

Testimony of Vincent Schiraldi, Co-Director, Columbia University Justice Lab before the Pennsylvania Senate Judiciary Committee

June 26, 2019

Thank you Chair Baker and Vice Chair Farnese for inviting me to testify before the Judiciary Committee on the important issue of community supervision. My name is Vincent Schiraldi and I am co-director of the Columbia University Justice Lab. I was formerly Commissioner of New York City Probation, Senior Advisor to the New York City Mayor's Office of Criminal Justice and Director of the Department of Youth Rehabilitation Services for Washington, DC.

In 2018, I co-authored the *Pennsylvania Community Corrections Story* about parole and probation in Pennsylvania and have since spoken at the annual conference of the County Chief Adult Probation and Parole Officers Association of Pennsylvania in State College, as well as to several groups of judges, prosecutors, defense attorneys and community members here about Pennsylvania probation and parole.

What I intend to do today is briefly discuss the origins of community supervision, how it evolved to where it is today and what challenges face community corrections both nationally and in Pennsylvania, and then conclude with some recommendations. I know that there are several bills making their way through the Pennsylvania legislature and while many of my recommendations will overlap with provisions in those bills, I'm not here as an expert on them and such have kept my comments specific to Pennsylvania's situation as I see it, rather than the provisions of any particular bill.

I. A Little History

First, a little history.

Probation and parole were first established in the United States in the 1800s. Probation was invented by a Boston bootmaker John Augustus in 1841 and parole by criminologist and Warden Zebulon Brockway in 1876. Probation was created to provide judges with a sentencing option other than the stocks, pillory and jail, and parole as a grant of early, but conditional, discharge from imprisonment.

Both men firmly believed in redemption. Their community supervision projects were overtly optimistic, hoping that individualized supervision and encouragement in the community would help turn their charges' lives around to remain a productive part of their communities.

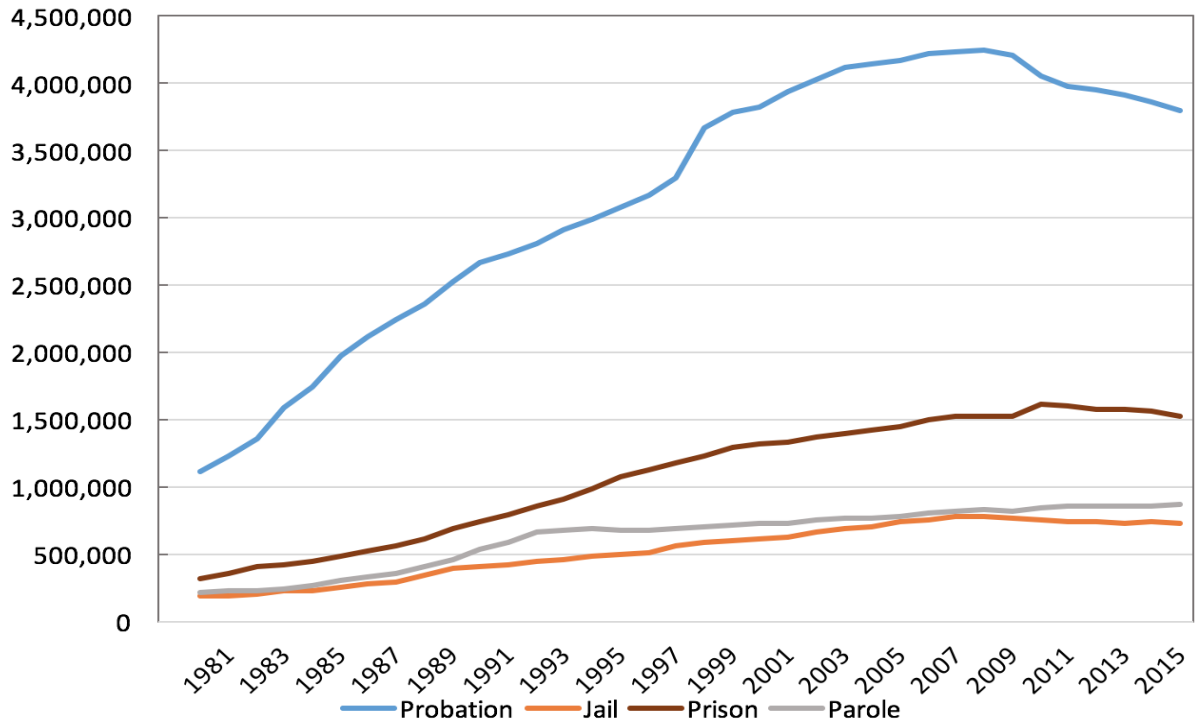
In the 1970s, this hopeful version of probation and parole ran smack into a pessimistic view of those who had broken the law as irredeemable and an era in which there was a belief that "nothing works" when it comes to rehabilitation. Research by

