

Ending Mass Probation: Sentencing, Supervision, and Revocation

Michelle S. Phelps

Summary

The United States' high incarceration rate gets a lot of attention from scholars, policy makers, and the public. Yet, writes Michelle Phelps, the most common form of criminal justice supervision is not imprisonment but probation—and that's just as true for juveniles as for adults.

Probation was originally promoted as an alternative to imprisonment that would spare promising individuals from the ravages of institutionalization, Phelps writes. But instead, it often serves as a net-widener, expanding formal supervision to low-level cases. Like mass incarceration, she demonstrates, mass probation is marked by deep racial and class disparities, and it can have devastating consequences for poor and minority communities.

In her review, Phelps covers three aspects of probation supervision—who is sentenced to probation, what they experience, and when and why probation is revoked (that is, when probationers are sent to jail or prison for violating the terms of supervision). She then presents policy recommendations for each of these three stages that could reduce the harms of mass probation. They include scaling back the use of probation, offering probationers more meaningful help to improve their lives, and raising the bar for revoking probation. Though probation reform may not be a cure-all, she writes, it could reduce the scale of our criminal justice system and temper its detrimental effects.

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In recent decades, the US criminal justice system has expanded in reach and intrusiveness, from arrests to mass imprisonment. Much of the research on mass penal control has focused on prisons, yet the most common form of supervision is probation.¹ Between 1980 and 2007, the number of adults under probation supervision in the United States grew from 1.1 million to 4.3 million.² The number has fallen modestly in recent years; by 2015, 3.8 million adults were under probation supervision, accounting for 56 percent of the 6.7 million adults under criminal justice control.³ In juvenile justice, too, probation continues to play an outsized role, although juvenile incarceration rates rose less steeply during the penal build-up and have been falling for longer.⁴ At the peak in 1997, more than 700,000 young people were placed on probation, compared to under 200,000 sent to residential placement.⁵ By 2013, the total number of annual delinquency cases had fallen by nearly half, and probation remained the most common sentence.⁶

How do we make sense of the expansion of probation? Originally designed and promoted as an alternative to imprisonment that would spare promising individuals from the ravages of institutionalization, probation has often served instead as a net-widener that expands formal supervision for low-level cases.⁷ Though it's frequently dismissed as a slap on the wrist, probation can entail fairly onerous requirements, including frequent reporting and drug testing, expensive fines and fees, and tedious rules and regulations. Probationers often fail to meet the multitude of conditions; when they do, they can be sent back to jail or prison. As University of Wisconsin legal scholar Cecelia Klingele notes, community supervision often

represents a delayed path to prison rather than a true alternative.⁸

Thus, probation is both a potential alternative sanction (which could, in theory, help to reduce incarceration rates) and, as Yale law professor Fiona Doherty puts it, "part of the continuum of excessive penal control."⁹ Yet this opportunity or risk is not spread evenly; race, class, and gender all influence whether people are diverted to probation (instead of prison) and whether they can successfully complete supervision without revocation (a return to jail or prison for violating the terms of release).¹⁰ And at the state level, policy choices shape the degree to which increasing probation rates are associated with more or less growth in imprisonment rates. Policies that promote real diversion of prison-bound cases and lower revocation rates can reduce the net-widening effect of probation.¹¹ Yet as I show below, current practices in many probation departments deviate sharply from these ideals.

Given the scale of mass probation, scholars and policymakers alike should be attuned to its causes and consequences. For young people in vulnerable communities, the cumulative effect of aggressive policing, repeated criminal infractions, and the piling on of sanctions can be disastrous.¹² For adults, mass probation is one more example of the United States' uniquely punitive criminal justice system.¹³ In this review, I concentrate on three critical aspects of probation—sentencing, supervision, and revocation—followed by policy recommendations for each. Though probation reform isn't a panacea for the harms of mass incarceration, it can reduce the scale and detrimental effects of our criminal justice system.

