

connecting with their families and communities, and identifying and providing assistance for individual needs. In screening his clients, Augustus felt it important to get to know the individual and the circumstances that precipitated the offense; he established what is now called the presentence investigation. His approaches to case supervision and revocation are also the roots for today's practices. Thirty years after Augustus, juvenile probation was formally established in Massachusetts, and in 1901, adult probation was established in New York. Although the U.S. Supreme Court ruled in 1916 that courts did not necessarily have the authority to impose probation, the practice continued to spread as state legislators enacted laws to the same effect. By 1956, probation was legally established in all U.S. states and the federal government.[5]

▲ John Augustus is considered the father of probation.

AFE, http://www.mass.gov/courts/docs/probation/fact-sheet.pdf

Two Key Perspectives on Probation

Early in the process of institutionalizing probation, two perspectives on its purpose and administration arose that probation departments still try to balance. The Augustus-inspired social worker approach emphasizes the needs of the offender and support and rehabilitative services. The law enforcement perspective emphasizes surveillance, the enforcement of rules and conditions of probation, and detecting and responding to violations by intensifying sanctions or revoking probation.

In the 1960s and 1970s, approaches to community supervision were primarily guided by the theories of rehabilitation and reintegration. This view assumes that personal issues and circumstances that led to criminal behavior can be "fixed" or ameliorated, and that lawbreakers can be guided toward a **prosocial** lifestyle. However, behind bars, prisoners do not face the real-life circumstances and challenges in the community that influence their inappropriate behavior. The reintegrative theory of corrections takes the rehabilitative perspective to the next step. Rehabilitation tends to work best in the client's home community, where new relationships with service providers and newly positive relationships with other community members can help the probationer stay on track. In the best case, the probationer is reintegrated as a healthier and more productive member of the community, and the community itself is renewed and strengthened.

By the 1980s, and increasingly in the 1990s, probation in the United States began to move toward a law enforcement perspective. For reasons that are still being debated by historians and crime experts, there was an upswing in violent crime between 1960 and the mid 1990s. Additionally, social movements, such as civil rights, seemed to threaten the established social and political order. Advocates for a harsher criminal justice system used these changes to incite and exploit public unease and push for harsher sentencing and punishment. The public began to demand that corrections, including probation, change its course

Prosocial: Actions and behaviors that are beneficial to the larger society.

away from rehabilitation. This tough-on-crime movement resulted in a rapid rise in incarceration rates, serious facility overcrowding, and ballooning corrections costs.

The law enforcement perspective is still prevalent today. The primary purpose of probation is most often to mete out punishment (retribution) and safeguard public safety—that is, to reduce crime during the offender's sentence (incapacitation) and deter future crime. Nevertheless, rehabilitative services can be part of the state's effort to reach these ends, and Augustus's caseworker perspective is still an important part of community corrections. In fact, the dominance of the law enforcement perspective may well be giving way once again to rehabilitative objectives as EBP demonstrates the benefits of engagement and empathy, backed by certain and swift sanctions that are more finely graduated and that keep the probationer in the community.

Probation Administration

Probation is administered at various levels of government—at the state, county, or city level, or a combination of state and local. Administrative responsibilities are usually handled by state departments of corrections, but the courts and the executive branch may also play a role. There are more than 2,000 probation agencies in the United States. Probation philosophy and approaches are partially shaped by the values and demands of the local public and political leaders. The local agencies that translate the philosophy into policies and procedures are the courts, the probation department, the police department, service providers, and other local groups. The individuals who function in these entities are judges and court administrators, prosecutors and defense attorneys, probation officers and supervisors (and, in some jurisdictions, pretrial services officers), police officers and brass, and front-line service professionals, among others. Supervision decisions fall mostly to judges, probation officers, and their supervisors.

The Role of Probation Officers

The role of probation officers (POs) is broadly divided into two areas—investigation and supervision. Although the supervision function is the one most commonly associated with probation officers, investigation takes a large percentage of an officer's time. Especially in larger agencies, officers may specialize in one area or the other. In larger systems, including the federal probation system, "pretrial services officers" investigate and supervise defendants awaiting trial, and "probation officers" investigate and supervise individuals after conviction. Pretrial services may be its own department, distinct from regular probation. Within these roles, officers may specialize in certain groups, such as gang members, domestic violence cases, or sex offenders.

Probation agencies vary a great deal in how they manage probation officers. Their recruitment strategies, the type and amount of training officers receive, the size of **caseloads**, the level of officer autonomy, the institutional support officers receive, and many other factors vary from one agency to another.

Caseload: The total body of client cases under a probation or parole officer's care. Also, a probation or parole specialty, such as intensive supervision or domestic violence.

Probation agencies also differ in their approach to supervision, depending on whether their perspective leans toward the rehabilitative approach or punitive law enforcement. In reality, probation officers serve both these functions. But an officer's personal opinion about the appropriate balance between the two roles can have a marked impact on how he or she approaches the work. A department's leaders also exert a great deal of influence over the culture of the organization and the values it expresses. One way that departments are focusing on reducing recidivism is to consciously alter their recruiting and hiring practices and select candidates who are more likely to succeed using a rehabilitative approach.

Probation officers rely on their own creativity as well as collaboration with other public sector professionals to do the best job possible and to individually case manage their clients.

Depending on the jurisdiction, the PO will have the support of a number of other professionals including supervisors and administrators; representatives of other governmental agencies such as the court, police, public health, and child protective services; and service and programming providers in the community. This support may be more or less formalized. For instance, some jurisdictions assemble teams of professionals from a variety of governmental and nongovernmental groups that formally meet to discuss and make recommendations about a particular probationer. Some jurisdictions may allow or require members of the probationer's family and community to be included. Other jurisdictions have similar teams but only on an informal or as-needed basis, and still others collaborate infrequently with other agencies and stakeholders. In all of these variations, the probation officer plays a central role.

Today's probation departments often use risk assessment instruments and **case management systems**. These can assist probation officers in making sentencing recommendations, deciding on what approach or tactics will work best with each probationer, and tracking a probationer's progress in meeting conditions. These tools can also assist with balancing workload, ensuring quality, collecting system statistics, using resources efficiently, identifying gaps in services, and managing staffing and training. Well-designed systems can ensure that probation officers have adequate guidance and institutional support for the myriad decisions they have to make.

