



TESTIMONY SUBMITTED BY  
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THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA  
TO THE  
PENNSYLVANIA SENATE JUDICIARY COMMITTEE  
PUBLIC HEARING ON PROBATION AND PAROLE

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Probation and parole drive Pennsylvania's mass incarceration crisis. Pennsylvania's lengthy probation sentences are unnecessary and disproportionate compared with the rest of the country. People charged with violations of probation and parole fill our state prisons and county jails. As with many other aspects of our troubled criminal legal system, racial disparities plague probation and parole revocations. Reform is sorely needed. Below are a few of the most troubling highlights of Pennsylvania's dismal probation and parole system:

- ❑ Between 2006 and 2016, Pennsylvania's violent crime rate declined by 28 percent, the fifth largest decline in the country. But in that same time period, Pennsylvania experienced a:
  - ❑ 17 percent increase in prison population, the seventh-largest increase in the country
  - ❑ 48 percent increase in parole population, the thirteenth-largest increase in the country
  - ❑ 10 percent increase in probation population<sup>1</sup>
- ❑ Pennsylvania has the highest incarceration rate in the Northeast, a rate that increased by 16% from 2005 to 2014.<sup>2</sup>
- ❑ Pennsylvania has the third highest percentage of its citizens on probation and parole in the country.<sup>3</sup>
- ❑ While one out of every 53 adults is supervised by probation and parole nationally, in Pennsylvania, one out of every 34 adults is under community supervision, a rate 36% higher than the national average. Only Georgia and Idaho have higher rates of community supervision than Pennsylvania.<sup>4</sup>
- ❑ As U.S. community supervision rates are five to ten times the rate of European countries, Pennsylvania supervises its citizens at one of the highest rates in the Western world.<sup>5</sup>

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<sup>1</sup> Council of State Governments Justice Center. 2018. 50-State Data on Public Safety, [https://50statespublicsafety.us/app/uploads/2018/06/PA\\_FINAL.pdf](https://50statespublicsafety.us/app/uploads/2018/06/PA_FINAL.pdf)

<sup>2</sup> Council of State Governments Justice Center. 2017. Justice Reinvestment in Pennsylvania: Policy Framework. New York, NY: Council of State Governments, [csjjusticecenter.org/wpcontent/uploads/2017/06/6.26.17\\_JR-in-Pennsylvania.pdf](https://www.csjjusticecenter.org/wpcontent/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf)

<sup>3</sup> Mariel Alper et al., *American Exceptionalism in Probation Supervision*, Robina Institute of Criminal Law & Criminal Justice, 2016, <http://www.robinainstitute.org/news/new-data-brief-american-exceptionalismprobation-supervision/>.

<sup>4</sup> Kaeble, Danielle, and Thomas P. Bonczar. 2016. Probation and Parole in the United States, 2015. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, [www.bjs.gov/content/pub/pdf/ppus15.pdf](http://www.bjs.gov/content/pub/pdf/ppus15.pdf).

<sup>5</sup> Phelps, Michelle S., and Caitlin Curry. 2017. "Supervision in the Community: Probation and Parole." Oxford Research Encyclopedia of Criminology Oxford, England: Oxford University Press, [criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-239](https://www.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-239)

## What is probation and parole?

“Probation and parole are a deprivation of liberty in their own right and have become key drivers of mass incarceration by serving as a tripwire to reincarceration for many of those under supervision. [C]ommunity corrections populations have risen alongside prison and jail populations but community corrections has not been funded adequately to meet the needs of a population of individuals beset by poverty, unemployment, inadequate housing, mental illness and substance use.” --- Columbia University Justice Lab, [Too big to succeed: The impact of the growth of community corrections and what should be done about it](#), January 2018

Probation is a court-ordered period of correctional supervision to be served in the community, generally in lieu of incarceration.

Parole is a period of conditional supervised release in the community following a term of imprisonment in county, state, or federal prison. Parole is an alternative to continued incarceration; the paroled person is released from prison but remains under correctional supervision for the duration of their sentence.