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Getting on Probation

Unlike parole (the other common form of community supervision), which is typically granted by a parole board or required as a mandatory condition of prison release, probation terms typically begin with a sentence from a judge. Probation sentences for adults have expanded enormously over the past three decades. Between 1981 and 2007 (the year with the highest probation rate), entries to probation increased by 214 percent, maxing out at over two million annually.¹⁴ The increase was driven in large part by the rise in criminal convictions, which sent more people to both probation and prison.¹⁵ Over the same period, the proportion of probationers under supervision for a felony hovered around 50 percent, increasing to 57 percent by 2015 as misdemeanor probation was scaled back and felons were increasingly diverted to probation in some places.¹⁶ For juveniles, the number of delinquency cases processed by the courts fell rapidly through the 2000s and even more quickly in the early 2010s, while the percent of adjudicated delinquency cases with a sentence of probation increased from 57 percent in 1985 to 64 percent in 2013.¹⁷

The chances of diversion aren't spread evenly across individuals. First, there are deep

race and class disparities in who commits the kinds of actions punished through the criminal justice system (predominantly “street crimes” associated with poor neighborhoods) and who gets arrested for criminal wrongdoing (for example, racial disparities in arrests for drug offenses). Second, personal characteristics—particularly race, age, gender, and socioeconomic status—interact with legal variables (including prior record and severity of the offense) to directly and indirectly affect sentencing. Researchers have found these effects across a variety of entry points to the adult criminal justice system, including bail and pretrial detention, guilty pleas versus trials, the decision to incarcerate or not, and sentence length.¹⁸ As Arizona State University criminologist Cassia Spohn notes, research on sentencing disparities has moved from a simple descriptive account of racial (and other) differences to sophisticated models that trace the direct and indirect effects of race (and other factors), which are compounded through each stage of the criminal justice system.¹⁹ This reinforcing system of inequalities creates a cascade of cumulative disadvantage that's particularly disastrous for young black men who grow up in low-income and high-crime urban neighborhoods.

Research on the juvenile justice system has seen a similar trend—the most robust findings suggest that disadvantaged young black men are less likely to be diverted to rehabilitative programs and more likely to be punished with confinement.²⁰ This trend may partly reflect the biases of the probation officers; examining the presentence investigation reports written by probation officers, researchers have found that black youth are more likely than similarly situated white youth to be described as fully culpable for their offenses.²¹

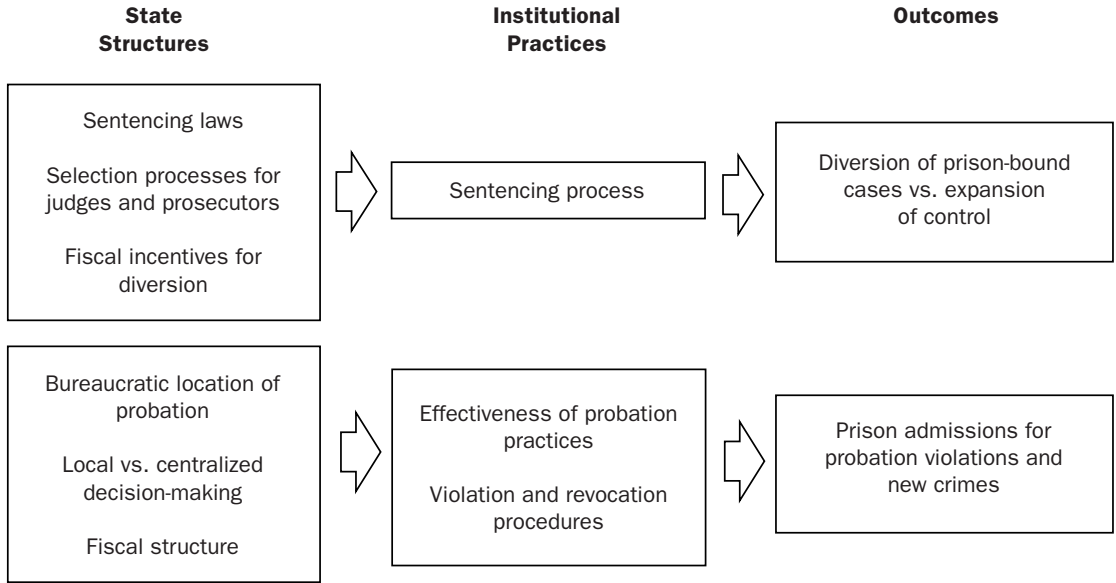
As a result, true diversion from prison is more likely for relatively privileged defendants, even as the probation population is skewed toward young men of color. In 2014, 36 percent of juveniles ordered to probation and 30 percent of adults under probation supervision were identified as black, proportions that far exceed the US black population of roughly 13 percent.²² According to a household survey conducted in the early 2000s, 19 percent of young (aged 20–34 years) black men without a high school diploma reported being on probation in the prior year.²³ Fully 46 percent of 24- to 32-year-old black men without a high school degree report having been on probation at some point in the past.²⁴