A probation officer's caseload can vary widely depending on the size and resources of the department, the officer's experience, the types of probationers being supervised, and the level of supervision that each requires. More experienced POs can handle larger numbers of more complex cases. Some cases involve hardened, system-savvy career criminals, others involve first-time DUIs. Probation officers that supervise high-risk probationers will have lower caseloads, perhaps 20 to 30, while those that supervise low-level probationers may have caseloads as high as 145 or more.[6] Principles of EBP direct higher levels of resources to the probation clients most at risk for additional consequential criminal behavior. Officers with specialized caseloads—such as violent offenders, sex offenders, clients on electronic monitoring, and the seriously mentally ill—see their clients often, spend more time with them, and work harder to help them change their problem behavior. However, budget constraints tend to increase officer caseload size.

Case management system: Computer programs that assist caseworkers with many aspects of their work, such as recording and tracking client data (e.g., contact information, background, court orders, risk assessment scores, drug test results, GPS monitoring, progress toward meeting conditions, etc.); recording daily work flow notes (i.e., how officer spent his or her day); integrating client data with information from the court, law enforcement, and other agencies; receiving automated recommendations regarding how best to approach each case; assistance in meeting agency policies, and reporting requirements.

Face-to-face interviews provide valuable information. A PO needs to know when *not* to speak to an employer, who may be unaware of the employee's probation status.

© iStockphoto.com / Christa Brunt

Many officers have reported feeling their caseload was too high for them to provide adequate supervision to all of their clients.[7] A large and diverse probationer caseload certainly makes the probation officer's job more difficult, and the media and public are quick to criticize when an overburdened department fails to prevent a serious new offense by a probationer. However, research has shown that the number of cases alone does not determine the quality of the supervision or the rate of recidivism.[8] Other factors are germane, such as departmental support, the nature of the supervision over the PO, the quality of the PO's training, and the seriousness of the specific cases. It is important that efforts to reduce caseloads be coupled with training in best practices.[9]

Probation officers usually have the authority to arrest and detain clients suspected of violations of probation or new offenses. This authority may be used rarely and only for the PO's own cases. Probation officers may also work closely with law enforcement and participate in raids and arrests when probationers are likely to be present. Some POs are trained and certified to carry weapons (such as firearms or pepper spray), and some wear uniforms while on duty. Most wear street clothes and do not carry guns or other weapons.

Sentencing and Investigation

A sentence of probation is not as straightforward as a sentence of incarceration. For incarceration, a judge mainly decides only the length of the sentence, parole eligibility, and the security level of the facility. When sentencing a person to probation, the judge must specify parameters including the duration of the sentence, terms of early release, type and intensity of supervision, and programs and service requirements. Each of these areas may entail fairly complex choices for the bench.

The role of the probation agency begins before sentencing, when a PO completes a presentence investigation and report (PSI). The PSI is presented to the court and used to assist in the sentencing decision. It is closely linked to the process of risk classifications for behavioral problems and new offenses and to assign programming and services. (See Chapter 3.)

The PSI includes sentencing recommendations, which the judge usually relies on in determining what sentence to choose after a conviction, or as part of a plea bargain. From initial sentencing decisions to termination of probation, the PO's recommendations are strongly considered. Most research finds that judges follow the PO's sentencing recommendations in the majority of cases.[10]

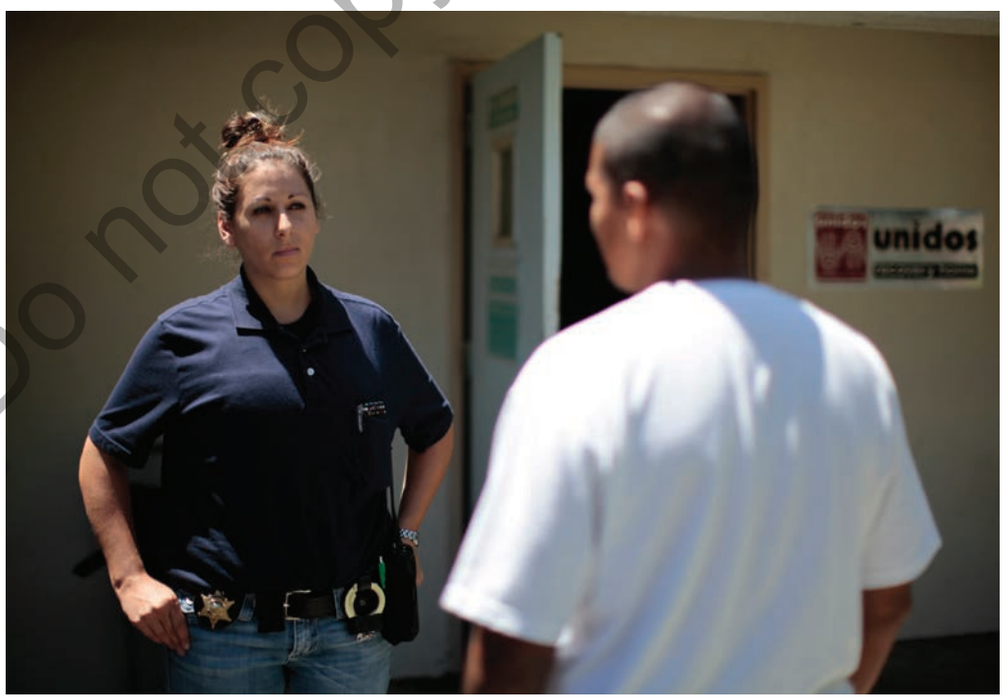
A judge may also hear the recommendations of the prosecutor and defense attorneys or other professionals such as psychologists. The PO's recommendations tend to have the most influence, because they are presumably based on the officer's objective research into the defendant and the circumstances of the offense as well as the officer's knowledge of the programming and services available and how those might serve a specific defendant.

A probation client may not serve any time in secure custody, apart from time in detention, at arrest or awaiting trial. The judge may also impose a combination of secure custody and probation. A split sentence is a period in custody, often six months, followed by a period on probation. An intermittent sentence is a term of probation interspersed with time in custody—each night or each weekend.

Supervision

Each probationer sentenced to probation is assigned a probation officer who will oversee his or her supervision. After sentencing, the officer and probationer meet to discuss the particulars as to how the individual will meet the court's orders, such as how and when they will stay in contact, the methods of supervision and surveillance, behavioral expectations for both of them, and in what community services the probationer will participate.