Probation and parole are correctional supervision. Life is different for those on probation or parole. Probation and parole come with onerous supervisory conditions. Probationers and parolees must meet regularly with an officer, pay supervision fees, find and maintain employment, undergo repeated and random drug testing, and open their home to random searches. Probationers are prohibited from travelling outside of their local county without prior approval. If a change of residence or employment occurs, they must notify their probation/parole officer within seventy-two hours. Probationers and parolees may be required to take certain medications, maintain a strict curfew, and may also be prohibited from entering bars or communicating with certain people.<sup>6</sup>

“Spending time with other people who have criminal records can be a violation. Many felons return to communities where it’s difficult for them to avoid spending time with other people with criminal records.” --- John Wetzel, Secretary, Pennsylvania Department of Corrections<sup>7</sup>

## Pennsylvania has more people under correctional control than other states

In addition to having the second highest percentage of people under community supervision (both probation and parole), Pennsylvania stands out when looking parole alone. Pennsylvania has both the highest number of people on parole and the highest rate of parole supervision in the United States.<sup>8</sup> Pennsylvania had over 112,000 people on parole in 2016; by comparison, Illinois, a state similar in size and geographic density, had fewer than 30,000 people on parole.<sup>9</sup> Pennsylvanians are more than three times more likely to be under parole supervision compared with adults in the rest of the United States.

When looking at the state’s total correctional control over its citizens (including both incarceration and community supervision), in 2015, with approximately 375,000 people under correctional control, Pennsylvania had more people under state supervision than the entire population of the city of Pittsburgh (305,928).<sup>10</sup> In Philadelphia alone, the Adult Probation and Parole Department supervises around 44,000 people, which means that approximately 1 out of every 35 Philadelphians are under some form of supervision.<sup>11</sup>

<sup>6</sup> First Judicial District, Adult Probation and Parole Department, *Questions & Answer Information*, available at <https://www.courts.phila.gov/pdf/site/appd-faq.pdf>; Pennsylvania Board of Probation and Parole, Arrest Worksheet, available at <http://www.pbpp.pa.gov/Understanding%20Parole/Documents/PBPP-347%20VSG.pdf>. Accessed on June 6, 2018.

<sup>7</sup> Greenblatt, Alan. “States Spend \$2.8 Billion a Year Incarcerating People for Minor Parole, Probation Violations.” *Governing*, 18 June 2019, [www.governing.com/topics/public-justice-safety/gov-parole-probation-report-criminal-justice.html](http://www.governing.com/topics/public-justice-safety/gov-parole-probation-report-criminal-justice.html).

<sup>8</sup> First Judicial District, Adult Probation and Parole Department, *Questions & Answer Information*, available at <https://www.courts.phila.gov/pdf/site/appd-faq.pdf>; Pennsylvania Board of Probation and Parole, Arrest Worksheet, available at <http://www.pbpp.pa.gov/Understanding%20Parole/Documents/PBPP-347%20VSG.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Bureau of Justice Statistics, “Correctional Populations in the United States, 2015.” *U.S. Census, ACS Estimates 2015*.

<sup>11</sup> First Judicial District, 2016 Annual Report, <https://www.courts.phila.gov/pdf/report/2016-First-Judicial-District-Annual-Report.pdf>; *U.S. Census Quick Facts, Philadelphia, 2016*.

## Probation caps: Pennsylvania's lengthy probation sentences are unnecessary and disproportionate compared with the rest of the country

Lengthy probation sentences are unnecessary and may actually harm public safety. Several studies have demonstrated that after one to two years probation is no longer effective because the behavior that tends to result in probation failure typically occurs in the first twelve months.<sup>12</sup> Lengthy probation sentences do not reduce recidivism and may instead act as a disincentive for probationers to engage in rehabilitative programming. Moreover, onerous probation conditions prolong the period of difficulty for individuals attempting to obtain housing or employment which are both critical factors that reduce recidivism and promote rehabilitative success.<sup>13</sup>

Nationally, the average probation sentence is three years and two months.<sup>14</sup> Federal law limits supervised release terms following imprisonment years for serious felonies, three years for lesser felonies and one year for minor felonies or misdemeanors.<sup>15</sup> But Pennsylvania, unlike Alabama, West Virginia, Utah, South Carolina, Texas, Florida and many other states, allows judges to place people on probation for years, even decades. In Pennsylvania, the only limit to a probation sentence is the statutory maximum for the underlying crimes charged<sup>16</sup> and Pennsylvania allows sentences for each charge to be stacked consecutively.<sup>17</sup> For example, if someone is charged with two first-degree misdemeanors, which each carry as statutory maximum of five years, a judge could sentence that person to a total of ten years of probation, keeping them under carceral supervision for a decade.