Data also reveal large differences in probation across state lines. For example, in 2010, Minnesota reported an annual probation admission rate of more than 1,200 per 100,000 residents; New York's rate was just 175 per 100,000.²⁵ Even counties in the same state may vary significantly. For example, in a random sample of state courts meting out felony sentences in 2004, the bottom fourth of counties assigned probation as the most serious sentence outcome in under 10 percent of cases, compared to more than 40 percent for the highest fourth. The same range in sentencing can be seen within crime categories (for example, aggravated assault, larceny, drug trafficking, etc.), suggesting that variation in types of crime doesn't explain the variation in probation sentencing.²⁶

What does explain these state and county disparities? Most sentencing research has looked at individual case outcomes, finding that individual-level variables, such as the crime's severity, prior sentences, age, race, gender, etc., explain most of the variation. Yet contextual variables matter as well, including

jail crowding and the overall severity of the average sentence in a given county.²⁷ Other researchers have found that states' racial composition, violent crime rates, political ideology, and region all reliably predict incarceration rates.²⁸ Yet the same isn't true for probation rates, which are only loosely correlated with states' imprisonment rates. In my own work, I've shown that two disconnected trends lie behind this variation. First, some high-incarceration states are underreporting their misdemeanor probation population, meaning that their reported probation rates are artificially low. Second, some low-incarceration states have surprisingly high probation rates, a fact not easily explained by crime or political leanings.²⁹ These trends likely reflect probation's conflicted identity as both a progressive alternative sanction and an additional mode of punitive state control.

The variation in probation rates prompts a question: Does expanding probation reduce or expand imprisonment? In other words, is probation a net-widener or an alternative? The answer is that it's both. Although the average relationship is positive (indicating net-widening), some states show a neutral or even negative relationship between growth in the annual probation rate and changes in the imprisonment rate in following years. (Note that the probation rate is shaped by both the number of people sentenced to probation and the length of their supervision, which determines how long they're subject to conditions and possible revocation. I'll turn to supervision length in the next section.) As figure 1 shows, two processes mediate the relationship between probation and incarceration rates: sentencing and supervision. Policies that promote more diversion in sentencing (measured by a higher proportion of probationers convicted

Figure 1. The Paradox of Probation Model: Understanding the Probation-Prison Link

of felony-level offenses) and curtail the probation-to-prison pipeline (measured by revocation rates) reduce the net-widening effect of probation.³⁰

Each of these outcomes is in turn shaped by structural factors at the state level, including sentencing laws, election processes for judges and prosecutors, and fiscal incentives. When these conditions shift, the net-widening effect of probation can change. For example, Michigan's Community Corrections Act of 1988 created fiscal incentives for sentencing felons to probation; by 2010, the prison commitment rate for new felonies had dropped by 40 percent.³¹ In recent years, California redefined certain low-level, nonviolent felonies as misdemeanors, shifting supervision for individuals convicted of these crimes from the state to the county level and, as a result, increased diversion to probation.³² As figure 1 shows, the other two key mechanisms for shifting the probation-prison relationship are the quality of probation supervision and the policies and

practices around probation violations, both of which I discuss below.

The picture for juvenile probation is likely similar to what we see in figure 1, but research to test this hypothesis has not yet been conducted. One key difference is that juveniles can be tried in either juvenile courts or, under certain circumstances, adult courts. Given the lower rates of imprisonment in juvenile court and the broader range of alternatives available (see Traci Schlesinger's article in this issue), the push to try older juveniles in adult courts (and to punish them in prison alongside adults) has profound implications for young people. Transferring juveniles to the adult system is strongly associated with a higher risk of imprisonment, longer terms of confinement, and more recidivism after release.³³ Following the Supreme Court's 2005 decision in *Roper v. Simmons* to end capital punishment for crimes committed by juveniles under the age of 18, some states have partially rolled back legislation that allows for sentencing juveniles in adult

courts. At least seven states (Connecticut, Illinois, Louisiana, Massachusetts, Mississippi, New Hampshire, and South Carolina) now try most juveniles in juvenile court. North Carolina is an unusual holdout, continuing to automatically try juveniles aged 16 or older as adults.³⁴ Based partly on psychological evidence that young people take many years to mature into full adulthood, some advocates have recently suggested expanding juvenile court jurisdiction to anyone under the age of 21.³⁵

Experiencing Supervision

The structure of community supervision varies widely from place to place. In some jurisdictions, a single state agency (typically the department of corrections) administers adult probation supervision. In others the process is decentralized, and a multitude of local agencies are responsible (including courts and private supervision companies). In 2015, 460 agencies responded to the Bureau of Justice Statistics' annual probation survey, and that number is likely too low.³⁶ In addition, more than 2,400 juvenile probation courts nationwide report on juvenile sentencing outcomes.³⁷