With the important exception of the power to investigate crime and make arrests, in most states, the probation officer holds little formal authority over the probationer; the judge makes the major decisions about sentencing and revocations. The PO typically does not



Probation officers must constantly weigh the client's needs, the client's behavior, and the protection of public safety.

© Reuters/Lucy Nicholson

SPOTLIGHT

STATE EFFORTS TO REDUCE PROBATION REVOCATIONS

In the face of perpetually crowded facilities, and given that upwards of half of probation revocations stem from technical violations rather than new crimes, some states have implemented laws and policies to limit the use of probation revocation. The National Conference of State Legislatures and the Pew Charitable Trusts produced a summary of state efforts to limit the impact of revocations on prison and jail crowding and to increase the options that courts and probation departments have in responding to violations.[1]

Some statutes dictate when probationers can be returned to custody and for how long. Georgia, for example, limits its prison time to two years for revocations, even when the probation term would have been longer. Vermont does not allow incarceration for revocations except when public safety is clearly threatened or the client will receive treatment available only in a custodial setting. A Pennsylvania law says that, except for the most serious cases, those returned to custody for revocation must be allowed to leave the facility for court-approved activities like work, school, or medical care. Iowa and Wyoming allow judges to remand probation violators to jail for short periods without a formal revocation, making their time on probation a mixed sentence of jail and community supervision.

Some states, including Louisiana, Maine, Nevada, Tennessee, and Texas, have established custodial facilities as alternative forms of incarceration for probation violations. These are often community-based options that place greater emphasis on rehabilitation than jails and prisons.

have the authority to substantively change the conditions of probation independently, but he or she can request changes of the court—to step up conditions for a client doing poorly (such as increase the frequency of drug testing) or to step down conditions for a client doing well (such as reduced community service hours). Similarly, the probation officer cannot remand a client independently. Rather, the officer can instigate a hearing, by which the court decides on the matter. If and when the court determines that all conditions have been met, the judge could terminate the probation.

Despite the lack of formal authority, the probation officer in large part dictates the tone and content of the probation experience. The PO is the client's primary link to the system. He or she is a sort of gatekeeper to other system representatives, such as the court, the police, or service providers. When the client begins to stray, commits a violation, or is rearrested, the probation officer has discretion to decide how to proceed. The PO may ramp up the punishment and restrictions through a request of the court for modification or a formal revocation of probation.

Instead of these formal proceedings, the probation officer will often use discretion to handle issues "in house" rather than involving the court, leveraging minor transgressions to encourage greater cooperation and build trust. The PO has significant leeway to more or less strictly apply court orders; that is, he or she can make probation seem more or less restrictive and burdensome to the probationer. On the other hand, the officer might adjust expectations or logistics to give the probationer a better chance of success, for instance, by rescheduling appointments so that the client does not have to miss work or to better meet public transit schedules.

Perhaps most significantly, there are a number of states—including Delaware, Georgia, Maine, Minnesota, Montana, and Oregon—that have granted greater autonomy to probation departments to alter the conditions of probation without court involvement, in some cases even to remand violators to custody. Typically, the state provides a set of "intermediate sanctions"—and a process for applying them—that the agency can employ, also without a revocation hearing. These are meant to address the nature of the violation and allow the probationer continued contact with his or her community. They may include electronic monitoring, intensive probation, day reporting, stepped-up drug testing, fines, community service, and new or additional programming like drug treatment, education, or restorative justice. Some states use short-term stays in jail, often referred to as "flash incarceration." Although mainly intended as a means to clear busy court calendars, reduce revocations, and save expensive bed space for the most serious cases, this authority also gives POs extra tools to use in their efforts to motivate clients and sends a clear message to probationers that violations will be dealt with quickly and decisively.

QUESTIONS

1. What is the main objective of reducing prison revocation for probation violations?
2. What are some of the strategies used by corrections departments to reduce revocations to prison or jail?
3. Under what circumstances do you think a short-term jail sentence is a good response to a probation violation?

Note

1. Lawrence 2008

Some jurisdictions give the probation department more discretion to modify the conditions of probation, which can give the PO more tools to encourage cooperation and buy-in from the probationer and can save the time and costs associated with going to court. This approach is an example of EBP and has proven effective in reducing overall recidivism.

Probation and law enforcement officers are vested with the authority to investigate, detect, and prosecute offenses perpetrated by probationers. Importantly, probationers can be searched based on a lower legal threshold—reasonable suspicion rather than **probable cause**—which in practice means that probationers are subject to search of their person and property at almost any time. This facilitates one of the key objectives of the probation officer's job—supervision to ensure that court orders are followed and to promote public safety. This is another example of the way the officer plays a pervasive and decisive role in the life of his or her clients.

Probable cause: Sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime.

Violation, Revocation, and Termination

Technical violations are instances of the probationer not complying with conditions of supervision, although such incidents may not necessarily represent major behavior issues or law violations. Technical violations include such behaviors as failing to keep appointments with the probation officer, not attending services mandated by the court, or moving residences without informing the probation officer. Failing a periodic drug test, neglecting to pay court-ordered restitution or fines, skipping class, or missing work can also be violations.

Technical violations: A breach of those conditions of probation (or parole) that on their own would not be considered criminal or would not lead to criminal proceedings, such as failing to hold down a job or failing a drug test.

▲ Time in jail and in court often brings celebrities down to earth. Perhaps it shouldn't, but status may bring special treatment to the well-connected.

Law violations, or new offenses, can lead to a revocation hearing. Probationers have **due process rights** in the revocation proceeding that are similar to those of new offenders. They have the right to a preliminary hearing when the facts of the new case are presented and probable cause of a violation is shown. They then have the right to a hearing before a judge in which written notice of the charges is presented and evidence and witnesses for both sides are heard and confronted. Except in certain cases, probationers have the right to representation by an attorney during hearings and sentencing. The probationer may be held in custody during revocation proceedings.

If a revocation hearing results in a determination that a violation has occurred, the judge may lift the suspended sentence and remand the probationer to custody, continue probation but with a longer term or with heightened levels of supervision and requirements, or censure the probationer but otherwise make no changes. A revocation hearing is a major step that the officer may often try to forestall as long as possible. Probation officers may choose to not pursue incarceration for technical violations unless they become chronic or might lead to more serious illegal behavior. Still, technical violations account for a large proportion of revocations—many experts estimating about 50%.[11]

There is inconsistency in how probation and the courts handle technical violations and new offenses. Relatively minor violations sometimes result in incarceration, while some serious new offenses may not. Although discretion on the part of POs and judges is sometimes necessary to consider changes in circumstances and context, this inconsistency has prompted criticism that probation may be unfair or ineffective.