New York Professor Robert Martinson purported to support the “nothing works” theory and it quickly came to dominate correctional practice. However, over the years, Martinson’s much-heralded paper was debunked, with increasingly sophisticated studies finding that many programs, if implemented well and properly resourced, could positively affect people’s lives. Martinson himself recanted his findings and, when asked by a fellow professor what he should tell his students about the Martinson Report, Martinson responded “tell them I was full of crap.”

II. Where we are now

But the damage was done and the race to incarcerate and supervise was on. Incarceration grew four-fold to its peak with funding for prisons outstripping higher education at a time when affordable higher education became a greater need for lower and middle class young people to thrive. In 2014, the National Academies of Sciences produced a major report on the causes and consequences of the growth of incarceration in the U.S., calling the public safety outcomes from this penal increase disappointing and costly, the impact on families of incarcerated people damaging, and the racial concentration of incarceration troubling. They described the explosive growth of incarceration in the U.S. since the 1970s “historically unprecedented and internationally unique.”

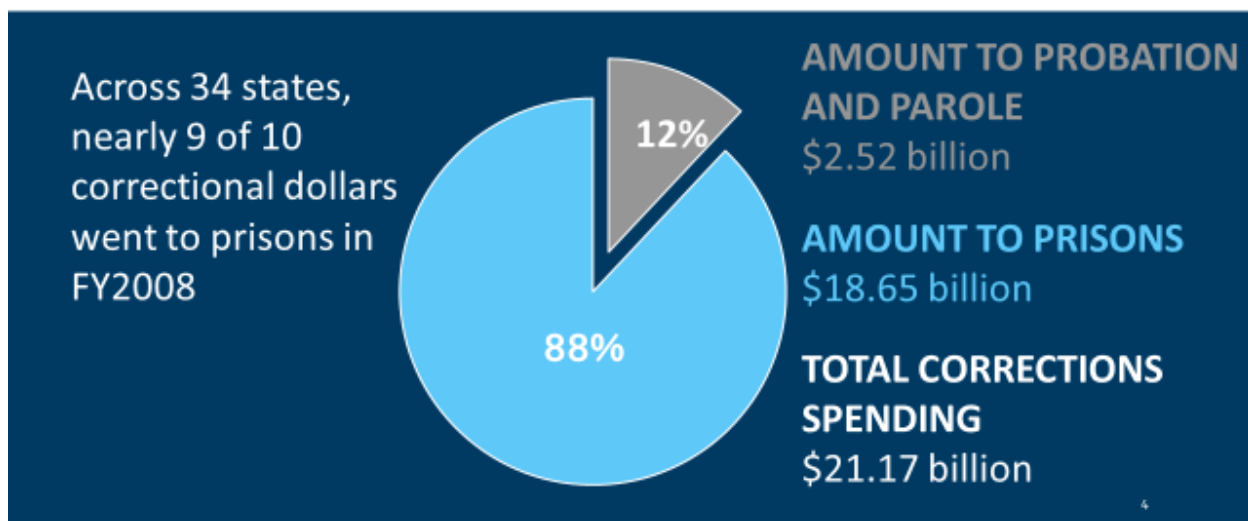
Although it was originally designed as either an up-front alternative to incarceration (in the case of probation) or a back-end release valve (parole), supervision grew four-fold to its peak, right alongside prison growth. This chart shows how jail, prison, probation and parole populations have grown side-by-side with one another.



