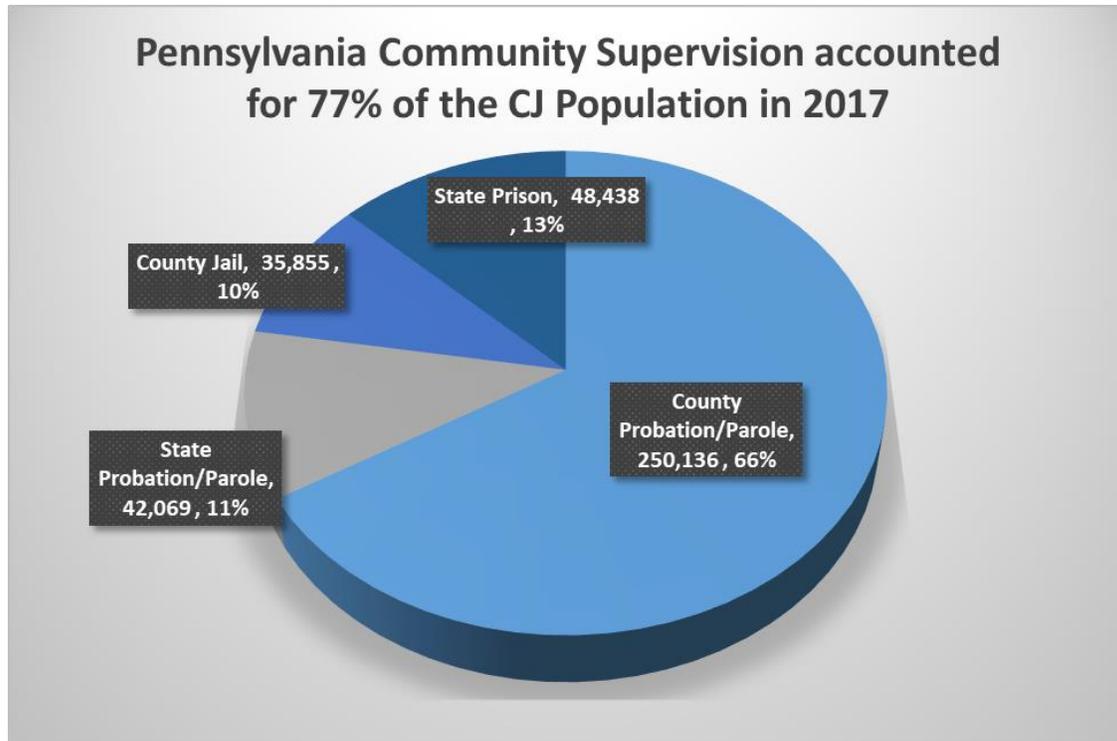


The overuse of incarceration as a response to crime has been the focus of many criminal justice reform initiatives, yet more people are actually impacted by community supervision (4.5M supervised [66%] vs 2.3M incarcerated [34%] nationally). While community supervision offers many benefits over incarceration, it also puts individuals under heightened scrutiny and harsh restrictions for very long periods of time, often facilitating a path back to prison even when no new crimes have been committed.



SB 14 (Williams) outlines several reforms to address community supervision in PA as outlined below:

- Requires the Pennsylvania Commission on Sentencing to adopt guidelines for administrative probation violations. These violations are those that are technical, or noncompliant with the conditions of probation. The sentencing guidelines that courts currently use to impose sentences do not apply to probation revocations. Thus SB 14 would enable courts to have guidance on an appropriate sentence following a revocation for these violations.
- Prohibits courts from imposing consecutive sentences of probation to other sentences. The purpose would be to limit the maximum time that someone is being supervised in the community.
- Requires Courts to specify that length of probation imposed can be continued, extended or including terminated.
- Imposes a 5 year cap of probation term for felonies and a 3 year cap for misdemeanors.

- Prohibits courts from extending probation for nonpayment of fines, costs and restitution unless the individual on probation is able to pay and willfully refused to pay.
- Limits total confinement following upon revocation of probation to
  - Any sentencing option available at time of initial sentence for a felony conviction
  - 6 months total confinement sentence upon conviction of a misdemeanor
  - 30 days if individual is likely to commit another crime and there are no other treatments or conditions to decrease that likelihood
- Provides for early termination of probation after 18 months without violations
- Provides retroactive relief to eligible individuals currently incarcerated for a probation revocation

These reform initiatives are very relevant to the Department of Corrections. Approximately 17% of inmates in state prison in Pennsylvania are incarcerated as a result of a probation violation. To the degree that probation supervision is successful, individuals who come into contact with the criminal justice system are reformed at a lower level of intervention, and do not ultimately graduate to state prison. Longer probation supervision sentences are ineffective, since research suggests that those who remain clean under supervision for longer than three years have a significantly low recidivism risk. In Pennsylvania, one day in a prison bed is generally about ten times the cost of one day under supervision. Beyond the fiscal costs, the human costs of being removed from the community and incarcerated in state prison are far reaching. Thus, the Department of Corrections has a vested interest in seeing probation policy succeed.