Across jurisdictions, probation rates diverge widely, driven in large part by sentencing trends, as I noted above. Yet the length of supervision varies as well.³⁸ The average is just under two years nationally, but state statutes vary greatly with regard to the maximum length of felony probation—from under five years in a handful of states to a lifetime in others.³⁹ Research consistently finds that long supervision is an ineffective use of resources: most recidivism happens in the first year or two of supervision.⁴⁰

As figure 1 suggests, each agency has its own supervision style, which in turn shapes

the effectiveness of supervision. In a recent review, George Mason University criminologists Faye Taxman and Stephanie Maass note, “Probation is compatible with restorative justice, rehabilitation, alternatives to incarceration, retribution, and incapacitation. In some jurisdictions, it is viewed as either enforcement (monitoring conditions assigned by the court) or social work (service provisions), or something between.”⁴¹ By setting supervision and revocation policies, developing hiring and promotion guidelines, and more, departments can substantially influence the tone of probation supervision. Even within one department, probationers often experience supervision quite differently, depending on the orientation of the officer and the level of their supervision (from small and intensive specialized caseloads to informal or paper-only and fine-only probation).⁴² Most officers supervise huge caseloads—more than 100 probationers on average.⁴³

Still, evidence from across the nation suggests key commonalities in supervision. Most important, while probation is described as a more rehabilitative alternative, community supervision in the United States is uniquely punitive.⁴⁴ Probationers are typically subject to a list of 10 to 20 conditions, including abstaining from drug and alcohol use, avoiding contact with known felons, paying fines and fees, reporting regularly to the supervising officer, participating in programming, abiding curfew and movement restrictions, finding or maintaining employment, and avoiding arrest. Former Massachusetts Probation Commissioner Ronald P. Corbett Jr. refers to these hamstringing conditions as the “burdens of leniency.”⁴⁵ For vulnerable individuals in high-crime communities, who

already face overwhelming challenges in finding employment, housing, and meeting their basic material needs, satisfying all of these obligations is close to impossible. These burdens may be particularly severe for young people who haven't yet reached psychological or social maturity.

Community supervision in the United States is uniquely punitive.

The breadth of probation conditions— together with officers' wide discretion— means that they effectively amount to an exhortation to “obey all laws and be good,” as Doherty puts it.⁴⁶ Failure to meet these many conditions leads to supervision violations and, potentially, revocation to prison for the entire length of the suspended sentence—the topic of the next section. As a result, defendants often report preferring a short stint in jail or prison to a longer period of probation supervision in the community.⁴⁷

Probationers also typically receive few of the kinds of supportive services that could help them overcome histories of trauma, addiction, unstable housing and homelessness, and underemployment.⁴⁸ A survey published in 2007 found that only a minority of community corrections agencies offered transitional housing (24 percent) or vocational training (23 percent); an even smaller proportion of the average daily probation population participates in these programs.⁴⁹ Many services for probationers have moved out of the state's control and into “therapeutic spaces, church basements, and community centers of the inner city,” a process that University of Chicago social

welfare scholar Reuben Miller dubs “carceral devolution.”⁵⁰

In addition, probationers and probation officers alike are subject to many layers of bureaucracy and governmental authority (for example, courts, schools, or other social service agencies), which can hamper officers' ability to be productive and supportive.⁵¹ These overlapping constraints lead probation and parole officers to frame supervisees as responsible for their own rehabilitation, providing little more than a “tough love” attitude in lieu of meaningful material support.⁵² Still, at least one study found that compared to parole officers, probation officers were more likely to have a caring approach that probationers perceive as genuine and helpful. But this approach was undercut by the officers' emphasis on control in the name of public safety.⁵³

Further, probationers often perceive the programming they receive as both punitive and counterproductive. For example, an ethnographic study of women in a halfway house in Chicago found that the reentry narrative favored by many criminal justice programs didn't fit the lives of the adults it sought to transform.⁵⁴ For example, avoiding “people, places, and things” associated with addiction is difficult when women's friends, families, and neighborhoods were both their source of intimacy and support—and steeped in drug use, past and present. Many reentry programs also routinely forced probationers to accept a tainted identity as a person beset by criminal thinking errors, while providing few structural solutions for severe material deprivation.⁵⁵ As a result, supervisees often reshaped and resisted the narratives that were foisted on them.⁵⁶

