

Probation in Pennsylvania, **EXPLAINED**

Presenters:

Marianne Stein, Legislative Associate, ACLU-PA
Alex Domingos, Senior Organizer, Campaign for Smart Justice, ACLU-PA

October 21, 2021

ACLU Pennsylvania

Agenda

01

Objectives & context

02

Probation in Pennsylvania

03

Framework for reform

04

Problems & solutions

05

Questions

Objectives & Context



#01

Briefing Objectives

#1

Become familiar with how the probation system works in Pennsylvania.

#3

Identify recommended solutions to systemic problems in probation.

Understand the core problematic elements of PA's probation system.

#2

Use this knowledge to better analyze proposed probation reform legislation.

#4

Probation in **Context**

Crime Rate

Between 2006 and 2016, Pennsylvania's violent crime rate declined by 28%, the fifth largest decline in the country. But in that same time period, PA experienced a:

- 17% increase in prison population, the seventh-largest increase in the country.
- 48% increase in parole population, the thirteenth-largest increase in the country.
- 10% increase in probation population.

1

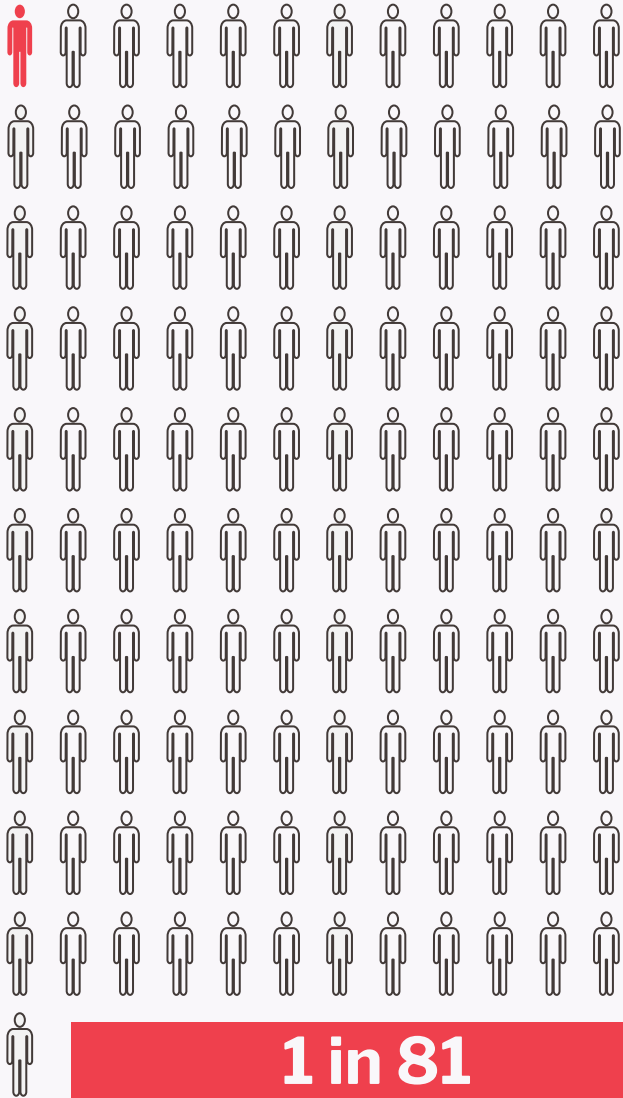
PA has the highest incarceration rate in the northeast.

2

PA has the second highest rate of supervision the country.

34

One out of every 34 adults in PA is under community supervision, 36% higher than the national average.

