



Testimony

Senate Judiciary Committee

Public Hearing on: County Adult Probation & Parole Advisory Committee (CAPPAC) and Probation Reform

September 20, 2021

Presented by:

April Billet, Director, York County Probation Services

President, County Chief Adult Probation & Parole Officers Association of PA

Contact: Helene Placey, Executive Director, CCAPPOAP

Email: helenepacey@gmail.com

Phone: 814-590-6323

Good morning Senator Baker, Senator Farnese and members of the Senate Judiciary Committee.

I am April Billet, Director of Probation Services in York County. I am the current President of the County Chief Adult Probation and Parole Officers Association of Pennsylvania. My remarks today are on behalf of the County Chiefs Association. Thank you for providing this opportunity to testify before this committee on the subject of issues facing county adult probation and possible reform measures.

My testimony will focus on several probation reform initiatives contained in the current SB 5 as well as former SB 14 from the 2019/2020 legislative session. I will also comment on other challenges facing county adult probation. My remarks will address four general areas:

- 1) Background of county adult probation and parole and current challenges;
- 2) Probation reform legislation and components in former SB 14 and current SB 5;
- 3) County adult probation operating standards; and
- 4) County adult probation implementation of evidence-based practices.

Background on County Adult Probation and Parole Departments and Major Challenges

County adult probation and parole departments are under the jurisdiction of the President Judge in each county. Sixty-five of the 67 counties in Pennsylvania operate county adult probation and parole departments. The DOC's Parole Field Services (former PA Parole Board agents) provides all adult probation and parole services in Mercer and Venango Counties.

County adult probation departments supervise 86% of offenders in the community on probation or parole (over 258,000 individuals). The DOC's Field Services supervises 14% of offenders in the community (approximately 41,946 individuals).

The passage of Act 114 of 2019 (JRI-2) and the creation of the County Adult Probation and Parole Advisory Committee (CAPPAC) is a step in the right direction to help provide resources and consistency throughout the 65 county adult probation departments. The CAPPAC and the Chiefs Association partnership with the Pennsylvania Commission on Crime and Delinquency (PCCD) creates much needed support for county adult probation departments. This support is critical to meet the needs of county adult probation moving forward. The establishment of the CAPPAC does not usurp the authority of the 60 county president judges but acts in partnership with them.

There continues to be numerous challenges that county probation departments face around the state but I will limit my comments to just a few.

A significant challenge for many county adult probation departments is caseloads are high and continue to grow. The statewide average is approximately 108 offenders per officer. This is

more than double the recommendation of the American Probation and Parole Association (APPA), which suggests caseloads of 50 offenders to one officer for moderate to high risk population. Studies show that reduced caseloads, in combination with evidence-based practices, can lead to improved recidivism outcomes.

A huge challenge is the lack of funding. County adult probation funds come primarily from the county and raising revenue is limited. The county adult probation departments carry the largest share of the Commonwealth's correctional workload, but the state provides only a fraction of the funding – an amount that is not adequate to support the provision of effective probation and parole services. The Grant-in-aid program, established in the Improvement of Probation Services Act of 1965, was amended in 1986 to include the goal of covering 80% of eligible county salary costs. GIA funding came close to meeting the 80% goal in the late 1980s (78% of eligible costs in FY 1988-89). Since then, GIA as a percentage of eligible salaries declined steadily. Based on a 2015 Legislative Budget and Finance Committee Report on *“Funding of County Adult Probation Services”*, GIA in recent years was less than 18% of eligible county salary costs.

The State GIA program reached its highest level in FY 2004 at \$21,025,000. The current amount is \$16,150,000 which has remained the same since FY 2011.