Unfortunately, the probation/parole population in Pennsylvania is disproportionately high. Pennsylvania has the third highest percentage of individuals under community supervision (probation and parole) in the country. While one out of every 53 adults is under community supervision nationally, in Pennsylvania, one out of every 34 adults is under community supervision, a rate that is 36% higher than the national average. Furthermore, while community supervision rates are declining nationwide, they continue to rise in Pennsylvania. In 2015, the community supervised population in Pennsylvania rose by 5.3% to a total supervised population of 296,000, almost the population of the city of Pittsburgh. This Pennsylvania phenomenon is almost exclusively a county issue, driven by county probation/parole supervision. The rate of those under state parole supervision is right about at the national average, while the county probation/parole supervised population is the second highest in the country. Racial disparities in probation supervision exist as well. Approximately 1 in 68 white Pennsylvanians are on probation, whereas approximately 1 in 23 African-American Pennsylvanians are on probation.

Pennsylvania county probation caseloads are extraordinarily high, and county probation agencies are woefully under-funded. This reality was clearly outlined by the most recent consensus-based Justice Reinvestment Initiative (JRI) workgroup as a problem of chief concern to the Pennsylvania criminal justice system. One solution is to better fund county probation, which has been a focus of the most recent JRI effort. Another solution is to examine whether smarter policies might be able to reduce the population of those under community supervision. This is the crux of the probation reform efforts now being proposed. Both approaches are needed.

Several factors contribute to Pennsylvania's high rate of those under probation supervision. First, Pennsylvania permits probation terms to equal the statutory maximum for the offense, while many other jurisdictions limit the total duration of a probation term. For example, if the maximum term of punishment for an individual's crime is 10 years and a probation sentence is chosen rather than a confinement sentence, the individual can receive a 10-year probation sentence. Such a long term of probation is unprecedented in many other states. The University of Minnesota's Robina Institute found that Pennsylvania is one of only four states where felony probation terms could reach the maximum allowable sentence, and the only state where misdemeanor probation terms could reach the maximum. The Council of State Governments (CSG) found that 62% of states cap probation sentences at five years or less. While early discharge from probation is allowable upon a motion of the defendant, it is not currently granted automatically after a period of "time clean" or good behavior as it is in many other states.

Another contributing factor is the ability of Pennsylvania courts to impose consecutive sentences of probation to other sentences. Approximately 30% of prison sentences in Pennsylvania are followed by a consecutive term of probation, with a typical probation term of three years. A study by CSG compared similarly situated defendants who were sentenced to state prison and did or did not receive a consecutive tail probation sentence after prison, and found no difference in recidivism rates. This large use of consecutive probation sentences extends the length of supervision and increases caseloads, with no clear public safety benefit. Pennsylvania also allows courts to sentence individuals to consecutive terms of probation, so that defendants can receive multiple probation terms "stacked" additively upon one another.

High supervision caseloads are also impacted by the inconsistent use of objective risk assessment instruments for determining the appropriate level of supervision. This means that many probationers are likely supervised at a higher rate of intensity than is necessary based on their risk of re-offending, driving up caseloads and costs. If valuable supervision resources could be saved by supervising low risk probationers at a lower intensity level, these resources could be more appropriately used to increase supervision of higher risk cases. The use of objective risk assessment tools by county probation agencies is fundamental to making this happen.

Finally, county probation agencies vary widely in their use of a continuum of options in response to technical probation violations. The Commonwealth's first JRI effort encouraged (but did not mandate) counties in this regard, by enabling a swift and certain sanctioning approach based on similar successful community supervision approaches in other states. Research shows that sanctioning for a probation violation does not need to be severe, if it is swiftly and consistently delivered in a fair manner. Even a short time-out of a day or two in jail may be successful in correcting bad behavior if delivered swiftly, certainly, and fairly. Unfortunately to date very few counties have adopted the "swift, certain, and fair" supervision approach encouraged by the JRI legislation. Having a wider continuum of graduated sanctions in response to technical probation violations would increase compliance while also saving costs and resources.

All reform should be driven by data. A glaring gap in county probation is a lack of consistent and reliable statewide data. Data is absolutely crucial to informing necessary reforms and consideration and funding should be provided to fill these critical gaps.