The number of revocations stemming solely from technical violations, as opposed to those stemming from new offenses or a combination, is difficult to ascertain, because probationers who are thought to have committed a new offense are sometimes revoked on a technical violation. This is done to speed the process and ease the caseload in criminal courts. However, this practice denies the probationer a thorough defense, as revocation hearings are typically not as thorough as regular court. In some cases, a probationer may have a more favorable outcome in court fighting the new charges.

Courts and probation agencies have learned that it is important to make probation conditions reasonable, achievable, and meaningful. It is also important to provide the right level of supervision and conditions. If probation is too lenient, the individual may not take it seriously, and the public's demand for accountability may not be met. On the other hand, too many requirements can lead to frustration and a sense of futility in the probationer, which can, in turn, lead to violations and probation failures. Probation officers are in the best position to gauge this balance, and with adequate training and resources, they can help their clients succeed.

Does Probation Work? Probation Research

It is important for probation agencies to ascertain which approaches are the most effective for a given context. Research can help agencies choose the most appropriate strategies to address specific factors, such as limited resources or a particular sort of client. The typical

outcome measures used to study the effectiveness of probation are violations or new offenses during the probation period, successful completion of probation, or recidivism in the months and years following a probation period.

BJS reports that, of those leaving probation in 2012, 68% had successfully completed their terms or had early terminations, while 15% were incarcerated and 13% had some other unsatisfactory result that did not include incarceration. Among the 68%, it is not clear how many had violations before completion.[12] Various studies indicate that the percentage of probationers who violate the terms of their probation either through a technical violation or a new offense ranges from 12% to 55%. The wide variation may be due to multiple factors and the various ways probation is practiced in different jurisdictions. These factors may include probationer characteristics, jurisdiction, community, department, and the probation officer. Probationer characteristics include offense history, crime triggers, and criminogenic needs. Each probation department will have protocols for when to use probation for more serious cases; this is partly driven by the political climate. In addition, each has its own method of distributing cases and level of support for its officers. Rural departments have different cultures than urban ones, and varying socioeconomic and treatment options. Each officer has his or her own skills, experience, and approach to supervision. Despite a variety of evaluation methods, there are no definitive or established measures of violations that indicate whether probation "works."

Most studies of probation focus on persons convicted of felonies, even though probation is used about as often for less serious convictions. When the results of studies include misdemeanants and felons, the recidivism rates drop substantially. Misdemeanants often require and receive few services and little supervision compared to felons, but it is important to note that probation is particularly effective for these lower-level individuals, with up to 75% successfully completing their sentences.[13]

The effectiveness of probation and alternatives to incarceration must be considered in light of the apparent ineffectiveness of prison and jail as a method of deterring future crime. Over half of those behind bars have been there before, usually not long before their most recent system involvement. It is difficult to design research that compares the behavior of those held in secure custody—where there is 24/7 surveillance and strict behavioral restrictions—to the behavior of those who are largely free in their communities. However, one study was able to account for this challenge by matching study participants on offense type and history and several other variables. It found that offenders subject to short-term incarceration had significantly higher recidivism rates than those sentenced to community service instead of imprisonment.[14] Another study found that traditional probation was more effective than jail and as effective as alternatives to incarceration at reducing new arrests.[15]

Absconding Probationers

Roughly 20% of probationers never appear at their appointments with probation officers. This is called absconding. There is no evidence that these probation clients are being arrested for new crimes, but no one knows this for sure. However, one absconder killed his mother-in-law. The incident received extensive media attention.

The local jail is crowded, and the county cannot afford to spend more than it already does tracking down, arresting, and incarcerating absconding probationers. The county has tried requiring electronic monitors for high-risk probationers, but these same individuals just disconnect the monitors. Some jurisdictions have proposed using very short jail stays ("flash incarceration")—up to 24 hours—to deter absconding. Other observers argue that the probation department should improve its service and treatment offerings and provide alternatives to incarceration for probation violators.

YOU DECIDE: ***How should the probation department respond to probationers who are "in the wind"?***

Due process rights: Broadly, an entitlement or legally binding guarantee that established principles and procedures are applied uniformly to each case. Specifically, due process may mean different things in different proceedings, but usually every defendant gets an advance notice of hearings and an opportunity to be present, to be heard, and to defend himself or herself. It also typically includes the rights to legal counsel, to confront and cross examine the witnesses, to not have to testify against yourself, and to have an offense proven beyond a reasonable doubt.

SPOTLIGHT

PERCEPTIONS OF PROBATION AND ALTERNATIVES: PUNITIVE ENOUGH?

Most members of the public seem to feel that incarceration does not help reduce recidivism, and many believe that time behind bars actually makes it more likely that persons will reoffend after release. Research is difficult to carry out on this topic, but carefully conducted studies have found no reduced recidivism and sometimes increases in recidivism after time behind bars.[1]

Members of the public certainly have an interest in not releasing persons who are highly likely to reoffend, but most support a role for community-based supervision, especially when it is coupled with rehabilitative programming.[2] However, the public does not always consider probation as punitive enough—that is, as holding lawbreakers sufficiently accountable for their actions.

Alternatives to incarceration and probation should not be considered necessarily more lenient than time served in prisons or jails.

Regardless of how the public views it, probationers perceive probation as punishment. They say they find the supervision by a probation officer and meeting the terms of their probation a strongly negative experience—burdensome and stigmatizing.[3] In particular, the threat of time behind bars that hangs over the probation sentence can be a stressful (and motivating) factor, especially for those interested in successfully moving past their

Probation and, in particular, alternatives to incarceration were partly founded on the idea that rehabilitative programming, such as anger management or drug treatment, has a greater likelihood of success when administered in a community setting rather than in prison. A study of drug offenders found probation more effective than prison at reducing new arrests and convictions.[16] It is also true that certain treatment services may yield their best results when associated with a probation sentence rather than when offered freely in the community. Linking drug treatment to a probation sentence increases the likelihood of successful treatment, because drug users tend to stay in treatment longer when it is linked to success or failure in probation (and possible time behind bars) than if there are no consequences for quitting. Additionally, the longer a client remains in treatment, the greater the reduction in criminality. Given that drug offenders account for a quarter of all probation sentences, this finding has ramifications for probation and alternatives to incarceration.