## Violations and revocations: People charged with probation and parole violations fill our state prisons

According to a recent analysis by the Council for State Governments, 54% of people admitted to state prison were admitted for a violation of supervision not because they committed any new crime.<sup>18</sup> And people charged with parole revocations made up more than half (52.5%) of all people admitted to state prison.<sup>19</sup> Between 2005 and 2016, admissions to Pennsylvania state prison for parole violations rose by 189 percent. Comparatively, admissions to state prison for new crimes increased by 61 percent.<sup>20</sup>

People admitted to state prison for technical violations of parole have committed no new crimes - they simply violated one of the numerous supervisory conditions.

“On any given day in Pennsylvania, 7,443 people are incarcerated as a result of a supervision violation at an annual cost to the state of \$334 million. Technical supervision violations account for \$101 million of this total amount, and new offense supervision violations make up \$233 million. These figures do not account for the substantial local costs of keeping people in jail for supervision violations.” --- Council of State Governments Justice Center, [Pennsylvania Data Snapshot, 2019](#)

<sup>12</sup> Kelly Lyn Mitchell, [It's Time to Rethink Probation in Minnesota](#), The Robina Institute of Criminal Law and Criminal Justice, (January 13, 2017) (citing James Austin, *Reducing America's Correctional Populations: A Strategic Plan*, 12 Justice Research Policy 9, 35 (2010) (there is no evidence that extending or reducing the period of probation impacts recidivism, and that most supervision failures occur within the first 12 months).

<sup>13</sup> *Id.*

<sup>14</sup> Bureau of Justice Statistics, “Felony Sentences in State Courts.” December 2009, *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>.

<sup>15</sup> 18 USCS § 3583.

<sup>16</sup> 42 Pa.C.S. 9754 (a).

<sup>17</sup> 42 Pa.c.s. 9721 (a).

<sup>18</sup> Council of State Governments Justice Center, *Pennsylvania Supervision Violation Data Snapshot, 2019*, <http://csgjusticecenter.org/confinedandcostly/?state=PA>

<sup>19</sup> Pennsylvania Department of Corrections, Annual Report, 2016, 2 *available at* <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2016%20ASR%20Report.pdf>.

<sup>20</sup> Jacob Kang-Brown, Oliver Hinds, Jasmine Heiss, & Olive Lu, [The New Dynamics of Mass Incarceration](#), The Vera Institute, 29 (June 2018).

## Technical and direct violations

If a probationer or parolee fails to meet any of the numerous supervisory conditions, they may be arrested and charged with a technical violation. A technical violation does not mean that the probationer or parolee has been convicted of another crime, but rather they simply failed to comply with one or more supervisory condition. An arrest for a new crime may also constitute a technical violation. That technical violation can become a direct violation if someone is convicted of a new crime that occurred while under supervision. As a result of a technical or direct violation, the probationer will have a hearing before their sentencing judge. During this hearing, the judge may revoke probation and re-sentence the probationer to new period of probation or to a term of incarceration.

Pennsylvania statute, 42 Pa.C.S. § 9771(c) permits a judge to incarcerate someone at a probation revocation hearing, if the judge feels incarceration is “essential to vindicate the authority of the court.” This statute allows judges to incarcerate people because a judge feels disrespected. If sentenced to incarceration at a revocation hearing, none of the time the probationer spent on the street counts towards this new period of imprisonment.

If arrested for a violation while on parole, the Parole Board can revoke parole and sentence the parolee to serve the remainder of their original sentence in state prison.

## Racial disparities plague probation and parole revocations

Studies<sup>21</sup> have demonstrated that, as with arrests, grievous racial disparities exist within probation and parole revocations. The Urban Institute conducted a large scale study of probation violations in Texas, Iowa, Oregon and New York City and reported:

*We consistently found disparity in probation revocation outcomes to the disadvantage of Black probationers. In all four study sites, Black probationers experienced probation revocation at significantly higher rates than white and Hispanic probationers.*<sup>22</sup>

Likewise, another study that tracked every adult parolee in California for a year found that race was a factor in how parole violations were handled and that Black parolees were more likely to be referred to the parole board and were more likely to be re-incarcerated for a violation than their white counterparts.<sup>23</sup>

## Sentences: “split” and “stacked” sentences contribute to increased recidivism rates and needless costs to taxpayers

Probation was intended to be an *alternative* to incarceration, to function as a ***court-imposed sanction in lieu of imprisonment*** rather than as a form of additional post-release supervision. Probation is a cheaper and more effective sanction than prison and should be used more often in order to bring down prison populations. Underscoring this is a conclusion drawn by a report from the Pew Center on the States: “By redirecting a portion of the dollars currently spent on imprisoning the lowest-risk inmates” toward community supervision, states can “significantly cut recidivism... at a fraction of the cost.”<sup>24</sup>

