



Hearing on County Probation Reform
Before the Senate Judiciary Committee
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Testimony of

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Good morning Chairwoman Baker, Chairman Farnese, and members of the Senate Judiciary Committee. My name is Fran Chardo, and I am the District Attorney of Dauphin County. With me is my colleague Stephanie Salavantis, District Attorney of Luzerne County, and Greg Rowe, Director of Legislation and Policy for the Pennsylvania District Attorneys Association.

We appreciate the opportunity to appear before you today, and we are especially pleased you have put together this very comprehensive and thoughtful hearing on our county probation system. This is an important topic, one which has garnered much public attention. County probation can certainly be improved. We have terrific county probation officers who do incredible work. We need to find ways to help them do even better. Improvements, however, must take into account the nuances of the probation system; the fact that not all probationers or technical parole violations can be lumped into one category; victims; restitution; the need to better allow our county probation officers to focus on those individuals who will benefit from the supervision; and the universal desire to ensure that only the appropriate probationers should be sent to prison following a technical violation.

At the outset, the PDAA has been actively engaging in discussions with many of the groups seeking to reform the probationary system, as well with the House and Senate bill sponsors and their respective staffers. We believe our laws can be improved to better ensure that the county probation system focuses on both those who need the supervision and those for whom such supervision will enhance public safety in their communities. We also need to ensure, however, that any legislation does not have unintended consequences that may diminish the goals of the legislation.

During my testimony, I would like to offer some thoughts regarding how probation should work, what are considered best practices based on research and experience, and what pitfalls we need to avoid. I will then use that policy-based discussion to serve as the basis for our comprehensive proposal on how to meaningfully and significantly improve our entire county probation system.

Probation serves many functions. It is meant to deter future criminal behavior, help rehabilitate the offender, ensure compliance with treatment to address the offender's criminogenic needs (which is more than just drug and alcohol treatment, but also involves addressing cognitive behavioral needs), serve as a form of punishment, provide an alternative to incarceration, and serve as a useful mechanism to increase the likelihood of payment of victim restitution. It also can help provide more appropriate supervision than state parole. When we examine legislation to improve probation, it is incumbent upon us to remember that different offenders have different needs, and any changes to the system have to ensure that each of these functions will be enhanced and not diminished.

Probation typically works when it is correctly targeted both in terms of length of time and intensity of supervision. Interventions, including graduated sanctions, must be appropriate as well. Sanctions need to be immediate, certain, and fair. There should be no surprises about the sanction, and sanctions should be tailored to the particular probationer. Indeed, no single set of sanctions will be effective for everyone. And incentives and positive reinforcement work.

That is what we do here in Dauphin County. Our probation numbers are lower than that of the state average because we identify and recommend for early termination probationers who have

not violated the terms of their probation, have paid their restitution, and do not otherwise pose a risk to public safety. We have collaborated with the courts, probation officers, and our defense bar, and the results speak volumes.

But there are some who would otherwise meet these criteria whom we do not recommend for early termination—these would include certain sex offenders, domestic abusers, those with extensive criminal histories, or who otherwise continue to pose a significant risk to public safety. These are the exceptions, to be sure. But our collaborative efforts work because we built in this flexibility from the beginning.

In addition, not all technical violations are the same. A first missed meeting with a probation agent is quite different than the sixth missed visit. A failed drug test may be quite different than a series of failed drug tests for substances like heroin or methamphetamine by an offender whose road to success is incumbent on successfully completing drug treatment programs. Showing up at the house of a former girlfriend may be innocuous in many instances, but if the probationer is a domestic abuser, then such behavior is potentially deadly. Or consider a probationer who was previously convicted of possessing child pornography who violates the technical conditions of his probation by using a computer, which he is prohibited to do because it could allow him access to additional pornographic images or videos. That is a much more serious violation than a probationer who was arrested for retail theft and provides a urine test indicating he has recently used marijuana.

In short, we must be careful about over-generalizing. Most technical violations do not require a return to prison. But some do. And graduated sanctions are often a smart and effective way of addressing technical violations. Consider the Hawaii HOPE program, a well-regarded program for probationers in Hawaii whose primary offenses were the result of drug use or abuse. At its core the HOPE program is about implementing a system of graduated sanctions for particular violations. The sanctions are swift and certain, not punitive or long. Hawaii HOPE has yielded much success, and Pennsylvania under Secretary Wetzel's leadership has implemented a form of it.

Based on these principles, I want to now highlight what we believe would be a series of significant, appropriate, and effective improvements to the probationary system.

First, for any probation sentence over 3 years or longer, we recommend requiring a mandated probation status conference after a defined period of time, perhaps every 2 years, where the judge may decide, among other things, to terminate probation. Judges currently have the statutory authority to terminate probation early, but there is no requirement in law that they consider it, unless a motion for early termination is filed. But those who work in the criminal justice system are overworked, and these motions are often not filed. That is why we in Dauphin County implemented our early termination system that I discussed a few minutes ago. We can use this model as the basis for improving our law state-wide. If there were mandatory probationary status conferences, I can guarantee that the number of people on probation will decline significantly. This model also would allow judges to look at the circumstances of

particular cases and for victims to have notification and input. This proposal is about requiring judges to consider whether to terminate probation but not requiring a pre-determined outcome. At the same time, it incentivizes good behavior by probationers because they will know that their case will be before the court in two years for early termination.