There is good reason to broaden the study of probation. Beyond punishment, incapacitation, and rehabilitation, probation is often meant to meet one or more other valuable goals, such as more appropriately matching the severity of the crime to the severity of the societal response, conserving public resources, and minimizing the negative impact of incarceration on individuals, families, and communities.

Alternatives to Incarceration

Alternatives to incarceration, also known as intermediate sanctions, are types of special probation that combine treatment with a higher level of surveillance and more restrictive conditions than traditional probation. With enhanced supervision, alternatives to incarceration are designed for more serious cases at higher risk for reoffending. They are designed for those who would not be eligible for traditional probation due to the seriousness of their behavior or other factors. Alternative sentences typically entail at least

conviction. "Surveys of offenders in Minnesota, Arizona, New Jersey, Oregon, and Texas reveal that when offenders are asked to equate criminal sentences, they judge certain types of community punishments [especially special probation and alternatives] as more severe than prison."[4] In fact, when given the choice, some opt for time behind bars instead of probation.[5] Note that this is not only due to the hardships associated with probation. Prison time has grown to be less scary, especially for repeat offenders who have learned the system, and less stigmatizing in some communities, especially for those whose family members and peers have served time themselves. Nevertheless, the terms of probation can be daunting: regular probation meetings; drug testing; curfews; attending substance abuse treatment, school, vocational, and life skills training; paying restitution; doing community service; and holding down a job.

QUESTIONS

1. Why might time spent in lockup increase recidivism?
2. Discuss the ways that probation is rehabilitative and how it is punitive.
3. What would you find most burdensome about being on probation?

Notes

1. Nagin, Cullen, and Jonson 2009; Smith, Goggin, and Gendreau 2002
2. Hart 2002; Hartney and Marchionna 2009; Krisberg and Marchionna 2006
3. Petersilia and Deschenes 1994; Wood and Grasmick 1995
4. Petersilia 1997, 45
5. Williams, May, and Wood 2008

one rehabilitation component. Failure to successfully complete an alternative could mean return to regular court proceedings or reinstatement of a suspended prison or jail sentence, as with revocation of probation.

By 1989, alternatives to incarceration such as intensive supervision probation, electronic monitoring, or house arrest were being used in 48 states, and today, they are used to some degree in every U.S. state.[17] States are using alternatives to incarceration for probation as well as other stages in the corrections system such as pretrial detention, parole, and early release programs designed to ease overcrowding.

As with probation, alternatives to incarceration allow people to maintain a connection with their families and communities and to hold down a job, hopefully so they can transition into a noncriminal lifestyle. In contrast, incarceration can reinforce negative interactions in prison and jail, weaken ties to society, and often increase the likelihood of reoffending.[18] To maximize the likelihood of success, the various types of alternatives to incarceration are targeted for offenders with particular characteristics and circumstances.

Intensive Supervision Probation

Intensive supervision probation (ISP, also referred to as intensive probation supervision) was one of the first alternatives to incarceration and was already in use in the early 1980s. ISP can take various forms, but typically emphasizes ramped-up surveillance and control strategies compared to traditional probation. These strategies include a higher restriction on movement, often a curfew, more meetings and check-ins with officers, tighter scrutiny of participation in treatment services, and strong responses to violations. Probationers on ISP may have additional rules to follow—such as refraining from substance use or association with antisocial peers—and will typically have other intermediate sanctions imposed as well—such as fines or community service. Probation officers supervising those on ISP often have smaller caseloads to facilitate the heightened surveillance and interaction.

▲ A PO demonstrates a new ankle bracelet, which can detect the use of alcohol through the wearer's sweat. Such devices are being used with increasing frequency by courts and probation offices around the state on offenders whose freedom requires them to refrain from drinking.

Electronic Monitoring

Electronic monitoring is a type of surveillance used widely across the United States in several situations, including pretrial, postconviction probation, and postincarceration parole. It is typically not a sanction or alternative to incarceration in its own right, but is used to monitor the movements of persons on other forms of supervision. Electronic monitoring may or may not be coupled with home confinement or house arrest, in which the supervised person needs to follow a strict curfew, often having to remain at home at all times except for employment, school, court-mandated programming or community service, or religious services.

Generally, electronic monitoring devices are either active or passive. Active devices use a global positioning system (GPS) and continuously track the client via an ankle bracelet that transmits his or her whereabouts to the supervising officer in real time. The device automatically and immediately detects any deviation from an established schedule or route. Passive devices, such as voice verification systems, require the client to call a specific number to check in or to answer the phone at home. Active systems are generally more commonly used and more cost-effective.[19] Electronic monitoring has also become commonly used with Driving Under the Influence or Driving While Intoxicated (DUI/DWI) offenders, combined with technology that requires drivers to take a breathalyzer test before they can start their cars. States are also using ATM-style kiosks, which use biometric identification.[20] Using this technology, persons on supervision can remotely check in, deposit money toward payment of fines, and leave messages for their PO. Alerts automatically go to the probation officer if the check-in raises any red flags that need a response, such as the probationer reporting a change of address or a new arrest. These systems are often maintained and monitored by private agencies that contract with the probation department.

Electronic monitoring can be a significant hindrance to additional criminal activity. Studies have found that it is most effective when used in conjunction with a major treatment component.[21] Even when used without specific rehabilitative programming requirements, electronic monitoring provides the potential for rehabilitation within the community.

Reporting Programs

Day reporting centers and work release programs are sanctions that serve both punitive and rehabilitative purposes by allowing defendants to return to or remain in their communities under strict guidelines. Day reporting centers are highly structured, nonresidential programs that provide treatment and close supervision. Participants usually have to report daily to the center, which typically resembles a probation office. They discuss their schedule for the day, steps they will take to fulfill conditions of probation, such as finding a job and attending treatment services, and they may be drug tested. They are allowed to return home in the evenings but are required to maintain a strict, closely monitored schedule. Programs vary in duration and specific components. Although most offer a range of services, some programs focus on drug treatment. Others focus on vocational training or are primarily check-in centers. The flexibility and wide range of programs and services makes them adaptable to different groups of offenders. The National

IN THE COURTS

Gagnon, Warden v. Scarpelli, 1973
No. 71–1225 Supreme Court of the United States

411 U.S. 778; 93 S. Ct. 1756; 36 L. Ed. 2d 656; 1973 U.S. LEXIS 70; 71 Ohio Op. 2d 279

In the state of Wisconsin, Mr. Gerald Scarpelli pleaded guilty to felony burglary and was sentenced to 7 years of probation in lieu of incarceration for 15 years. He was permitted to live in Illinois and was supervised by the Cook County Adult Probation Department under the Interstate Compact law. One of the conditions of probation was that Mr. Scarpelli "make a sincere effort to avoid all acts forbidden by law." The consequences of violating this agreement would lead to the imposition of the original sentence of 15 years. Subsequently, Mr. Scarpelli was found by the police while he was in the course of a household burglary. His probation was revoked based on his association with known criminals and his arrest for burglary. Mr. Scarpelli was committed to prison to serve his original sentence. At no time did he receive a hearing of any kind.

