

The Social History of Crime and Punishment in America: An Encyclopedia

Probation

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Probation is the most widely used sentencing option in the United States. The term *probation* derives from the Latin word *probatio* (meaning “period of proving” or “trial and forgiveness”), thus implying that an offender must prove himself/herself through a specified period of time (the length and term of probation) by complying with the terms and conditions of probation. According to the Bureau of Justice Statistics, of the 7.2 million persons under correctional supervision (including both community-based corrections and institutional corrections) at year-end 2009, 58 percent were on probation (4.2 million). Approximately half of all persons on probation at year-end 2009 were being supervised for a conviction for a felony offense. Probation is a community-based sanction that affords the convicted offender an opportunity to remain in the community with the possibility to receive therapeutic support programs as an alternative to going to prison. Persons sentenced to probation are subject to terms and conditions ordered by the court [p. 1432 ↓] or other governing body. Probation allows the offender to remain in the community subject to terms and conditions imposed by the court and is an alternative to incarceration. Probation can be either unsupervised (in which the offender is not monitored) or supervised (in which the offender is monitored by a probation officer or other community corrections professional).

Reasons for Probation

There are a number of advantages and disadvantages associated with probation. First and foremost, probation is more cost-effective than incarceration. Nationwide, the average cost per day to house an offender in a jail or prison is \$62 per day, far more than \$2 to \$3 per day for probation. Probation offers a reduced criminalization of offenders as they are not subject to socialization with more hardened offenders behind bars. Community-based corrections allow the offender to maintain his/her family ties, as parents on probation are able to remain in the home to raise their children (whereas incarcerating the parent may result in the children being placed with other family members or foster care). Because probation affords an offender the opportunity to work, thereby providing for his/her family as well as paying restitution, court costs, and fees, and contributing to the tax base, probation is advantageous as the offender is contributing financially to society versus being a tax burden through the cost of

incarceration, any public assistance his family may receive in his absence, and so on. Probation offers the offender a greater opportunity to receive therapeutic and professional services in the community. In prison, there are few programs available to offenders, and those that are available have limited availability based on the large numbers of offenders in prison seeking to participate in those programs.

A main disadvantage of probation is that it can be considered a lack of punishment. One of the widely held criticisms of probation is that the offender is allowed to reside in the community. That, coupled with the relatively nonrestrictive terms and conditions of probation, does not constitute a “real” punishment in the eyes of opponents, and there is no severity in the punishment.

Community-based corrections also have a social liability in that offenders remain in the community and often reoffend, sometimes committing violent acts. According to the Bureau of Justice Statistics, 35 percent of offenders recidivate, being rearrested for a subsequent offense after exiting probation (either having their probation revoked, terminated, or transferred to unsupervised probation).

Early Probation

Probation as a community-based sanction can trace its origins to the English courts in the 18th and 19th centuries. Judges had the discretion to grant what was deemed a judicial reprieve, thereby sparing the offender from incarceration by suspending his/her sentence if the judge deemed there was no purpose served by incarcerating the offender. This practice was adopted in the American colonies. In Boston, Judge Peter Oxenbridge Thatcher employed judicial leniency by allowing offenders to be released from custody on their own recognizance (their verbal or written promise to appear in court if need be) either before or after they were convicted. In 1841, John Augustus, a Boston shoemaker and a member of the temperance movement against alcohol, often visited the Boston courts to observe the daily hearings, operations, and business of the courts. There, Augustus often intervened on behalf of offenders charged with being a public drunkard; he observed that many offenders were held over for court or remained in custody because they could not afford to pay the fine or other monetary assessment ordered by the court. Augustus then decided to approach judges and asked if they

would consider releasing the offender if Augustus promised to “monitor” him/her while he/she was released and ensure that he/she did not get in further trouble. Augustus also attempted to rehabilitate alcoholics and assisted those arrested for alcohol-related offenses. It is estimated that by the time of his death in 1859, Augustus supervised 2,000 offenders, both men and women, over the years, and thus Augustus is widely considered to be the “father” of modern probation.