Since 2020, GIA falls under the responsibility of the CAPPAC. The CAPPAC established a Funding Subcommittee who is tasked with developing a new funding formula to take into consideration factors such as: the number of individuals sentenced to probation, number of people under pretrials supervision, number of individuals discharged from probation supervision, the risk and need score of individuals under supervision, as well as other factors. Even though the GIA funding formula is still in draft stages of discussion, we know the amount of GIA needs to be increased significantly in order to appropriately fund the operation of county adult probation and parole and provide adequate resources to individuals under court supervision.

There are other challenges that face county probation departments but in the interest of time, I will limit my remarks to these two.

Probation Reform Components in former Senate Bill 14 and current Senate Bill 5

Our Association supports the idea of general caps on probation sentences of three years for a misdemeanor offense and five years for a felony offense. Based on substantial research in the field, the benefits of county probation max out at 18 months to 2 years. However, we recognize the concerns of prosecutors and judges. Concerns regarding lack of supports and services in the community for individuals with serious mental illness and significant histories of substance abuse by some individuals are serious and should be addressed prior to implementing hard caps on county probation sentences. Additionally, many prosecutors and

judges sentence defendants to long probation sentences in lieu of a state prison sentence with the goal of keeping these individuals close to their natural supports, rehabilitation efforts or programs in their communities and their trust in their county probation offices. Hard caps may unintentionally result in more defendants being sentenced to state prison.

Instead, we suggest an automatic, early termination of probation supervision in statute. We recommend a presumptive early termination at 24 months or at 50% of the supervision; whichever is earlier if there have been no violations during the term of supervision and all conditions of their supervision have been met.

Early termination of probation is already permitted in statute (42 Pa.C.S.A. §9771(d) and §9773(a)). It is common practice in many counties to incentivize good behavior with a reduction in their term of supervision as long as the individual has no violations and completes all conditions of their supervision. The shortened sentence still provides an opportunity for the supervising officer to assist the individual with addressing their criminogenic risk factors resulting in behavior change which in turn lessens the likelihood of future criminal behavior. The unfortunate reality is many counties do not terminate probation supervision early and individuals end up on probation supervisions for years and years putting a strain on already overburdened caseloads and resources when many of those individuals have otherwise successfully completed the required conditions of their probation term.

The prosecutor, probation officer and judge would still have an opportunity to quash an early termination if there are legitimate reasons the supervision should be continued. A petition for early termination would be automatically generated. The court could review the petition (no hearing is necessary) and the court could sign the order to terminate supervision

There is no need for additional court proceedings such as a 'probation review conference'. Adding more court hearing would be burdensome to an already overwhelmed court system. An automatic early termination petition would be initiated at 24 months or at 50% of the supervision (whichever is earlier) and at that time any objection would be made by the supervising officer, prosecutor or judge if early termination is not appropriate. This process would be simpler, and more efficient to limited court resources.

Another area our Association supports is the prohibition to extend supervision due to nonpayment of fines, costs unless the court can make a finding that the offender is financially able to pay and has refused to do so. Many county probation departments already have policies in place that mirror this concept. They can track payment of fines and costs through a civil compliance court proceeding, but still terminate supervision. Or the collection of court ordered money can be turned over to a designated agency (e.g. clerk of court, prothonotary, private collection agency). Continuing to extend probation supervision for unpaid costs and

finer results in individuals getting hopelessly caught in the criminal justice system with little or no chance of success.

A concept our Association opposes is requiring the Sentencing Commission to adopt guidelines for graduated responses to technical violations (administrative violations) as well as setting a 30-day limit of incarceration on technical violations. There are many factors judges take into consideration regarding technical violations including the number of technical violations and type of technical violations, when resentencing. Technical violations vary in seriousness. Every case is different and a cookie cutter approach is not the solution.

Limitations on incarceration for technical violations does not take into consideration any negotiation that may have occurred at the front end of the criminal justice system. The prosecutor may have agreed to reduce a charge or a judge may have given a break at sentencing and imposed a term of probation when the individual should have been facing a term of confinement. These are all factors that a court must consider at the time of a violation proceeding.