We also believe that the legislation should contain earned time credits. Credits could take two forms. First, there could be credits for a reduction of the length of probation if the probationer has had no violations during a particular period of time. This concept is comparable to the earned time credit program, which provides credits to certain less violent offenders receive in state prison who completed programming and complied with prison rules. Prisoners can receive about a 20 percent reduction in their minimum sentence with such earned time credits. Second, there could be credits for a reduction of the length of probation that could be awarded if the probationer earns a GED or similar milestone. Positive behavior should be rewarded, and these two forms of credits will both reduce probation lengths and incentivize good behavior that may ultimately reduce the likelihood of recidivism.

Probation can further be streamlined by establishing guidance and limits on sanctions for technical probation violations. Sanctions should be graduated. We have such a structure for state parolees. State parolees cannot be sent back to state prison for technical violations unless the violation fits into one of five categories: 1) the violation was sexual in nature; 2) the violation involved assaultive behavior; 3) the violation involved possession or control of a weapon; 4) the parolee has absconded and the parolee cannot be safely diverted to a community corrections facility or center; or 5) there exists an identifiable threat to public safety, and the parolee cannot be safely diverted to a community corrections center or facility. Moreover, the state parole statute places limits on recommitment lengths in prison.

We believe consideration should be given to incorporating a similar structure in law for technical probation violations. In doing so, we will have determined the kinds of serious technical violations that may in some circumstances warrant revocation. Because parolees and probationers are different, we would need to further examine what kinds of criteria to include under this system of graduated sanctions.

There has been considerable discussion about whether improvements to the county probationary system should include mandated caps. We are opposed to such caps, and we believe that the proposals I outlined above would achieve the same goals as caps, yet ensure that certain probationers, such as those with significant criminogenic needs, those who pose a significant threat to public safety and those who have not paid restitution, could continue on probation for a longer period of time. These would not be the majority of cases, to be sure. Unfortunately, mandated caps would not permit judges to treat those kinds of cases differently from the more typical case where an offender does not fall into these or other specialized categories.

Pennsylvania does have probationary caps: the statutory maximum. While it is true that other states have caps that are lower than the statutory maximum — particularly for some felonies —

many states have misdemeanor caps that are higher than Pennsylvania's applicable statutory maximum.

In addition, convicted offenders are sometimes sentenced to probation in lieu of incarceration, or for a shorter period of incarceration, such as in cases where individuals have been charged with and found guilty of felonies, or for conduct such as assaulting others, or threatening others while in possession of firearms. Particularly when there are significant drug, alcohol and mental health issues involved, we have seen instances where the ability to impose a longer probationary term appropriately eliminated or reduced the need for incarceration. The unintended but very real potential consequence is that the proposed caps may cause probation to become so weak that it would no longer be used as an alternative to incarceration in these types of cases.

We also believe that a ban on consecutive probationary sentences is ill-advised. Imagine if an underlying criminal act resulted in five or more victims. A very real scenario would be one where an individual broke into five separate cars and stole items from each. These would be charged as five separate misdemeanor counts of theft and vandalism, with five separate named victims and five separate orders for restitution. Were there a ban on consecutive probationary sentences, four of the victims would have to be effectively forgotten about at sentencing if probation were the sentence. Similarly, there could be a situation where an individual commits simple assault against several different individuals. Even if the perpetrator was charged with and convicted of simple assault, all but one victim would also have to be forgotten about. Such a result is simply not acceptable.

Nor is a ban on split sentences acceptable. Split sentences occur when an offender serves a probationary term after having served a state sentence. Split sentences allow a judge and county probation agent to follow an offender who served a state sentence. Split sentences are not infrequently used in cases involving sex offenders, since many county probation officers are excellent at supervising sex offenders – and many sex offenders in need of extended supervision beyond parole. Moreover, judges sometimes believe that some offenders, often those with particular criminogenic needs, are better served if post-release supervision includes supervision by county probation officers. We should not forbid this practice across the board.

Unfortunately, there is a lack of good data on the topic of revocations. We know from the Council of State Governments that about 10% of the state prison admissions are for probation violations. But the data does not distinguish between technical violations and new crimes. Nor does the data tell us what kind of technical violation was at issue. Without such data, we really do not understand whether technical probation revocations are problematic or appropriate, or somewhere in between. CSG was able to determine that 65% of probation terms are for 3 years or less, and 35% are for longer than three years.

One of the often mentioned talking points in favor of reform legislation is that Pennsylvania has the second highest percentage of people on probation and parole. While we agree that we can and should identify ways of reducing the number of people on county supervision, the underlying talking point lacks context in that it compares Pennsylvania's sentencing system to

that of other states which have some different sentencing schemes. Pennsylvania is somewhat unique in that we have an indeterminate sentencing system, coupled with a law that requires that the maximum part of a sentence be at least double the minimum. We have so many people on supervision because we mandate that almost all offenders have a chance at getting released on supervision.

Our criminal justice system can be improved when we work collaboratively. Improving probation should be no different. The changes we have made to Pennsylvania's criminal justice system have occurred because of our work together, with many of you, with former Chairman Greenleaf, and with outside stakeholders like the Justice Action Network. We agree our probationary system needs improvement, and we are optimistic that meaningful legislation will be enacted this fall.