After Augustus's death, another Boston philanthropist, Rufus R. Cook, continued Augustus's work through the Children's Aid Society and assisted juvenile offenders. Benjamin C. Clark volunteered as well to continue Augustus's work. Boston led the nation in establishing probation as a statutory sanction in that the first state law prescribing for probation was passed [p. 1433 ↓] in Massachusetts in 1878, granting the mayor of Boston the authority to hire the first probation officer, a retired police officer, Captain Edward Savage, who became a full-time paid probation officer. By 1925, probation was available for juveniles in every state and for every adult by 1956. The growth of probation at this time can be credited to the attitudes and beliefs held during the Progressive Era, when, in an effort to address the challenges of crime and deviance, reformers advocated strategies to rehabilitate offenders rather than house them in correctional institutions. Alternatives to incarceration such as probation, parole, and indeterminate sentencing, which afforded offenders the option to secure their freedom if they made strides in reforming their lives, proliferated.

Probation officers from the Anchorage Probation Enhanced Supervision Unit display a bag of cash found in a search of an offender's apartment. When the offender denied access to his apartment, the officers returned with a search warrant and found \$30,000 in cash and cocaine. The offender was remanded and the case was forwarded for new criminal offenses.



Probation Standards

Although the terms and conditions vary from jurisdiction to jurisdiction and offender to offender (based on the offense, the offender's challenges, and other factors), there are standard conditions of probation (required of all offenders, regardless of the their offense, special needs, or previous convictions). These conditions require the offender to be gainfully employed or enrolled in a program of study; commit no criminal offense and notify the court and/or probation officer if charged with a new offense; pay a fine, cost of court, restitution, or other fees; report as directed to the court, probation official, or other community corrections professional; notify officials of any change in address and/or employment; not possess any illegal weapons; maintain family obligations (e.g., child support); and remain within the court's jurisdiction unless given permission to leave by the court and/or probation officer. Punitive conditions of probation are those that increase the punishment of the offender based on the severity of the offense. Therefore, the offender may be sentenced to complete community service hours as a condition of probation or be required to be [p. 1434 ↓] on curfew or be placed on intensive probation (a more restrictive form of probation). Treatment conditions of probation (such as requiring the offender to participate in substance abuse treatment or mental health counseling) attempt to reverse the offender's self-destructive behavior.

There are three primary types of probation: supervised probation, unsupervised probation, and intensive supervision probation. Intensive supervision probation (ISP) is a more restrictive form of probation in which the offender is subject to additional terms and conditions and closer monitoring of his/her behavior. ISP was first implemented

in Georgia in 1982 in response to the state's incarceration rate (it was the highest per capita rate of any state). The overcrowded conditions in Georgia's prisons were spilling over into the local jails, and thus the state had to develop probation programs that were effective alternatives to incarceration. While the model for ISP varies from state to state, it typically involves the use of two probation parole officers (oftentimes a probation officer and a surveillance officer) who work together to monitor the offender. Whereas an offender on regular probation has one encounter with his/her probation officer once per month (or in some instances, once every other month), an offender on ISP sees his/her offender several times per week. In addition, these offenders are typically subject to curfew, which is closely monitored by the two-person team, and are required to complete more community service hours than an offender on regular supervised probation. They are subject to searches of their person, premises, and vehicle (a condition that is typically ordered only in special circumstances for regular probation). ISP officers typically have smaller caseloads (an average of 30) than do regular supervision probation officers (the recommended average is 90), allowing ISP officers more time to dedicate to the close monitoring of offenders.

There are five models of probation (the manner to describe the relationship between the probation officer and the client). These models are the treatment model, the rehabilitation model, the due process model, the just-deserts model, and the community model. The treatment model, sometimes referred to as the medical model, makes the assumption that criminal behavior is somewhat like an illness, and if the cause of the illness is addressed, then the offender will be less likely to engage in criminal behavior again. The treatment model aims to remedy the offender's illness. The rehabilitation model stresses reforming the offender through rehabilitation. The due-process model, which is sometimes referred to as the justice model, stresses fair and equitable treatment of all offenders, regardless of extralegal factors such as race, socioeconomic status, or gender. The just-deserts model emphasizes that the punishment should be equitable with the severity of the crime and that offenders should get their "just" or rightful punishment, or the punishment that they deserve based on their offense. The idea is that the more serious the offender's crime is, the more restrictive his/her probation or level of supervision should be. Finally, the community model, sometimes referred to as the reintegration model, focuses on preparing the offender to return to the community and thereby equipping the offender with appropriate resources to reintegrate