Data like these and more sophisticated research have found that probation and parole, writ large, are no longer serving as alternatives to incarceration but rather as add-ons, working as tools to expand incarceration instead of as pathways for people to succeed in their communities. A report released just last week by the Council of State Governments found that one in four prison admissions are for technical probation or parole violations, costing states \$9.3 billion annually.

To make matters worse, as probation and parole grew alongside imprisonment, they were never funded to adequately do the job that was their original purpose. Today, there are 4.5 million people on probation or parole, about twice as many people as are in prison and more people than *live* in half of all U.S. states. However, while there are twice as many people on probation or parole as in prison and jail, nine out of 10 correctional dollars go to incarceration, not community supervision – with even less money, in my experience, going to communities in a way that would limit utilization of these systems to begin with.

PRISONS DOMINATE SPENDING



Compounding this was the deterioration of the social safety net during the last four decades. Housing, welfare payments, and educational supports have all diminished as overburdened probation and parole departments were being asked to help people sustain themselves, improve their education and find stable housing. Collateral consequences of criminal convictions grew, employers became more suspicious of those with criminal convictions, and the ability to search backgrounds has grown exponentially.

Meanwhile, as cases like Willie Horton and all the local versions of Willie Horton became political flash points, the margin for error for community corrections narrowed considerably.

This has created a perfect storm for probation and parole officials: high caseloads, full of mostly men looking for work, sustenance, drug treatment, mental health counseling, stable housing and education, in a risk-averse environment with limited resources. In a situation like that, probation and parole officials often don't have the time or resources to help turn someone's life around, but they sure have time to write a violation report, and prison and jail are resources that are seemingly infinite and at their fingertips.

III. The Pennsylvania Story

So where does Pennsylvania fit in all of this?

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.

There are nearly as many people under community supervision in Pennsylvania (296,000) as *live* in Pittsburgh (303,625). Pennsylvania has the highest number and rate of people under parole supervision in the country, three times the national average. Pennsylvania's rate of probation supervision is 18% higher than the national average.

While community supervision rates declined nationally between 2015 and 2016, they grew by 5.3% in Pennsylvania that year, the most recent year for which we have national comparison data, although my understanding is that the number of people under supervision in Pennsylvania has since begun to decline.

Pennsylvania's high rate of community supervision is having a significant impact on corrections populations in the Commonwealth. A 2017 report by the Council of State Governments' Justice Center found that nearly one-third of Pennsylvania's prison beds are occupied by people who have violated conditions of probation or parole, costing the state \$420 million a year. While 28% of admissions to prison in the United States in 2014 were the result of a parole (or conditional release) violation, 45% of prison admissions in Pennsylvania were the result of parole violations. And that's just prison admissions; it does not include the impact of violations on jails. One report found that half of the people in Philadelphia's jail were held on parole or probation detainees.

