



Why Ending Mass Probation is Crucial to U.S. Criminal Justice Reform

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The high U.S. incarceration rate gets a lot of attention from scholars, policymakers, and the public – yet the most common form of criminal justice supervision is not imprisonment but probation. Rates of adult probation supervision skyrocketed in recent decades, reaching “mass” proportions in the 2000s. By 2015, 3.8 million adults were under probation supervision, accounting for 56 percent of the 6.7 million adults under any kind of criminal justice control. Similarly, while overall delinquency cases in the juvenile system have declined precipitously since the mid-1990s, almost two-thirds of the nearly 900,000 cases handled annually in juvenile courts resulted in a sanction of probation in 2015.

Probation was originally promoted as an alternative to imprisonment for less serious offenses. However, instead of diverting people from prison, probation often “widens the net” by expanding formal supervision for low-level offenses that would otherwise garner little to no punishment. This matters because the very fact of being on probation puts individuals under heightened scrutiny, restricts their behavior, and eases the path to imprisonment. In addition, mass probation is marked by deep racial and class disparities – both in terms of who is placed on supervision and who is revoked to jail and prison for violations.

Momentum to reform criminal justice policies and practices continues to build among community leaders. Emerging evidence from localities across the country suggests that we can improve probation without compromising public safety and community wellbeing – indeed, perhaps even in ways that improve them. My research identifies several policy options that can reduce the harms of mass probation. Potential reforms cover three areas: who is sentenced to probation, what they experience, and when and why probation is revoked. The recommendations include scaling back the use of probation, offering probationers more meaningful help to improve their lives, and raising the bar for revocation. Though probation reform is not a cure-all, it could reduce the reach of our criminal justice system and temper its most detrimental effects.

Sentenced to Probation

Probation sentences for both adults and juveniles massively expanded in the 1980s and 1990s, driven primarily by an increase in the number of delinquency and criminal cases filed by prosecutors. An extensive literature shows that people are at unequal risk for arrest and court-imposed penalties – based on race, class, gender, age, and location, and these inequalities get compounded as people pass through each stage of the criminal justice process. This creates a cascade of cumulative disadvantage that is especially disastrous for young black men who grow up in low-income and high-crime urban neighborhoods. True diversion from prison is more likely for relatively privileged defendants, who are also more likely to complete supervision successfully. These divergent pathways produce a probation population that is skewed toward young men of color (although less so than the prison population). Nearly half of 24 to 32-year-old black men without a high

school degree have been on probation at some point in their past.

Reducing the profound inequalities reinforced and exacerbated by probation policies requires, first, cutting back community corrections by half. Diversion starts with fewer individuals experiencing police contact and facing arrest for low-level crimes, especially the sorts of offenses associated with poverty such as minor drug offenses and nonpayment of fines and fees. In cases where arrest is warranted, judges should be encouraged to release more individuals with no sanctions or supervision, including by imposing alternatives to jail and prison like moderate community service obligations or restorative justice. In turn, people who commit less serious felonies – such as lower-level burglaries, assaults, and drug possession – should be diverted to community supervision instead of prison. Lastly, even for more serious offenses, terms of supervision should be shortened and lifetime probation eliminated, so that probationers can exit supervision when they meet their obligations.

Improving Probation Supervision

Compared to our recent past and other Western countries, U.S. probation today is administered in a uniquely punitive fashion, with fewer assistance programs, tighter restrictions, and more aggressive surveillance. Probationers are typically subject to a list of 10 to 20 prohibitions – including abstaining from drug use and alcohol, avoiding contact with known felons, paying fines and fees, reporting regularly to the supervising officer, participating in programming, abiding curfew and movement restrictions, finding or maintaining employment, and avoiding arrest. For vulnerable individuals in high-crime communities, satisfying all of these obligations is close to impossible – putting them at risk of incarceration. To enhance the rehabilitative value of probation, the conditions imposed should be limited and related to the individual's success in the community. In such a system, probation officers could help individuals get their lives back on track and fewer probationers would fall into cycles of re-incarceration.

Reforming the Probation Revocation Process

Failure to meet the many conditions of probation often leads to revocation, whereby individuals are sent to jail or prison for a short period of punishment or the entire length of the original suspended sentence. Imprisonment for violating the terms of supervision is typically easier for officers and prosecutors to pursue than new criminal convictions. This means probationers can be sent to prison for behavior that would not otherwise lead to incarceration. As of the early 2000s, 23 percent of state and federal prisoners and 33 percent of jail inmates were on probation at the time of their arrest and nearly a quarter of those were incarcerated for nothing more than a technical violation of the terms of community supervision.

Reducing the probation-to-prison pipeline is an area where headway has occurred. Key reforms include developing intermediate sanctions for violations, setting clearer and fairer guidelines for probation violations, and reducing admissions to prisons for supervision violations. These policies will ideally be developed in tandem with improving supervision – with fewer conditions or demands, more assistance, and tighter revocation guidelines, probation departments can slash the number of probationers sent to jail and prison.

Read more in Michelle S. Phelps, “Ending Mass Probation: Sentencing, Supervision, and Revocation” *Future of Children* 28, no. 1, (2018): 125-146; Michelle S. Phelps, “Mass Probation: Toward a More Robust Theory of State Variation in Punishment” *Punishment & Society* 19, no. 1, (2017): 53-73; Michelle S.

Phelps, "The Paradox of Probation: Community Supervision in the Age of Mass Incarceration" *Law & Policy* 35, no. 1-2, (2013): 51-80.