Pennsylvania courts are permitted to sentence people to probation following their prison/parole terms, commonly referred to as a “split” sentence.<sup>25</sup> Pennsylvania also allows courts to sentence individuals to consecutive terms of probation, having the effect of “stacking” multiple probation terms for multiple counts

<sup>21</sup> See Council of State Governments Justice Center, “50-State Report on Public Safety” (2018), <https://50statespublicsafety.us/workbooks> and Michelle S. Phelps, “Mass Probation and Inequality: Race, Class, and Gender Disparities in Supervision and Revocation” in [Handbook on Punishment Decisions: Locations of Disparity](#), (New York: Routledge, 2018)

<sup>22</sup> The Urban Institute, *Examining Racial and Ethnic Disparities in Probation Revocation: Summaries Findings and Implications from a Multisite Study* (April 2014) available at <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>.

<sup>23</sup> David Fialkoff, *Standardizing Parole Violation Sanctions*, National Institute of Justice Journal, No. 263, June 2009.

<sup>24</sup> Pew Center on the States. One in 31: The Long Reach of American Corrections. Pew Center on the States; Washington, DC: 2009, 3, <https://www.pewtrusts.org/en/research-and-analysis/reports/2009/03/02/one-in-31-the-long-reach-of-american-corrections>.

<sup>25</sup> Glaze, Lauren E.; Bonczar, Thomas P. Probation and Parole in the United States, 2010. Bureau of Justice Statistics; Washington, DC: 2011.

additively upon one another.<sup>26</sup> As a result, a person convicted of a single criminal incident in Pennsylvania with multiple charges can be given consecutive stacked sentences that include both probation and parole. In other words, a judge can sentence a person to serve 3 to 6 years in state prison followed by 5 years of county probation. This means that the person will spend a minimum of 3 years of their 6 year sentence in state incarceration. If, after 3 years, they are paroled, that person will spend the remaining 3 years of their sentence on parole (supervised release under the Pennsylvania Department of Probation and Parole). After 6 years of successful state supervision, they must then return to the county for another 5 years of supervision by the county probation department.

This “probation tail” (imposing a term of probation following a sentence of incarceration/parole) assumes that after 6 years, the person still has any ties - family, friends, job opportunities - in the county to which they must return to complete the additional 5 years of probation under county supervision. This is an excessive and unnecessary burden to impose upon someone who has already served their time; it provides no public safety benefit and is a needless waste of county and state resources.

## Senate Bill 14

Senate Bill 14 would reform many of the most archaic, ineffective, burdensome, and expensive provisions plaguing Pennsylvania’s probation system, including:

**Probation caps:** SB 14 limits the amount of time a person can be kept on probation to five years for felonies and three years for misdemeanors.

**Split and stacked sentences:** SB 14 would prohibit consecutive stacking of probation sentences and limit probation tails that follow incarceration terms.

### Revocation:

SB 14 establishes the following criteria for incarcerating people due to a revocation of probation:

- For people whose probation was revoked for an administrative violation, incarceration is capped at 30 days.
- For people convicted of new misdemeanor offenses, incarceration is capped at 60 days.
- For people convicted of new felony offenses, courts may use alternatives to incarceration that were available at the time of the original sentencing.
- For people whose probation is revoked for a technical or administrative violation of probation, and whose conduct indicates they are likely to commit a future crime and if no other condition of supervision or treatment will decrease the likelihood of future crime, then a judge may incarcerate someone for up to 30 days.

SB 14 would allow people whose probation was revoked and who received a prison sentence of more than one year to petition the court for resentencing according to the new rules if:

- The revocation and sentence of imprisonment were for an administrative violation of probation;
- The person has had no disciplinary infractions while in prison;
- The person has had no new criminal charges or convictions while on probation; and
- The person may only petition for such a re-sentencing once, unless new conditions arise for a second petition later on.

**Failure to pay:** SB 14 would prohibit extending a probation term because a person failed to pay a fine, cost, or restitution, if the person is not financially able to pay such amounts.

**Termination:** SB 14 would require termination of supervised probation after a person has served 18 months of probation without violation or revocation.

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<sup>26</sup> Pennsylvania Commission on Sentencing. 2017. Pennsylvania Commission on Sentencing Annual Report 2016, [pcs.la.psu.edu/publications-and-research/annual-reports/AR2016/view](https://pcs.la.psu.edu/publications-and-research/annual-reports/AR2016/view).