Sentencing is individualized and so should any subsequent revocation proceeding regarding violations of supervision. Our Association has faith in our courts and allowing judicial discretion at time of sentencing and violation proceedings. We know that sentencing and resentencing practices vary county by county. There can be significant differences within the same county among the judiciary. There has been no emphasis on collecting and analyzing data to develop good criminal justice policy so Pennsylvania should not rush into enacting statutes that have no data to support the proposal.

Another concept in past and current legislative proposals is the elimination of consecutive probation sentences to any other sentence. Our Association is divided on this topic. Approximately half our members support the elimination of consecutive probation sentences because it contributes to unnecessarily lengthy terms of probation. Research shows that lengthy terms of probation do not enhance public safety. A Council of State Government analysis shows the average length of probation terms exceeds the period during which most recidivism occurs, stretching supervision and program resources. The average time to failure occurs just prior to the 24-month range. A similar report from the PEW Trusts shows that for individuals on probation, committing a new crime typically happens within the first 10 to 18 months. Therefore, probation terms exceeding the 24-month threshold is not necessary for the majority of offenders and puts a burden on the already overwhelmed county probation caseloads. Probation terms that last for years often fail to deliver better outcomes compared to shorter periods of supervision.

The other half of our members oppose the elimination of consecutive probation sentences for several reasons. In some cases, it would give a 'bulk discount' for individuals who commit

multiple crimes. For example, the individual who is convicted of 20 counts of bad checks when there are multiple victims. It diminishes the punishment for each individual crime and the individual victims. It also impacts when an individual commits crime across several counties. This provision would prohibit a judge to run his/her probation term to probation term imposed previously in another county. Once again, it gives a 'bulk discount' for individuals who commit multiple crimes across county lines.

County Adult Probation Operating Standards

Prior to the passage of Acts 114 and 115 of 2019, county adult probation departments were audited by the PA Parole Board for compliance with operating standards that were developed from the American Correctional Association standards. There were 173 county adult probation standards in PA based on ACA's Performance Based Standards for Adult Probation and Parole Field Services. With the passage of Act 114-2019, county adult probation and parole standards now fall under the authority of the CAPPAC.

In 2020, the County Chiefs Association's completed a thorough review of the 173 standards and provided recommendations to the CAPPAC. In the spring of 2021, the CAPPAC reviewed, refined and approved 81 operating standards in May, which were subsequently approved by PCCD in June of 2021. Standards not related to county probation supervision were eliminated. These included standards related to facility management and facility codes were removed. Additionally, other standards were consolidated.

These 81 operating standards involved policies and procedures and require county probation department's compliance. Counties will be monitored by the Pennsylvania Commission on Crime and Delinquency on an annual basis beginning in 2022. Compliance to the standards is linked to grant-in-aid funding. Our Association believes incorporating policies into the operating standards is the best approach to standardizing and improving county probation departments. The operating standards involves the creation of policy and provides consistency across the state. Policies such as how often and where individuals are required to meet with their probation officer are already contained in the operating standards. Other policies involve minimum training standards for new officers as well as continuing education for seasoned officers. The current county adult probation and parole operating standards are the best solution to implement best practices and rather than legislation.

Implementation of Evidence-Based Practices

In 2016, the County Chiefs Adult Probation and Parole Officers Association released its strategic plan for advancing adult probation and parole within the Commonwealth. In 2021, the Association underwent a refresh to ensure we were on target with the plan. The goal of our strategic plan is to enhance public safety, reduce recidivism, and provide for a more effective

use of public funds through the implementation of evidence-based practices (EBPs) in the adult county probation system.

Evidence-based practices are the application of science into operational practice for services and programs for offenders. The goal is to use practices that have been empirically tested and have been shown to reduce recidivism among offenders. Our juvenile probation system has already undergone statewide implementation of EBP under the direction and leadership of JCJC.