Mr. Scarpelli later challenged his probation revocation. The case eventually went to the Supreme Court, which held that Mr. Scarpelli was entitled to a preliminary and a final hearing with a formal transcript and a right to hear the evidence against him. Moreover, the court also ordered that he should be afforded the right to representation by counsel, if indigent. Although this right to legal representation was to be determined on a case-by-case basis, deference should be given to the discretion of the probation officer who is acting as an agent of rehabilitation. Still, the court recognized that the revocation process must adhere to basic principles of due process and put into place protection of the rights of persons in violation of probation or parole.

Institute of Justice (NIJ) recognizes the use of day reporting centers to reduce prison and jail overcrowding and details two essential elements: enhanced surveillance for people who have problems under traditional probation and the provision of or referral to treatment services.[22]

Work release programs are residential programs that allow clients to work during the day but require them to return to a locked facility each evening. These programs limit the individual's movement in the community and reduce his or her opportunities for reoffending.

Drug Treatment

Drug treatment programs for substance abusers include outpatient, short-term residential, and long-term residential placements. Many programs serve first-time offenders exclusively, few accept violent offenders, and all are selective regarding the mentally ill population. Despite a growing number of programs, the number of persons served over the past decade represents a small portion of those who meet eligibility criteria for treatment.

Evaluations of individual programs tend to show similar results. Recidivism rates are significantly lower for those who complete their programs. However, most drug treatment programs have a 40% to 60% completion rate. Those who drop out or are terminated early tend to have similar recidivism rates as nonparticipants, highlighting the importance of correctly matching a probationer's needs to the proper programming option and actively supporting and encouraging completion.[23] Completion rates depend in part on how relapse is addressed by the program. Although practitioners believe that relapse is an inevitable part of therapy, many programs terminate participants after a single relapse incident.

SPOTLIGHT

FOR THE BENEFIT OF THE DEFENDANT? THE RISK OF NET-WIDENING

One strength of alternatives to incarceration is that they broaden the menu of options for sentencing judges. Appropriate implementation of alternatives requires care to limit the use of alternatives to only those who would have been subject to incarceration. "Net-widening" can occur when an individual comes to the attention of law enforcement or the court through behavior that would not otherwise lead to an arrest or formal processing such as an infraction, mental health–related acting out, or minor drug use. Instead of responding with a citation or referring the case to public health services, the police officer may decide to arrest the person and bring him or her into the system, knowing that he or she would likely end up in an alternative that provides substance abuse treatment or mental health care that may be appropriate, such as therapy or anger management. In doing this, the officer may be acting out of genuine regard for the individual's well-being, or may be thinking more punitively, to "teach a lesson." Either way, the person may end up in the system when, had the option for alternatives not

Drug Courts

The drug court model originated in Dade County, Florida, in 1989, when prison overcrowding coincided with a severe funding crisis. The panel that was appointed to address the issue found that a large proportion of inmates had drug-related offenses and had been repeatedly incarcerated. Drug courts create a nonadversarial environment that combines long-term treatment with the structure and accountability of the justice system. Most combine at least one year of drug treatment with intensive supervision and may include rehabilitative programming apart from substance abuse treatment. These programs include routine drug testing, regular court appearances, and a system of rewards and sanctions. Participants are generally selected by the district attorney's office and can agree to participate or not. Successful completion of the program most often results in dropped charges, while failure to complete it can result in regular court proceedings or immediate activation of the custody sentence. Today, drug courts are one of many kinds of collaborative courts; others deal with the mentally ill population, the homeless, and domestic violence cases.

In 2010, there were more than 2,300 drug courts across the nation and in every U.S. state, with many more in the planning stages. The level of success in each depends on available resources and the coordinated strategy and collaboration of stakeholders such as courts, attorneys, and community agencies. Drug courts serve different populations and vary in cost. Cost differences are tied to the scale of the program, the level of treatment, the degree of participation on the part of agencies, and the services available to participants.

Restorative Justice

Restorative justice seeks to enhance public safety by involving all stakeholders and repairing harmful actions caused by criminal behavior. Restorative practices and programs reflect several important values that outline the roles of stakeholders: positive encounters between victims, offenders, and community members; amends for the harm; reintegration of both victims and offenders into society; and inclusion of all stakeholders in the resolution of the crime and the broken relationships it caused. Restorative justice practices include victim–offender mediation sessions, restorative justice conferences, peacemaking

been there, there would never have been an arrest in the first place.[1]

A key piece of the probation equation is the recognition that overly punitive sanctions are not neutral; they entail risks to the public.[2] There are individuals who get in trouble but are unlikely to recidivate or become more serious or chronic offenders. For these, short of purely retributive punishment, any sentence beyond light probation would serve little purpose. Overcriminalizing low-level offenses can alienate defendants, further marginalize them economically and socially, and raise their likelihood of reoffending.

QUESTIONS

1. Describe a situation that might fit the definition of net-widening.
2. Do you think that net-widening is always a negative thing?

Notes

1. Weissman 2009
2. Bowers and Pierce 1980; Potter 1997

circles, victim impact panels, and restorative boards. In 2010, the states most actively utilizing restorative justice approaches were Minnesota, Vermont, Wisconsin, Maine, New Mexico, Pennsylvania, and Montana.

Restorative justice began as a response to youth justice and as a means to address minor offenses. However, as the United States and other nations struggle to reduce imprisonment and improve public safety and community bonds, restorative justice practices have expanded to address serious crimes and offenses committed by adults. As research continues to confirm its success, restorative justice may become an increasingly common response to crime.

Restorative justice can be implemented in a variety of ways prior to and throughout the criminal justice process. For example, some schools have turned to restorative justice programs as an alternative to formal processing for bullying and other issues, and some jurisdictions offer restorative justice–based "diversion" programs that channel certain youth away from criminal prosecution.[24] When offenders are sentenced to community supervision, this may include restorative justice–inspired conditions such as community service, or reparations to victims.[25] There are also programs within prisons that make repairing harm done to victims a centerpiece of prisoners' rehabilitation and reintegration plans.