(i.e., providing resources for counseling and stable living environments). There are three conceptual models of intensive supervision probation: the justice model, the limited risk control model, and the treatment-oriented model. The justice model seeks to be punishment centered, yet fair to the offender. This model emphasizes daily or near-daily contact with the offender, community service, and if applicable, restitution or reparations to the victim. This model does not address rehabilitation for the offender. The limited risk control model is based on an offender's anticipated criminal behavior. A risk assessment is conducted to determine which level of supervision is appropriate for the offender and takes into account the offender's previous criminal history, current criminal offense, and the risk he poses to the community based on the same. Finally, the treatment-oriented model focuses on rehabilitation of the offender in an effort to reintegrate the offender into the community.

Mechanics of Probation

Probation is typically a suspended sentence. Once an offender is convicted of an offense, rather than incarcerate the offender, the judge can suspend his/her sentence and place him/her on probation. So long as the offender complies with the terms and conditions of his/her probation, he/she can [p. 1435 ↓] remain free in the community. However, if the offender violates the terms and conditions of probation, his/her probation can be revoked, he/she can be remanded into an active sentence in jail or prison. In general, there are two types of violations of probation: technical violations and new offense violations. Technical violations are those in which the offender violates a technical condition of probation (such as maintaining full-time employment, adhering to curfew, or completing community service hours) and thus breaks the terms of probation. New offense violations involve the offender being arrested and/or convicted of a subsequent or new criminal offense. Of the offenders who have their probation revoked and are sent back to jail, it is estimated that one-third commit new offense violations while two-thirds commit technical violations. Probation officers typically have the responsibility for determining whether the offender has violated the terms and conditions of probation.

Although the U.S. Supreme Court held in *Griffin v. Wisconsin* (1987) that probationers do not have the same rights as other members of society and that the probationer's

freedom is conditional contingent on his/her compliance with special restrictions, offenders do have certain due process rights, including the right to an attorney during the revocation process (*Mempa v. Rhay*, 1967). In addition, the Supreme Court, through *Morrissey v. Brewer* (1972) and *Gagnon v. Scarpelli* (1973), ruled that the probation revocation hearings must include a three-stage procedure, affording offenders limited due process rights that must be protected. Per the landmark decisions, offenders must be afforded a preliminary hearing, a probation revocation hearing, and a revocation sentencing hearing.

At the preliminary hearing, a “disinterested person” (such as a judge or an administrative hearing officer) determines if there is probable cause to revoke the probation. In other words, whether the facts and circumstances cause a reasonable person to believe that the offender likely violated the terms and conditions of his/her probation. If, at the preliminary hearing, probable cause has been found, the probation officer (or other representative of the supervising agency) presents evidence to support the contention that the offender violated the terms and conditions of probation. At this hearing, the offender has the right to know the charges being alleged against him/her, the right to present witnesses on his/her behalf, and the right to confront witnesses against him/her. At this stage, a neutral and detached body, such as a judge or an administrative hearing officer, makes a decision in favor of the probation officer or the offender. If the decision is made to revoke the offender's probation, then the judge must decide whether to remand the offender to a period of incarceration in a jail or prison and for what length of time. The judge can also decide whether to keep the offender on probation and possibly make modifications to the terms and conditions (e.g., require additional community service hours, impose additional sanctions such as a term in boot camp, sentence the offender to a weekend in jail, and so forth).