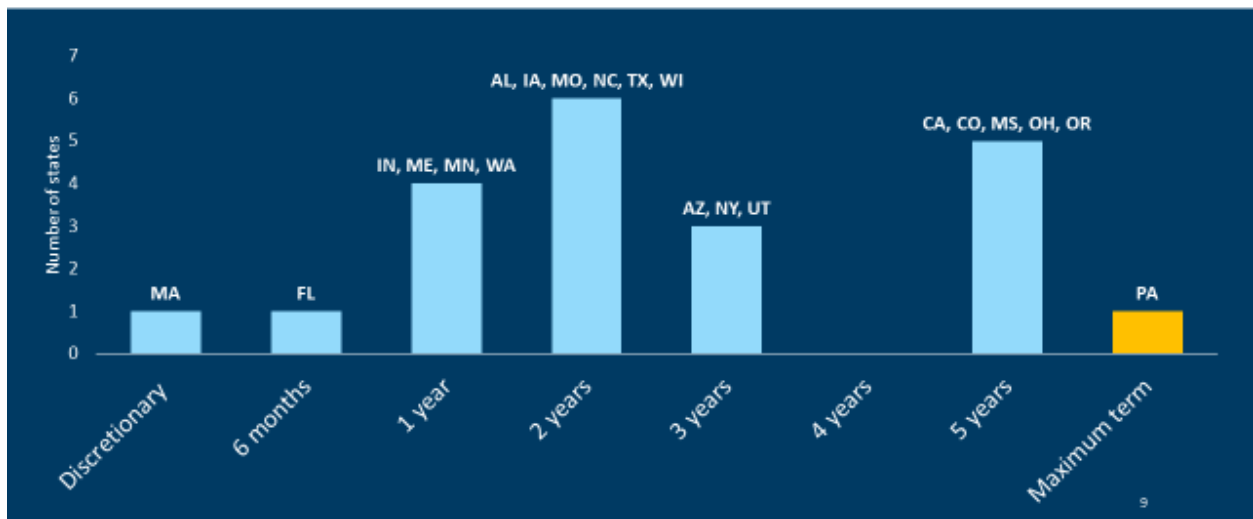
There's a number of reasons for this which I believe are important to briefly discuss and which relate directly to the pending legislation:

- Persons sentenced to prison for indeterminate ranges in Pennsylvania are required to be supervised on parole for the duration of the remainder of their maximum sentence which is sometimes quite long. So, if someone receives a 10 to 20-year prison sentence in Pennsylvania, and they are released at their minimum of 10 years, they are supervised on parole for an additional 10 years.
- Pennsylvania permits probation terms to equal the statutory maximum for a person's offense; many other jurisdictions limit the duration of a probation term (see below). So, if the maximum period of punishment for a person's offense is 20 years, they can receive a 20-year sentence to probation, a probationary period unheard of in many states. If that individual violates probation, the judge can sentence him or her to the maximum term of 20 years. Judges can also resentence persons who have not succeeded on probation to even longer terms of probation. According to a 2014 analysis of 21 states by the University of Minnesota's Robina Institute of Criminal Law and Criminal Justice, Pennsylvania stands out in this regard. It is one of only four states examined where felony probation terms could be the maximum allowable sentence, and the only state examined where misdemeanor probation terms could be the maximum.

MAXIMUM LENGTH OF FELONY PROBATION, BY STATE



MAXIMUM LENGTH OF MISDEMEANOR PROBATION, BY STATE



- Pennsylvania courts are permitted to sentence people to probation following their prison/parole terms. Thirty percent of prison sentences in Pennsylvania were followed by a probation term with a median length of three years in 2014. According to a Council of State Governments' analysis, persons with "probation tails" were rearrested at the same rate in Pennsylvania as those without. As such,

probation tails expend resources and serve as trip wires back into incarceration without increasing public safety outcomes.

- Pennsylvania also allows courts to sentence people to consecutive terms of probation. Therefore, people can receive multiple probation terms for multiple counts, “stacked” additively upon one another.
- While early discharge from probation is allowable upon the motion of the defendant, it is not administratively granted as it now is in many other states, greatly limiting its utility.
- When an individual is accused of a probation violation in Pennsylvania, they are often held on a local county detainer, meaning they are not entitled to pre-hearing release either on bail, their own recognizance, or under supervision. There is also no time limit to this detention.

The cumulative impact of these factors have left Pennsylvania with some of the highest community supervision rates in the country, at a great cost, and with no discernable benefit to public safety or individual outcomes.