Studies of the participants of restorative justice practices show that perpetrators are more likely to find their treatment fair and to apologize to the victim(s), whereas victims tend to find greater satisfaction than what they had expected and are more likely to forgive the offender than if they were in a regular court proceeding. In addition, victims and offenders appreciate being able to explain their sides of the story.[26]

Some evidence also shows that restorative justice programs lead to greater compliance with reparation and victim compensation. In comparison with control groups with diversionary or other court sentences, restitution compliance rates range from 75% to 100%. Last, another claim for the effectiveness of restorative justice practices is a reduction in recidivism rates. In a 2003 meta-analysis, victim–offender mediation participants were one third less likely to reoffend during the subsequent six months than were those who had not participated in these sessions.[27] However, many challenges still remain in assessing

the effectiveness of restorative justice programs, due to the difficulty of conducting controlled experiments for different treatment conditions. There is also a great deal of variety in the purposes, structures, and functioning of restorative justice programs, as well as in the political, social, and cultural contexts in which they are employed.

Community Service and Restitution

Performing community service and paying monetary recompense for offenses are two common elements of a sentence of alternatives to incarceration. Fines and community service are meant as punishment in their own right. Another monetary recompense is victim restitution, where the offender pays the victim to account for physical harm and medical expenses, property damage or loss, and the less tangible emotional impacts of the victimization.

Fines, victim restitution, and community service are all aspects of restorative justice, as they facilitate the offender giving back, ameliorating the impact of crime, and rebuilding relationships in the community.

Fines compensate the system for the costs incurred in arrest, court processing, detention, and administration of probation. Tariff fines are based on the offense. For instance, all those convicted of a DUI may incur a $500 fine. Other fines, sometimes called "day fines," are adjusted according to the client's ability to pay—based on his or her income or other resources.[28] Day fines attempt to equalize the impact of the fine, so that low-income probationers will not be unduly burdened, and wealthier individuals will still have to pay a meaningful fine.

Community service involves unpaid work in the community, usually for a set number of hours or until the completion of a particular project. The number of hours assigned, and assurance of satisfactory completion on the part of the probation officer, will typically be more stringent for community service associated with an alternative to incarceration than with traditional probation. The type of assignment can be linked to the person's crime or to his or her skills and occupation. For instance, those convicted of vehicular manslaughter may perform community service in a trauma center, and a construction contractor convicted of fraud may help build homes for the poor.

Community service may conjure images of prison work crews and raise the complex issue of prisoner labor. However, with probation clients, it is largely seen as a constructive way for probationers to pay back the community while retaining relative freedom.

http://www.bop.gov/resources/news/20140227_paving_project.jsp

Evaluating Alternatives to Incarceration

As alternatives to incarceration were first being introduced in the late 1980s, they were often implemented before probation departments had the capacity to appropriately administer them and before community services were sufficiently available to ensure that offenders received mandated treatment.[29] Even so, those programs that provided appropriate levels of supervision and made sure their clients received the treatment services they required were shown to reduce recidivism.[30] Research has continued to show that programs that combine treatment services with strong supervision can be rehabilitative without sacrificing public safety.[31]

Intensive supervision probation has not had a very good track record with regard to reducing recidivism, possibly because of variations in the way the model is implemented. Studies do show that when it is administered in a client-focused manner that emphasizes rehabilitation over deterrence, recidivism outcomes improve.[32]

Critics complain that electronic monitoring is too controlling, violates an individual's privacy, and is often used instead of rehabilitation. Others say it unduly risks public safety, because supervisors can't always respond quickly enough when the person strays.[33] However, in a small study of 49 individuals who served one third of their sentence on electronic monitoring, these complaints were not reported. Instead, an overwhelming majority said it was an effective supervision tool, and most said they would not have considered trying to evade the surveillance.[34]

A preliminary study of programs in Wisconsin showed that day reporting participants had fewer incidents of rearrest and a lower severity of offense than those in a comparison group.[35] A Utah study showed that 22% of participants were rearrested after one year.[36]

Work release programs in Texas are currently geared toward parole and probation violators and are used in place of return to prison.[37] A 2007 study found that Florida's work release program significantly improved an early release offender's postprison employment outcomes but that there were not enough beds for the individuals who qualify. There were 3,000 beds available, but another 1,000 prisoners were on the waiting list.[38]

Work release programs, though not as heavily centered on treatment as day reporting, allow individuals to earn a living and acquire positive living habits.[39] A meta-analysis of existing research found that such programs reduce recidivism and improve the job readiness skills.[40] An evaluation of programs in Ohio that serve moderate- and high-risk offenders at the end of their terms reveals significantly decreased recidivism rates up to 34% lower than those in the comparison group.[41] A Washington state report finds that early release persons who participate in work release programs have lower rates of recidivism (6%–15%) than non–work release participants (22%).[42]

Evaluations of drug courts reveal promising results. A national review by the Government Accountability Office of 27 evaluations representing 39 programs showed that drug court participation reduced recidivism levels both during the program and after completion; program completion further reduced recidivism. This conclusion is supported by a growing body of research.[43] A study conducted by the Urban Institute found that drug courts, though effective, target only a very small population. Approximately 80% of drug courts exclude defendants with any prior conviction or those charged with sales (regardless of the defendant's dependency issues). A number of drug courts reject those whose problems are too severe, while others reject those whose problems are not severe enough. Many programs must reject clients for lack of capacity. The Urban Institute estimates that, of the millions arrested yearly on drug charges, only 30,000 are accepted into drug courts.[44]