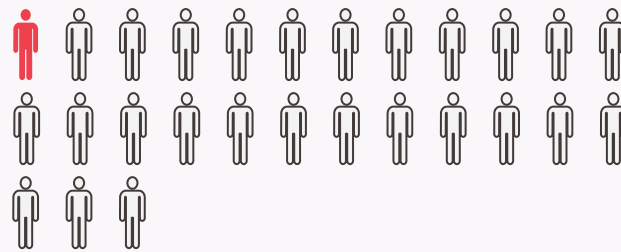


White people in the U.S.
are on probation or parole

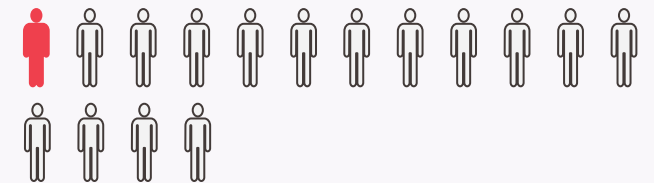
Racial disparities

In Allegheny County, Black people comprise 13 percent of the population, but 42 percent of the supervision population.

In Philadelphia, one in every 14 Black people are under supervision.



Black people in the U.S.
are on probation or parole



Black people in Philly are
on probation or parole

#02

Probation in Pennsylvania

Probation vs Parole

Probation and parole are both types of community supervision, but there are important differences:

Probation

- **Alternative to incarceration**
- **Sentencing decision** made by a judge
- Must abide by court-ordered conditions or risk revocation

Parole

- **Alternative to continued incarceration**
- **Administrative decision** made by the PA Parole Board
- Must abide by court-ordered conditions or risk revocation

Probation trap

Without caps on probation terms, PA's probation system traps people in a cycle that resentsences them on the same offense over and over again.

5 | Incarceration

Following revocation, judges often incarcerate people—the very outcome probation was intended to avoid in the first place. Or a judge can impose a new sentence of probation with new and/or more conditions, and the cycle starts all over again.

4 | Revocation

At the violation hearing, judges can revoke (or rescind) probation. After revoking probation, a judge has several options for punishing the defendant.

1 | Sentencing/re-sentencing

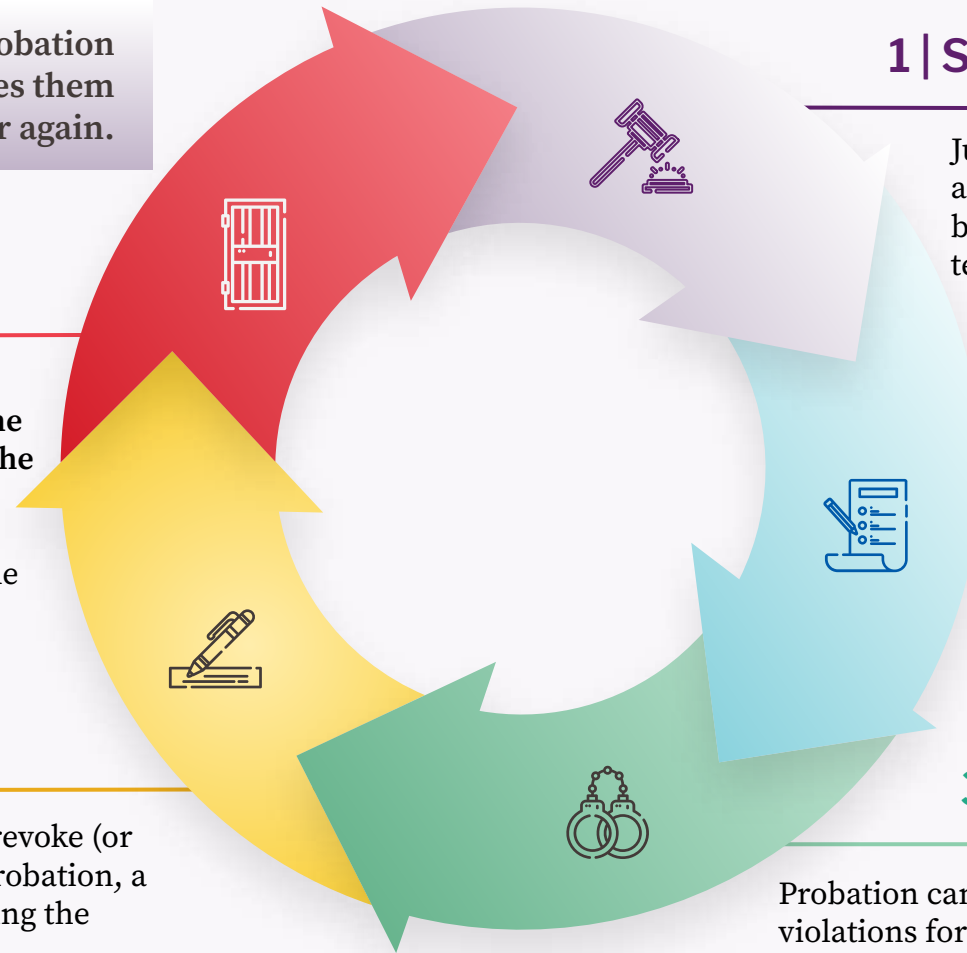
Judges can impose probation as a stand alone sentence; consecutively (back to back); or as a split sentence—a probation term or “tail” that follows incarceration.