Even in juvenile courts, which are typically more oriented toward rehabilitation, we see some of the same patterns. Juvenile probation officers, for example—and particularly younger officers—report holding strongly punitive attitudes toward their charges.⁵⁷ Temple University criminal justice scholar Jamie Fader describes the challenges young men face in trying to achieve successful adult lives after incarceration. She highlights the disconnect between the rehabilitative programming provided in juvenile institutions (typically found in white rural areas) and the daily realities that young people (who are disproportionately black boys) face in urban communities before and after incarceration.⁵⁸ Other research finds that young people on probation perceive the justice system as fundamentally unfair, especially toward black and Latino youth.⁵⁹ This perception of unfair treatment is propelled not just by probation and corrections officers, but also a larger “youth control complex” that includes parents, teachers, police officers, and counselors, who together criminalize, ostracize, and punish youth in low-income communities.⁶⁰ More optimistically, however, research suggests that at least some juvenile court systems have been more effective than their adult counterparts in diverting young people to noncustodial programs. In addition, some juvenile courts have developed robust restorative justice programs, which provide mediation for convicted youth and victims (and/or community representatives) and give the youth opportunities to repair the harm of their offense.⁶¹

Last, probationers face many of the same barriers to success as other criminal justice populations, including the stigma and other consequences of a criminal record. The collateral consequences of conviction include

monetary fees and penalties; exclusion from public housing, social services, and public participation through voting; loss of parental rights; difficulty obtaining state identity documents; and bans on employment in certain sectors (such as healthcare).⁶²

While such penalties are often associated with felonies, even misdemeanors can entail severe consequences.⁶³ People with a criminal record may also face discrimination from employers, lenders, and landlords.⁶⁴ Such challenges create barriers for probationers and, by extension, their families, and communities.⁶⁵

Perhaps not surprisingly, criminologists have found that when it comes to employment and recidivism, adults sent to probation often fare as poorly as similarly situated adults sent to prison.⁶⁶ In other words, there is little evidence that probation in the United States is more rehabilitative than incarceration.⁶⁷ Shawn Bushway, a criminologist at the State University of New York at Albany, argues that the details of supervision (interactions with officers, programming options, etc.) may matter more than whether a person is sentenced to prison or probation.⁶⁸ And the poor results of both probation and imprisonment (which make future life success more difficult) suggest that for many low-level offenses the public would be better served by a criminal justice system that did less—in other words, true diversion away from formal supervision.⁶⁹

In recent years, probation departments have introduced a range of supervision reforms to respond to these concerns. Most of these reforms follow the *risk-need responsivity model*, which promotes evidence-based interventions that are targeted to individuals' specific risks and needs.⁷⁰ Supervisees first receive an assessment, which is then

used to tailor a supervision plan. For example, based on evidence that low-risk individuals fare better with no or minimal supervision, states are working to reduce or eliminate supervision for such cases.⁷¹ Many jurisdictions have done so by shifting such individuals to fine-only probation and by changing reporting from in-person interactions to electronic kiosk check-ins. Such reforms allow officers to concentrate on people who are rated as high-risk and those who are new to supervision. However, risk-need assessments are often misused, badly administered, manipulated (or overridden), or poorly tailored for specific supervision populations, limiting their effectiveness.⁷²

Reforms to the juvenile justice system have moved increasingly toward a system of benign neglect for low-risk cases and more targeted and supportive supervision for high-risk cases.

Another reform has been to shorten the length of supervision, which gives probationers a positive incentive at the same time as it reduces the department's caseload. Research in this area has led to a new approach called *dosage probation*, in which the length of probation is determined by the number of hours needed for intervention; probationers can terminate supervision early if they complete their case-management plan and avoid getting arrested.⁷³ Other states have introduced credits for each successful month on supervision; each credit shortens the supervision term.⁷⁴ In Missouri, an

earned compliance-credit program reduced the community supervision population by nearly 20 percent without affecting recidivism rates. Other states have started to change statutes and policies that allowed adults to be sentenced to lifetime terms of probation.⁷⁵ However, in some jurisdictions probationers can't complete their terms early unless they've paid all fines and fees, an impossible goal for many probationers.⁷⁶

Reforms to the juvenile justice system have largely followed the same trends, moving increasingly toward a system of benign neglect for low-risk cases and more targeted and supportive supervision for high-risk cases.⁷⁷ In addition, diversion programs and treatment services have been better developed for juveniles than for adults. In stark contrast to the small decline in adult imprisonment rates, the rate at which juveniles are sent to residential placements fell by more than half between 2001 and 2013.⁷⁸ Two exciting models are the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, which works to bring down detention rates and disproportionate minority confinement while improving conditions behind bars and Positive Youth Justice, a "strengths-based" model that builds on young people's existing resources and their ties to their peers, families, and communities.⁷⁹