The evidence-based principles for effective services and interventions with offenders include:

- Conduct an assessment of offender risk and needs using an actuarial instrument and determine the drivers of criminal behavior;
- Enhance intrinsic motivation through use of constructive communication techniques, such as motivational interviewing and goal setting;
- Apply risk, need, and responsivity principles (i.e., target high-risk offenders, focus on changing criminogenic factors, provide services that match needs.) provide the appropriate dosage of services; and, deliver treatment and other services as part of the sentencing and sanctioning process;
- Employ programs and practices grounded in scientific evidence (i.e., cognitive behavioral therapy) and delivered by trained staff
- Utilize community support networks to reinforce pro-social behaviors and help offenders establish prosocial contacts in the community
- Routinely monitor and assess offender and staff performance.

The Chief's Association is in the beginning stages of a multi-year effort to achieve better outcomes in community-based offender recidivism rates. We believe the strength of our strategic plan lies in the support and collaboration of county adult probation and parole partners and key state stakeholders such as the Pennsylvania Commission on Crime and Delinquency. PCCD has supported these efforts through grant awards and active participation on committees and the Statewide EBP Leadership Team in the chiefs association's efforts to improve outcomes. Other agencies involved in these collaborative efforts include: the County Commissioners Association of Pennsylvania, Administrative Office of Pennsylvania Courts, Pennsylvania Department of Corrections, Pennsylvania Parole Board, Office of the Victim Advocate, and the Pennsylvania Commission on Sentencing.

Implementation of EBP in all counties adult probation departments will be a daunting challenge. But once implemented, county criminal justice systems should see results including:

- Improved supervision outcomes;
- Reduced offender risk;

- Reduced recidivism;
- Reduced use of county jail and state prison for probation and parole violators; and
- Better utilization of public resources.

As Pennsylvania's county adult probation departments continue to move toward statewide implementation of EBPs, we have been moving away from the old mindset of "trail 'em, nail 'em, and jail 'em" philosophy. The goal of county probation is not only to ensure public safety, but also to provide the support necessary to change offender behavior.

Senate Bill 708

A special thank you to this Committee for passing SB 708. This bill is identical to former bill that did not pass as part of the JRI-2 package back in 2019. SB 708 would make changes to the current county offender supervision funds. There is a provision under the Crime Victims Act requiring adult offenders under the supervision of a county probation department pay a monthly fee (a/k/a supervision fee). The statute currently allows the county to retain 50% of the fee it collects and remit the remaining 50% to the Commonwealth's State Offender Supervision Fund. To encourage counties to collect these fees, the Pennsylvania Board of Probation and Parole established a policy of returning the fees to the county on a dollar-for-dollar basis. During the time the fees are with the Commonwealth, any interest earned is retained in the state General Fund. This transfer by the counties of half of the supervision fees to the state and their subsequent return to the counties creates additional administrative burdens. This practice is wasteful in time and administrative effort. It should be noted that the counties earn no interest on this money, while the state does.

Our members support SB 708 which would streamline the process of county supervision fees. The proposed legislation would remove the requirement that 50% of the money being sent to the State Offender Supervision Fund. This change would allow 100% of the county supervision funds to remain at the county where the fees were collected. Thank you to this committee for voting to approve this bill and move it forward.

Summary

There are many ways to improve the county criminal justice system and sentencing practices in Pennsylvania but much of the efforts will have to be at the county level with county stakeholders, particularly the judiciary and prosecutors. As stated previously, our Association has faith in our judges and utilizing their judicial discretion at time of sentencing and any potential subsequent proceeding.

We hope the Legislature will continue to support county adult probation and parole. There is a tremendous need for the Legislature to increase the Grant-in-aid funding to support effective probation and parole services in our communities.

The County Chiefs Association looks forward working with legislators, the CAPPAC and PCCD to develop solutions to improve county adult probation.

Thank you again for this opportunity to provide remarks. I would be happy to answer any questions.