2 | Conditions

People often languish for years under burdensome rules of probation, inevitably resulting in a violation of a condition of probation.

3 | Violations/detention

Probation can be violated in two ways: (1) technical violations for breaking a rule or (2) direct violations for a new arrest. Violations may result in the judge detaining the person, without bail, pending a hearing.





Probation **Sentences**

Decided by: **Judges & legislators**

Duration

PA is one of the few states that fails to impose a cap on the length of probation sentences—the only limit is the statutory maximum for the crime charged.

Consecutive

Pennsylvania also allows judges to impose consecutive sentences of probation, served back-to-back rather than concurrently.

Split

Courts are also permitted to sentence people to a term of probation following incarceration or parole, commonly referred to as a “split” sentence.

1. Report to your PO (Probation/Parole Officer) as directed and permit a PO to visit you at your residence and submit to warrantless searches of your residence, vehicle, property, and/or your person (including drug/alcohol testing).
2. Do not violate any criminal laws or ordinances. Notify your PO within 72 hours of any new arrest or citation or any other contact with law enforcement.
3. Notify your PO within 72 hours of any significant change in employment. You must show pay stubs to your PO to verify your employment and work hours. If unemployed, you must seek work as instructed by your PO.
4. You must reside at the address you reported to your PO and may not move without approval from your PO. In an emergency, notify your PO within 24 hours of the reason for the move and your new address. Upon request, you must list all persons staying at or visiting your residence.
5. Your PO must give permission whenever you plan to stay overnight away from your listed address. You may not

Probation Conditions

Decided by: **Judges & legislators**

General (statutory)

General conditions:
Rules that all people on probation must follow are specified under [42 Pa.C.S. § 9763\(b\)](#).

Examples

- Maintain employment
- Remain in jurisdiction
- Pay court-ordered fines
- Abstain from drug use

Special

Special conditions:
Judge-mandated specific rules that apply to an individual person on probation.



Probation **Violations**

Decided by: **Probation officers**

Direct

Direct violation:
Conviction for a new offense.

Technical

Technical violation:
Breaking a probation rule or condition that would otherwise not be considered a crime if the person was not on probation.

Examples

- Missing an appointment
- Leaving the county without notification
- Failing a drug test
- Police contact



Probation **Detainers**

Decided by: **Judges & probation officers**

Detainer

A court order to hold someone—without bail—pending a hearing for a technical violation or until a new case has been resolved.

Incarceration

A person can be detained for 2-3 weeks (or more) before going before a judge for a hearing.

Pleas

Incarceration is, by its very nature, coercive. People in custody are far more likely to plead guilty to an open matter.

Probation detainers **feed mass incarceration**

While Philadelphia reduced its jail population from more than 8,000 in July 2015 to under 4,000 in May 2020, the proportion of people locked up on supervision detainers increased, from **46 percent to 58 percent**.

In Dauphin County in 2019, **34 percent** of people in jail were detained on supervision-related charges.

On one day in October 2019, more than **40 percent** of those jailed in Montgomery County were held on detainers.