Administration of Probation

There are a number of challenges in effective administration of probation that impact the effectiveness of supervision by probation/parole officers. Sex offenders present a problem for probation and parole and require unique programming and policies. Megan's Law and other similar statutes require convicted sex offenders to register with local law enforcement; law enforcement officials are in turn required to notify the

community of the offender's presence. Because many communities do not want sex offenders residing nearby, probation officers not only face the possibility of the sex offender re-offending, they also have to protect the offender from vigilante behavior by community members. Special needs offenders such as sex offenders also pose a challenge for probation in that probation agencies have created specialized caseloads and special programs to target these offenders. For example, the North Carolina Department of Correction, Division of Community Corrections created specialized caseloads in which all sex offenders were supervised by the same officer (or officers). States must also deal with a lack of access to adequate mental health facilities for these offenders, and probation officers are sometimes underprepared or undertrained to work with certain categories of offenders such as sex offenders or mentally ill offenders.

Another challenge of probation is the lack of public confidence in probation and the perception that probation is too lenient. According to [p. 1436 ↓] the American Probation and Parole Association (APPA), between 43 percent and 65 percent of offenders sentenced to probation are either arrested during probation/parole or within three years of their probation sentence. Only 57 percent of offenders sentenced to probation successfully complete their sentences. Because of the recidivism rate and relatively low successful completion of probation, there is a perception that probation is ineffective.

Terrorism is another challenge for probation officers. While it is doubtful that most terrorist activities will warrant a probation sentence, offenders who have been convicted of funding these organizations and offenders with terrorist ties have been placed on probation, and extremist domestic terrorist organizations have members who are on probation and/or parole. Further, probation officers may be instrumental in knowing their offenders' affiliations with various organizations and other associates, which may prove useful for counterterrorism efforts.

Budget cuts have resulted in challenges for agencies. These cuts result in staffing issues and problems ensuring that officers have appropriate resources (equipment, training). Although the number of persons placed on probation has increased, funding of these agencies has not—in some places, it has declined. As such, many probation officers have caseloads that exceed the American Probation and Parole Association recommendation that regular probation supervision caseloads be no greater than 90

offenders for every officer. In some jurisdictions, there are 352 offenders for every officer. When officers have that many cases, the quality of supervision suffers, and probation officers suffer stress and burnout. This can impact the probation officer in terms of physical and emotional health and can often result in high turnover rates of probation officers, which can result in a lack of or lapse in supervision or in offenders being supervised by less experienced probation officers.

Today, many of the offenders placed on probation are violent offenders or felons and suffer from mental and behavioral health challenges, as well as substance abuse issues. As such, probation officer safety is a concern. Probation officers often go into high-crime neighborhoods to visit their offenders (often with multiple offenders residing in the same neighborhood). Supervision standards in many jurisdictions require probation officers to visit the offender in the community at night and on weekends, exposing them to risks.

In the United States, the responsibility for the administration of probation services varies from jurisdiction to jurisdiction. At the federal level, the U.S. Probation Office is responsible for administering probation in each of the U.S. district courts. At the state level, probation and parole can be administered through the state's executive branch of government, state judicial agencies, or local executive or judicial agencies. In some states, probation is administered by a combination of these agencies and organizations or may even be a private function, contracted by the states to a private organization.

Conclusion

Probation officers typically have the responsibility for the supervision of offenders sentenced to probation. Depending on the jurisdiction, these officers may be sworn law enforcement officers with the power to arrest and carry firearms. These officers monitor the progress of the offender on probation and report any violations to the court or other sentencing authority, represent the probation agency in matters against the offender, and make recommendations to the court in terms of whether probation should be revoked or continued. Probation officers are responsible for conducting office visits with the offender (meeting with the offender in the office to discuss his/her compliance with the terms and conditions of probation). Probation officers are

often responsible for searching an offender, his/her residence, and/or his/her vehicle per the terms and conditions of probation, conducting curfew checks and subsequent criminal record checks, searching for new arrests and convictions, and verifying an offender's employment, residence, and school enrollment. In order to do this, probation officers conduct field visits, in which they visit the offender at his residence, place of employment, or school. During a field visit, a probation officer is able to verify and assess the suitability of an offender's residence, employment, or school enrollment.

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See Also:

- [Community Service](#)
- [Parole](#)
- [Sex Offenders](#)
- [Terrorism.](#)

Further Readings

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