Violations and Revocation

As noted above, probationers frequently fail to meet the many requirements of supervision and/or are arrested for a new crime, which can lead to revocation to jail or prison.⁸⁰ Depending on the state, revocation decisions may be made internally by the probation department or be subject to a brief court hearing. Regardless of

the mechanism, revocations are typically easier for officers to pursue than are new criminal charges filed by a prosecutor. (As a result, distinguishing between admissions for technical violations—that is, violations of the terms of supervision—versus new crimes can be difficult.⁸¹) Probationers face several challenges in avoiding future criminal justice contact, including increased scrutiny, behavior restrictions, a smoothed pathway to incarceration through revocation, and heightened sentencing penalties if convicted for a new crime. This probation-to-prison pipeline, together with the lack of meaningful diversion, helps to explain why probation too often functions as a net-widener rather than alternative to prison.

Among adults, the number of probationers incarcerated for supervision violations has increased significantly. Between 1980 and 2000, the proportion of state prison admissions for new court commitments fell from over 80 percent to roughly 60 percent, with entries for parole and probation violations making up most of the difference.⁸² By the 1990s, more than one-fifth of prisoners were on probation at the time of arrest, compared to 12 percent in 1974.⁸³ The number of probation violators in local jails increased as well, growing by 50 percent between 1990 and 2004.⁸⁴ As of the early 2000s, 23 percent of state and federal prisoners and 33 percent of jail inmates had been on probation at the time of arrest.⁸⁵

Many probationers are incarcerated for technical violations (or breaking the rules of supervision) rather than new criminal offenses.⁸⁶ Among inmates in the mid-2000s who were on probation at the time of their arrest, 75 percent of jail inmates and 30 percent of prison inmates had not been convicted of a new crime.⁸⁷ Roughly a quarter

of jail and prison inmates were incarcerated for violating supervision conditions without any new arrests, including failure to report, drug use, and failure to pay fines and fees.

The juvenile revocation rate has received less attention from researchers, yet 16 percent of juveniles in residential placements in 2010 were incarcerated for technical violations of probation and parole supervision. In more than 10 states, technical violations represented a larger share of detained juveniles than violent (or person) offenses.⁸⁸

Although research on violations and revocation is less extensive than that for sentencing decisions, we know that not all supervisees face the same risk of revocation. Studies of jurisdictions across the country have found that probation revocation is associated with the same characteristics correlated with sentencing outcomes and other criminal justice indicators, including gender, age, employment status, and race.⁸⁹ The Urban Institute recently found that black and Hispanic probationers faced substantially higher revocation rates in the four jurisdictions it studied, which were only partially explained by legal factors like risk assessment scores and probation violation charges.⁹⁰ As criminologists Celesta Albonetti and John Hepburn argue, these characteristics often are mutually reinforcing: “social disadvantage may condition the effects of other offender characteristics (such as age, race, and gender), incident offense characteristics, and treatment conditions on probation failure.”⁹¹ As a result, although the demographic profile of probationers in the community is fairly different from that of prisoners, incarcerated probation violators are demographically indistinguishable from other kinds of prisoners.⁹²

Several mechanisms may underlie disparities in revocation, the most obvious of which is that poor people find it harder to meet the requirements of supervision, which include maintaining employment, meeting regularly with the probation officer, and paying fines and fees.⁹³ Failure to meet these obligations—including financial penalties in some jurisdictions—can lead to imprisonment, creating a loophole for legal prohibitions against debtors’ prisons.⁹⁴ Relatively poorer probationers and racial minorities are also more likely to be rated as high-risk on actuarial risk assessments, and therefore may face greater supervision burdens.⁹⁵ Last, relatively more disadvantaged probationers may lack the interpersonal skills and experience to negotiate successfully with their probation officer (such as a deferential tone, routine reporting of personal circumstances, etc.); they may also face implicit or even explicit discrimination in the officer’s supervision style and use of discretion.⁹⁶

In recent years, jurisdictions have increasingly come to see high revocation rates as a departmental failure. As figure 1 shows, departments have two ways of shaping revocation rates: the first is to improve supervision and the second is to change violation and revocation policies and practices. Departments are increasingly moving from a “trail them, nail them, and jail them” (or *risk containment*) model to one focused on promoting success (or *risk reduction*).⁹⁷ This new orientation to supervision includes better access to supportive services and more respectful and collaborative relationships between supervisees and officers.⁹⁸