IV. What can we do about this problem?

From 2013 to 2016, the Harvard Kennedy School Program in Criminal Justice Policy and Management convened 29 individuals from community corrections, prison and jail administration, prosecution, academia, advocacy, philanthropy, elected officials and formerly incarcerated communities to examine the state of community corrections in America. In an extremely unusual move due to the high degree of agreement among the participants, this Executive Session on Community Corrections issued a consensus paper on the future of community corrections, describing five principles that should guide the future of probation and parole:

1. To promote the well-being and safety of communities.
2. To use the capacity to arrest, discipline, and incarcerate parsimoniously.
3. To recognize the worth of justice-involved individuals.
4. To promote the rule of law, respecting the human dignity of people under supervision and treating them as citizens in a democratic society.
5. To infuse justice and fairness into the system

In August 2017, the nation’s leading probation and parole administrators signed a *Statement on the Future of Community Corrections*, in which they noted that “community corrections has become a significant contributor to mass incarceration” but that “increasingly sophisticated research has shown that we can responsibly reduce probation and parole populations” and that “it is possible to both significantly reduce the footprint of probation and parole and improve outcomes and public safety.” That

statement, which was later joined by 45 current and former prosecutors, offered the following recommendations:

- Reserving the use of community corrections for only those who truly require supervision.
- Reducing lengths of stay under community supervision to only as long as necessary to accomplish the goals of sentencing.
- Exercising parsimony in the use of supervision conditions to no more conditions than required to achieve the objectives of supervision.
- Incentivizing progress on probation and parole by granting early discharge for those who exhibit significant progress.
- Eliminating or significantly curtailing charging supervision fees.
- Preserving most or all of the savings from reducing probation and parole populations and focusing those resources on improving community based services and supports for people under supervision.

Combining the principals and recommendations of the Harvard Executive Session, the Statement on the Future of Community Corrections, and other standards like the American Law Institute’s Model Penal Code, I offer my recommendations in four sections: enhancing due process for persons accused of technical violations; focusing supervision terms to the time they are most effective; limiting technical violations in number and length; and capturing the savings from these reforms to be used for community supports:

A. Enhancing Due Process

- **Strictly limit incarceration and increase due process protections for people under community corrections supervision.** Incarceration is an outsized and highly disruptive response to behavior that is not criminal. As research on pretrial detention has shown, even short periods of incarceration can be highly disruptive to housing, employment, and family ties and can contribute to recidivism. People under community corrections supervision should not be incarcerated, even for short-term holds, unless criminal activity is suspected. In cases where criminal activity is suspected, Pennsylvania should require judicial review before a person is incarcerated, with the same level of due process proceedings that would be expected for a member of the public who is not under community corrections supervision. This ensures appropriate due process, and avoids unnecessary incarceration.