Cost Savings

Considering the cost savings that can be achieved using probation instead of incarceration, probation certainly has an important place in the modern corrections system. It is estimated that federal, state, and local governments spent $68 billion on corrections in 2008, approximately 90% of which was for prisons and jails, the remainder going to community corrections. Probation costs about $1,200 per year per person; prison costs at least $28,000 annually.[45] Even though the cost of community supervision varies widely among jurisdictions, it can be administered at a fraction of the cost of jail or prison. When conditions of probation or alternatives to incarceration include monetary fines, governmental costs can be further reduced. For instance, some alternative programs require participants to pay for their court-ordered treatment services. Alternatives to incarceration, especially when coupled with high-quality treatment services, generally cost more than traditional probation, but still far less than secure custody.[46] A cost–benefit analysis that factors in the reduced costs to law enforcement, the courts, corrections, and other public agencies shows a more favorable cost–benefit equation for quality community corrections programming. For instance, a cost–benefit study tracked recidivism for 2 to 4 years following participation in a selection of California's 200 drug court programs. The study found that 17% of drug court graduates were rearrested, compared to 41% of nonparticipants. Participants who did not complete the program still received some benefit; they were rearrested at a rate of 29%. The nine sites studied saved the state $90 million per year in costs associated with law enforcement and corrections.[47] Alternatives are generally strategies that can be successful with large numbers of offenders as long as they are implemented carefully, with appropriate system supports and community resources. Representatives of the courts, district attorney's offices, public defenders, and the community need to be made aware of the nature and effectiveness of alternatives, which would increase support for them and expand their use. It is estimated that billions of dollars could be saved if the use of alternatives to incarceration were even slightly expanded.[48]

SUMMARY

Probation has a long history and is the most widely used correctional sanction in the United States today. Probation is a form of community supervision that can be imposed by the court either before or after conviction. The probationer must answer to a probation officer and the court and adhere to the conditions of supervision to avoid a revocation of probation and the imposition of a harsher punishment—usually a jail or prison sentence.

The probation officer plays a key role in this intermediate sanction, investigating the defendant's background and needs, preparing a report to inform the court, and maintaining a supervisory relationship that works on both trust and discipline.

Probation departments use risk assessment and case management tools to allocate resources. Departments are typically underfunded, however, despite costing a fraction of what incarceration costs. Probation officers often have to handle huge caseloads.

Probation and alternatives to incarceration sit at the intersection of some of the most difficult and often conflicting purposes of the corrections system: balancing punishment with fairness, protecting public safety but reasonably limiting the use of expensive incarceration, and helping lawbreakers avoid future system involvement.

Alternatives to incarceration provide a range of options and help judges "customize" the consequences for individuals. They include ISP, electronic monitoring, day reporting centers, work release programs, drug courts, and drug treatment.

Society's response to crime is still dominated by either the threat of or actual imprisonment, the harshest and most punitive measure. Despite the vastly higher costs

for secure custody facilities, when budgets need to be cut, it is easier to reduce alternative programs than prisons and jails. This may be partly because alternatives have not fully taken hold in the system. The term itself—*alternatives*—suggests they are optional or peripheral. There is growing support, although not yet sufficiently strong individual leadership, from state and federal agencies mandating the expansion of alternative programs. The clout of prison guard unions, lobbyists, and the political strength of the private prison industry all are factors in the slow growth of alternatives, as is the continued belief in tough-on-crime approaches. The effectiveness of probation and alternatives to incarceration is the subject of much inquiry. Probation and alternatives to incarceration have never received the wholehearted support and funding they need to fully test them. Evaluation is difficult, due to the complexity of administering these sanctions. At the very least, a serious exploration of alternatives, including shifts of resources away from traditional custody, could give new strategies and programs a greater chance of success.

DISCUSSION QUESTIONS

1. What are the two major perspectives on the purpose of probation? What theories, assumptions, and goals underlie each approach? Which perspective makes the most sense to you, and why?
2. Discuss how and why probation and alternatives are more complex penal sanctions than a term in prison or jail.
3. Discuss ways that the court and probation officer encourage the probationer to remain in compliance with the terms of supervision.
4. Should probation officers be given more authority to change the terms of probation and to remand their clients to custody? Why or why not?
5. Discuss the various kinds of alternatives to incarceration and their advantages and disadvantages. Think of a more apt term for them than *alternatives*.
6. Are alternatives to incarceration too lenient? Costs aside, under what circumstances, and for whom, might incarceration be necessary or effective?

KEY TERMS

Adjudication, 90
Caseload, 94
Case management system, 95
Community supervision, 90
Conditions of probation, 90
Due process rights, 100
Early release, 91
Evidence-based practice, 90
Judicial reprieve, 92
Probable cause, 99
Prosocial, 93
Technical violations, 99

NOTES

1. Maruschak and Bonczar 2013
2. May, Williams, and Wood 2008
3. Maruschak and Bonczar 2013
4. Guzman, Krisberg, and Tsukida 2008
5. American Probation and Parole Association 2012
6. Vale 2011
7. DeMichele 2007
8. Burrell 2006; Worrall et al. 2004
9. Jalbert et al. 2011
10. Freiburger and Hilinsky 2011; Leiber, Reitzel, and Mack 2011
11. Burke, Gelb, and Horowitz 2007
12. Maruschak and Bonczar 2013
13. Petersilia 1997
14. Wermink et al. 2010
15. Savolainen 2003
16. Spohn and Holleran 2002
17. General Accounting Office 1990

18. Courtright, Berg, and Mutchnick 2000
19. National Law Enforcement and Corrections Technology Center 1999; Harkness and Walker-Fraser 2009
20. Biometric identification uses intrinsic physiological identifiers including fingerprints, palm prints, face recognition, and iris recognition.
21. Courtright, Berg, and Mutchnick 2000; Gable 2007; Payne and Gainey 2004
22. Parent et al. 1995
23. Inciardi, Martin, and Butzin 2004; Jolin and Stipak 1992; McMurran 2007; Warner and Kramer 2009
24. Brown 2013
25. Karp and Clear 2002
26. Menkel-Meadow 2007
27. Nugent, Williams, and Umbreit 2004; Sherman and Strang 2007
28. Zedlewski 2010
29. Petersilia 1997
30. Lowenkamp et al. 2010
31. Savolainen 2003; Porter, Lee, and Lutz 2002
32. Lowenkamp et al. 2010
33. Gable 2007
34. Payne and Gainey 2004
35. Craddock 2000
36. Van Vleet, Hickert, and Becker 2006
37. Levin 2008
38. Berk 2007
39. Aos, Miller, and Drake 2006; Aos et al. 2001
40. Seiter and Kadela 2003
41. Lowenkamp and Latessa 2002
42. Sommers, Mauldin, and Levin 2000
43. Barnoski and Aos 2003; Wilson, Mitchell, and MacKenzie 2006
44. Bhati, Roman, and Chalfin 2008
45. Pew Center on the States 2009
46. Federal probation officers are directed to consider such cost savings as part of their presentence investigation.
47. Byrne et al. 2006
48. Vuong et al. 2010