This orientation is also reflected in changes to how some jurisdictions respond to

violations. For example, working through the Justice Reinvestment Initiative, Arizona gave counties financial incentives to reduce probation violations, cutting the probation revocation rate to both jails and prison by about one-third between 2008 and 2011.⁹⁹ Another reform gaining traction is expanding alternative sanctions for violations, giving officers more options when a supervisee breaks probation conditions.¹⁰⁰ These sanctions can include additional reporting burdens, participating in programming, half-day or short-term confinement in violation centers, and extending the length of probation. In many cases, the idea is to intervene earlier in a supervisee’s history of violations, providing a mild sanction immediately following a violation rather than ignoring a series of violations and then filing for revocation. Research suggests that alternative sanctions can be just as effective as jail stays in reducing future violations, while easing local budgets.¹⁰¹ Not sending probationers to jail for violations can also improve their employment outcomes, which helps them contribute to their families and communities.¹⁰²

One prominent example of a policy reform designed to reshape how departments respond to probation violations is Hawaii’s Opportunity Probation with Enforcement (HOPE) program, which automatically responds to all program violations with “swift, certain, and fair” sanctions—typically a few days in jail.¹⁰³ The thinking is that swift but moderate responses to violations will give probationers an incentive to comply with supervision requirements and gradually earn more freedom over time. Initial evaluations of the pilot in Hawaii were positive. Yet recent attempts to replicate the program have shown disappointing results, perhaps in part because the replications did not

devote enough attention and resources to support services for probationers and instead focused only on “zero tolerance” enforcement.¹⁰⁴

Policy Recommendations

The US criminal justice system has reached a massive scale, with devastating consequences for the poor and disproportionately minority communities most affected by criminal justice contact. Increases in prison, jail, probation, and parole populations continued until the late 2000s, despite more than a decade of falling crime rates. Placing a large number of adults on probation for lower-level offenses has likely done little to improve public safety, yet has increased the burdens of state surveillance in the most disadvantaged neighborhoods. Piling sanctions, restrictions, and obligations on vulnerable adults more often impedes rather than supports their ability to productively contribute to their families and communities. Frequently imprisoning probationers for low-level supervision violations that would not be crimes absent supervision disrupts communities and creates churn in jails and prisons. Emerging evidence from localities and states—outlined above—suggests that we can do better, not only without compromising public safety and community wellbeing but also perhaps improving them. Below I offer policy recommendations for each of the three areas I’ve discussed: sentencing, supervision, and revocation.

Increase Real Decriminalization and Diversion in Sentencing

To reduce the profound inequalities reproduced and exacerbated by probation policies, we must first seek to radically scale back criminal justice operations. In addition

to reforms happening in some states today (including diverting nonviolent drug cases and increasing parole release rates), we must promote decriminalization and diversions that do more than widen the net. For low-level offenses, supervision is largely unhelpful to both probationers and their communities; when fewer such cases are summarily sentenced to probation, we can do more with probation for those who have committed serious offenses.

Diversion starts with fewer individuals experiencing police contact and facing arrest for low-level crimes of poverty, including “quality of life” crimes, minor drug offenses, and nonpayment of fines and fees. Rather than being funneled through the misdemeanor system, which comes with legal limits and collateral consequences, such people should be released without arrest.¹⁰⁵ Through legislative reforms, low-level criminal offenses could be redefined as noncriminal or civil offenses akin to a parking ticket. In cases where arrest is warranted, we should encourage judges to release more individuals with no sanctions or supervision, including alternatives to jail and prison like moderate community-service obligations or restorative justice processes. For many low-level offenses, court processing and a criminal record are sufficiently punitive. Piling supervision and restrictions on top of such punishment is unnecessary for public safety.

Second, scaling back the punitive build-up would require us to be more lenient even for more serious cases. In addition to bumping the lowest-level probationers off supervision, people who commit less serious felonies (such as lower-level burglary, assault, and drug possession cases) who otherwise would be sentenced to

prison should instead be bumped down to community supervision (as California has done).¹⁰⁶ The conditions imposed on their probation, which can lead to revocation if violated, should be limited to restrictions that are related to the individual's success in the community rather than a laundry list of wishful aspirations.¹⁰⁷ In addition, the length of supervision—even for serious offenses—should be trimmed (and lifetime probation should be eliminated), so that probationers can complete supervision when they meet their obligations. Financial obligations shouldn't be a cause for continuing probation; such obligations can be monitored without supervision (and, in the case of the many who are unable to pay, forgiven by departments or courts).