Probation **Revocation**

Decided by: **Judges & probation officers**

Violation

Two ways probation can be revoked:

- Direct violation (new offense); or
- Technical violation

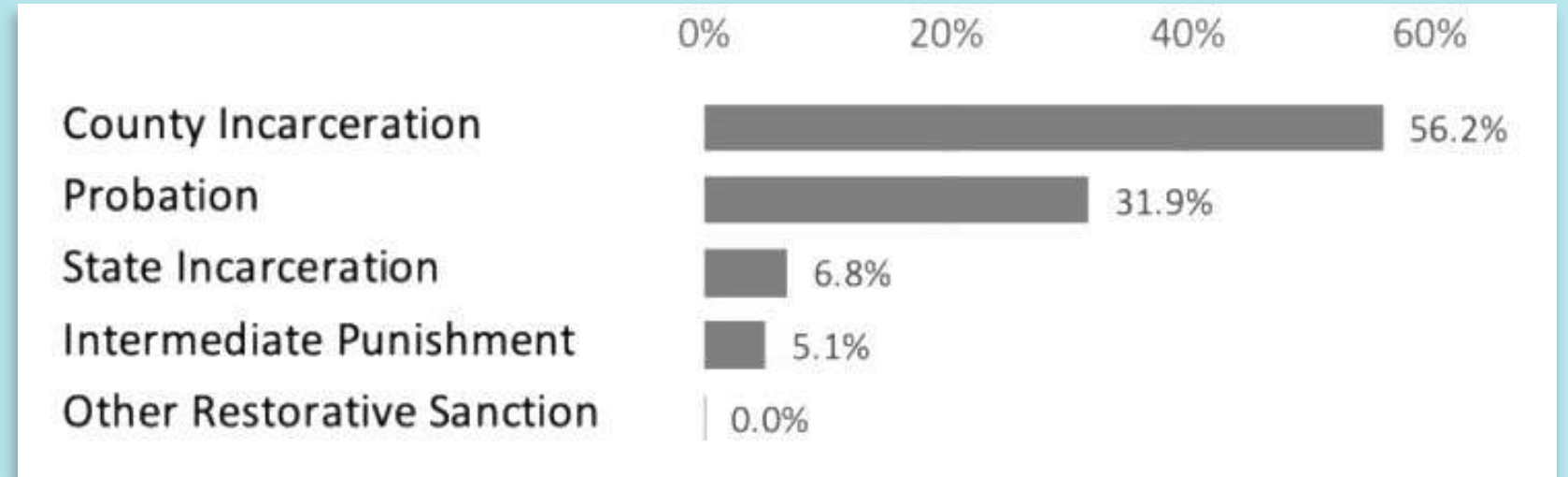
Hearings

Revocation hearing before the judge (not always the original sentencing judge)

Re-sentence

- Continue with current term of probation
- Incarceration
- Sentenced to a new term of probation (no caps, restarts the cycle all over)

Revocation Outcomes



Probation **Termination**

Decided by: **Judges & legislators**

Options

- Complete your sentence.
- Petition the court for termination hearing.
 - Probation officer
 - Person on probation
 - Defense counsel

Requirements

- Serve probation term without any violations.
- Complete any treatment / program requirements.
- Make on-time payments for fines, costs, restitution.

Hearings

Judges can approve or deny termination.



Questions

Framework for **Reform**



#03

Principles of reform

#1 | Responsive

Do reforms respond / correlate to these main drivers of mass supervision in Pennsylvania:

(a) Limit probation terms

Any meaningful reform legislation **must limit** the amount of time people can be sentenced to probation.

(b) Reduce time on probation

If probation caps are unattainable, there must be alternative ways to reduce the length of probation sentences.

(c) Restrict revocations & revise conditions

Technical violations can extend a person's probation or can result in having probation revoked; it's critical to restrict revocations and revise conditions.

1 | Non-carceral

Do reforms create new pathways to incarceration or expand judicial and/or prosecutorial power to incarcerate people?

#2 | Clarity

Are reform measures clearly articulated?

Will they be easy to follow and implement?

#04

Problems & **Solutions**

Problem:

Lengthy sentences

Pennsylvania is one of just a handful of states that doesn't limit the length of probation sentences and allows stacked and split sentences.

All available data shows that probation is only effective for the first 1-2 years. Even federal probation is capped at three years. Excessive supervision becomes invasive surveillance.