B. Focusing supervision terms to the time they are most effective

- **Reduce probation and parole terms and eliminate consecutive probation terms.** Probation should be a sentence granted in lieu of imprisonment, not an add-on. Such terms should be only as long as is necessary to achieve the rehabilitative and accountability purposes of probation, and no longer. Most re-offenses under community supervision occur within the first year or two of supervision, after which the impact and utility of supervision wanes. Lengthy probation terms not only stretch out already strained probation resources, but they serve as unnecessary trip wires to technical revocations. According to a 2017 Pew Charitable Trusts report, eight Justice Reinvestment (JRI) 3 states (AK, AL, GA, HI, LA, MT, TX, and VT) have shortened probation terms. The Harvard Kennedy School Program in Criminal Justice Executive Session on Community Corrections recommends combining shortened supervision terms with the ability to earn time off supervision for meritorious behavior (see below). The American Law Institutes' Model Penal Code: Sentencing (MPCS) likewise recommends, "For a felony conviction, the term of probation shall not exceed three years. For a misdemeanor conviction, the term shall not exceed one year. Consecutive sentences of probation may not be imposed." Reducing community supervision terms would allow Pennsylvania's probation and parole supervising agencies to focus on individuals for the period of time they are at the greatest risk of offending, rather than exposing them to technical violations long after they have committed their original offense while increasing workloads for overburdened community supervision workers.
- **Allow persons under community supervision to earn "merit time" or "earned compliance credit" off their probation and parole terms.** A report by the Pew Charitable Trusts indicates that, in 18 Justice Reinvestment Initiative states (AK, AR, AZ, DE, GA, ID, KS, KY, LA, MD, MO, MS, MT, NH, OR, SC, SD, UT) people can shorten their supervision periods by up to 30 days for 30 days of compliance. Earned compliance credits both provide an incentive for persons on probation and parole to perform well under supervision, and help focus scarce community supervision resources on those most in need of them. In 2012, policy makers in Missouri granted 30 days of earned compliance credit for every 30 days of compliance while under supervision for certain people on probation and parole. As a result, 36,000 people on community supervision were able to reduce their terms by 14 months, there was an overall 20% reduction in the number of people under supervision, and reconviction rates for those released early were the same as those discharged from supervision before the policy went into effect. When New York City Probation increased early discharges nearly six-fold from 2007 to 2013, only 3% of persons discharged early were rearrested for a felony within a year of discharge, compared to 4.3% of those who were on probation for their full term. The Harvard Executive Session, the Model

Penal Code and the Statement on the Future of Community Corrections all recommend allowing persons to earn early discharge from community supervision.

C. Limiting Technical Violations in Number and Length

- **Eliminate/limit incarceration for technical violations.** The Harvard Kennedy School consensus document states “agency practice should eschew needlessly depriving people on probation and parole of their liberty through frivolous violations, instead emphasizing behavior change by providing robust opportunities for, and rewarding, progress.” Numerous JRI states have eliminated incarceration for certain technical violations. Pennsylvania policy makers should scour the list of items for which people under supervision can be violated, making sure that no people under supervision are exposed to incarceration for technical violation behavior that does not directly relate to public safety or that poses extraordinary or overly burdensome conditions.
- **Cap revocation terms.** Research into the impact of punishment and incarceration consistently shows that it is the certainty, not the severity or length, of sentences that carries the greatest impact on public safety. Multi-year sentences for persons who fail technical terms of their probation or parole, years after they committed their original crime and were released from incarceration, reduce system legitimacy and add to incarceration populations while providing little in the way of public safety benefits. According to Pew, 16 Justice Reinvestment states have put caps or guidelines on how long individuals can serve for a technical violation of supervision conditions (AK, AL, AR, GA, HI, ID, KS, LA, MD, MO, MS, MT, NC, OK, PA, UT).

D. Realign savings to community supports

- **Capture a portion of the savings from these reforms and use them to provide supports to the remaining parole and probation population.** Enacting these reforms will save state and local coffers considerable funds that are now expended incarcerating people for low-level violations for excessive time periods. Reforms like those recommended would result in a group of high-need individuals remaining on parole who require enhanced housing, employment, education, substance abuse and mental health services and supports if they are going to thrive in the community. Savings from these reforms should be carefully estimated by local and state budget officials with a portion going to community operated and driven programs that assist people on parole or probation to thrive in their home communities.

V. Conclusion

Probation and parole started as highly individualized attempts to rehabilitate people who had broken the law. They have become overwhelmed by massive numbers of people under supervision for far longer than they should be; people with far too many problems and POs with far too few resources. The result has been a dilution of the effectiveness of supervision, overworked POs, high failure rates, overuse of incarceration and wasted lives.

But this is one of those rare areas where best practice happens to be better for public safety, people's lives, and fiscal austerity. By reducing probation and parole terms, reducing the reasons for which someone can be revoked, reducing terms of revocation, incentivizing good behavior and capturing and reallocating the savings, the Senate can make probation and parole more focused, rehabilitative, and effective, without costing you a nickel more.

I am happy to answer any questions the Committee may have.