In this respect, the adult system could take a cue from the juvenile justice system, which has successfully cut both delinquency cases and youth confinement in half over the past decade. Researchers need to study this transformation more thoroughly to find how it was accomplished (in terms of both policy details and political willpower) and how those lessons might be applied to the adult system. Yet more could be done to ensure that juveniles receive fair, equitable, and parsimonious treatment. In particular, status offenses (or crimes that violate the law only because of the person's age, such as truancy, running away from home, or violating curfew) and lower-level delinquency cases should never be the reason to lock up a young person. As they carry out such reforms, both the adult and juvenile systems need to take a hard look at equity, as diversion programs often disproportionately benefit white Americans with more social privilege (see Traci Schlesinger's article in this issue).

Improve Supervision for Smaller Caseloads

If officers had smaller, more focused caseloads, community supervision could move away from a law enforcement framework and back toward a social work perspective, providing meaningful assistance to probationers. Drawing on evidence of what works from decades of criminological research, such reforms would provide more support to probationers while reducing the severe restrictions, intense surveillance, and tough responses to violations that have proliferated. Such assistance and support should lighten the burdens of supervision rather than add frequent program attendance (and payments for such assistance) to the long list of demands probationers face.¹⁰⁸ In this vein, a recent policy report by leading correctional experts and academics recommends that probation “impose the least restrictive sanctions necessary,” while recognizing “our common human capacity both to make mistakes and to make a change for the better.”¹⁰⁹

But how do we improve supervision for those who will remain on probation? As I noted earlier, we can use risk-need assessments to assign individuals to supervision levels. Such assessments can help to limit probation overtreatment and direct attention to the probationers who most need supervision and assistance—though fairness and equity in their implementation remains a concern.¹¹⁰ They can also help identify factors associated with recidivism, which can then be addressed during supervision. However, risk assessment can tell practitioners only where to focus their efforts, not how to adjust their supervision strategies.

Reforms that draw on the desistance model improve relationships between probationers and officers by building a more respectful and collaborative dynamic.

One promising method is to give probationers incentives to desist.¹¹¹ Shadd Maruna, a criminology professor at the University of Manchester, defines desistance as “long-term abstinence from crime among individuals who had previously engaged in persistent patterns of criminal offending.”¹¹² Maruna frames desistance as a continual process of recovery, which assumes occasional relapses and requires continual maintenance, and he stresses the importance of “making good,” or contributing to family and community. Research on desistance has shown that most people mature out of criminal offending, aided by internal processes (including new skills and a personal narrative of transformation) and external ties, pressures, and opportunities (including positive relationships, especially marriage and employment).¹¹³

Reforms that draw on the desistance model—which have gained more traction in Europe than in the United States—improve relationships between probationers and officers by building a more respectful and collaborative dynamic framed around helping individuals improve their social and economic circumstances.¹¹⁴ A desistance model also encourages positive behavior rather than just punishing poor behavior. An even more positive framework would

incorporate the strengths of probationers’ families and communities rather than cleaving them from their networks and communities. Last, desistance-based reforms must provide material support to counter the factors that can lead to recidivism, including stable housing, employment or help finding work, medical care, and more. As an additional benefit, research suggests that by treating probationers with dignity, respect, and fairness, probation officers can help build up the legitimacy of (and ultimately compliance with) the law.¹¹⁵ However, to enact such reforms (especially in the United States) will require significant work to rewire probation officers’ orientation toward their clients.¹¹⁶

Reduce Revocation Rates and Disparities

Finally, probation departments should improve responses to supervision violations. This is perhaps the recommendation where the most headway has already been achieved. One piece of this puzzle is reducing the number and onerousness of probation conditions and improving access to supportive services that encourage desistance. The other is changing the way that officers and departments respond to the violations that will inevitably occur. Promising reforms include developing graduated sanctions, reducing individual officers’ liability for revocation (for example, requiring supervising officers to sign off on violations or changing department policy regarding when to file for revocation), increasing incentives to keep probationers in the community, and eliminating returns to prison for technical violations of the conditions of supervision. These reforms reduce cycling in and out of jail and prison, which can destabilize probationers’ lives.

We should also be concerned about disparities in revocation patterns—an area that researchers and policymakers have paid less attention to. We need to ensure that departments respond to probationers in a fair and unbiased manner, and that they are doing more to support the poorest and most marginalized probationers (and not simply criminalizing poverty). Efforts to reduce the number of severity of probation conditions and restrict revocations for low-level supervision violations should both bring

down the revocation rate and reduce the role of officer bias in revocation decisions.

In short, both scholars and policymakers are developing promising reforms to make probation sentences more proportional, fair, and parsimonious and to improve supervision. If implemented at scale, these reforms could make the criminal justice system less harmful and more beneficial for probationers, their families, and communities.

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