Solution:

Limit probation terms

Limit the amount of time people can be sentenced to probation.

- Cap probation sentences for misdemeanor and felony offenses.
- Prohibit split sentences.
- Prohibit consecutive sentences of probation.
- Prohibit extending probation for people financially unable to pay fines or restitution.

§ 9754. Order of probation.

(a) General rule.--

* * *

(a.1) Misdemeanors and felonies.--The total probation period may not exceed the following:

- (1) for a felony, five years; and
- (2) for a misdemeanor, three years.

§ 9721. Sentencing generally.

(a.1) Exception.--

* * *

(4) A court may not impose a sentence of probation consecutive to another sentence of probation, total confinement or State or county intermediate punishment.

§ 9771. Modification or revocation of order of probation.

* * *

(b.1) Nonpayment of fines or costs.--Notwithstanding subsection (b), the court may not extend the period of probation, may not impose a brief sanction under section 9771.1 (relating to court-imposed sanctions for violating probation) and may not revoke an order of probation solely due to nonpayment of fines or costs unless the court finds, with respect to the payment of fines, the defendant is financially able to pay the fines and has willfully refused to do so.

Problem: **No way off probation**

If reform cannot include hard caps (limits) on probation terms, then there must be alternative ways to get people off probation who don't need or who won't benefit from continued supervision.

This can be accomplished through provisions that incentivize good behavior and/or reward exceptional achievements.

Solution: **Reduce time on probation**

Reduce the amount of time people spend on probation.

- Automatically or presumptively terminate probation after a period of time without violation.
- Reduce length of probation sentence for good behavior or upon completion of educational, vocational, or other achievements.

§ 9771. Modification or revocation of order of probation.

* * *

(e) Early termination of probation for merit time.--Where a defendant has successfully completed 18 months of supervised probation without violation or revocation, the probation sentence shall be terminated by the county probation department.

Case study: **York County**

- **Early termination policy:** Developed 5 years ago by the president of the county probation chiefs association and the York County district attorney.
- Clear guidelines and criteria established.
- **Eligibility:** 24 month mark with no violations and all conditions completed.
- **Approval:** 93% of cases submitted by the probation officers have been approved for early termination by the court.
- **Recidivism:** Only 8% of those who were terminated early have recidivated.

Problem:

Violations resulting in incarceration

Nationwide, the majority of people confined in jails or prisons following revocation have not been convicted of a new crime.

In Pennsylvania, 78 percent of county probation revocations are for technical violations.

54 percent of Pennsylvania's state prison admissions are for supervision violations of probation and parole, at an annual cost of \$334 million to the state — \$101 million of which is spent on technical violations alone.

Solution:

Restrict revocations & revise conditions

Restrict the court's ability to incarcerate people following revocation and revise unreasonable conditions of probation.

- Restrict incarceration for violations, both before and following violation proceedings.
- Establish graduated sanctions for technical violations.
- Eliminate or revise unreasonable conditions of probation.

Factors **driving violations**



Poverty



Housing insecurity



Racially biased policing
& enforcement



Substance use & mental
health conditions

§ 9771. Modification or revocation of order of probation.

* * *

c) Limitation on sentence of total confinement.--~~the~~ Except for defendants who were admitted to a program established under section 9771.1(a) (relating to court-imposed sanctions for offenders violating probation), the court shall not impose a sentence of total confinement upon revocation unless it finds that:

(1) the defendant has been convicted of another ~~crime; or~~ felony, in which case the court may sentence the defendant to the sentencing alternatives available at the time of the initial sentencing;

(1.1) the defendant has been convicted of another misdemeanor, in which case the court may sentence the defendant to imprisonment for not more than six months; or

(2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned~~; or~~ and no other condition of supervision or treatment would decrease the likelihood that the defendant will commit a future crime, in which case the court may sentence the defendant to imprisonment for not more than 30 days.

~~[(3) such a sentence is essential to vindicate the authority of the court].~~



Questions



Thank You!

Contact

Marianne Stein
mstein@aclupa.org

Alex Domingos
adomingos@aclupa.org