

Of the fifty states, Pennsylvania has the second highest percentage of its citizens on probation and parole and the highest incarceration rate in the Northeast.¹ Pennsylvania keeps its citizens under carceral control at one of the highest rates in the Western world.

Probation and parole drive Pennsylvania's mass incarceration crisis. Pennsylvania's lengthy probation sentences are unnecessary and disproportionate compared with the rest of the country. People charged with technical violations of probation and parole fill our state prisons and people held on probation detainers fill our county jails. As with many other aspects of our troubled criminal justice system, racial disparities plague probation and parole revocations. Reform is sorely needed.

This overview explains probation and parole, technical and direct violations, and provides Pennsylvania specific statistics and information.

What is probation and parole?

Probation is a court-ordered period of correctional supervision to be served in the community, generally in lieu of incarceration.

Parole is a period of conditional supervised release in the community following a term of imprisonment in county, state, or federal prison. Parole is an alternative to continued incarceration; the paroled person is released from prison but remains under correctional supervision for the duration of their sentence.

Probation and parole are correctional supervision. Life is different for those on probation or parole. Probation and parole come with onerous supervisory conditions. Probationers and parolees must meet regularly with an officer, pay supervision fees, find and maintain employment, undergo repeated and random drug testing, and open their home to random searches. Probationers are prohibited from travelling outside of their local county without prior approval. If a change of residence or employment occurs, they must notify their probation/parole officer within seventy-two hours. Probationers and parolees may be required to take certain medications, maintain a strict curfew, and may also be prohibited from entering bars or communicating with certain people.²

Pennsylvania has more people under correctional control than other states

In addition to having the second highest percentage of people under community supervision (both probation and parole), Pennsylvania stands out when looking parole alone. Pennsylvania has both the highest number of people on parole and the highest rate of parole supervision in the United States.³ Pennsylvania had over 112,000 people on parole in 2016; by comparison, Illinois, a state similar in size and geographic density, had fewer than 30,000 people on parole.⁴ Pennsylvanians are more than three times more likely to be under parole supervision compared with adults in the rest of the United States.

¹ *Probation and Parole in the United States, 2016*, U.S. D.O.J. Bureau of Justice Statistics, NCJ 251148 (April 2018).

² *E.g.*, First Judicial District, Adult Probation and Parole Department, *Questions & Answer Information*, available at <https://www.courts.phila.gov/pdf/site/appd-faq.pdf>; Pennsylvania Board of Probation and Parole, Arrest Worksheet, avail. at <http://www.pbpp.pa.gov/Understanding%20Parole/Documents/PBPP-347%20VSG.pdf>. Accessed on June 6, 2018.

³ *Id.*

⁴ *Id.*

When looking at the state's total correctional control over its citizens (including both incarceration and community supervision), in 2015, with approximately 375,000 people under correctional control, Pennsylvania had more people under correctional control than the entire population of the city of Pittsburgh (305,928).⁵ In Philadelphia alone, the Adult Probation and Parole Department supervises around 44,000 people, which means that approximately 1 out of every 35 Philadelphians are under some form of supervision.⁶

Technical and direct violations

If a probationer or parolee fails to meet any of the numerous supervisory conditions, they may be arrested and charged with a technical violation. A technical violation does not mean that the probationer or parolee has been convicted of another crime, but rather they simply failed to comply with one or more supervisory condition.

An arrest for a new crime may also constitute a technical violation. That technical violation can become a direct violation if someone is convicted of a new crime that occurred while under supervision.

As a result of a technical or direct violation, the probationer will have a hearing before their sentencing judge. During this hearing, the judge may revoke probation and re-sentence the probationer to new period of probation or to a term of incarceration.

Pennsylvania statute, 42 Pa.C.S. § 9771(c) permits a judge to incarcerate someone at a probation revocation hearing, if the judge feels incarceration is "essential to vindicate the authority of the court." This statute allows judges to incarcerate people because a judge feels disrespected. If sentenced to incarceration at a revocation hearing, none of the time the probationer spent on the street counts towards this new period of imprisonment.

As Meek Mill recently demonstrated, one can successfully complete years of probation for a crime that occurred over a decade ago, nevertheless because of Pennsylvania's draconian laws, a judge still had the authority to send Meek Mill to state prison for years as a result of a technical violation of probation.⁷

If arrested for a violation while on parole, the Parole Board can revoke parole and sentence the parolee to serve the remainder of their original sentence in state prison.

People charged with technical violations fill our state prisons

In 2016, more people were admitted to state prison for parole revocations than for any new crime; people charged with parole revocations made up more than half (52.5%) of all people admitted to state prison.⁸ Between 2005 and 2016, admissions to Pennsylvania state prison for parole violations rose by 189 percent. Comparatively, admissions to state prison for new crimes increased by 61 percent.⁹

People admitted to state prison for technical violations of parole have committed no new crimes - they simply violated one of the numerous supervisory conditions.

⁵ Bureau of Justice Statistics, *Correctional Populations in the United States, 2015*; U.S. Census, *ACS Estimates 2015*.

⁶ 2016 First Judicial District Annual Report, <https://www.courts.phila.gov/pdf/report/2016-First-Judicial-District-Annual-Report.pdf>; U.S. Census *Quick Facts, Philadelphia, 2016*.

⁷ Nia Bala, *Meek Mill is Exhibit A of our Nation's Broken Probation System*, USA TODAY, April 24, 2018.

⁸ Pennsylvania's D.O.C. 2016 Annual Report, 2 avail. at <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2016%20ASR%20Report.pdf>.

⁹ Jacob Kang-Brown, Oliver Hinds, Jasmine Heiss, & Olive Lu, *The New Dynamics of Mass Incarceration*, The Vera Institute, 29 (June 2018).

Probation detainers keep thousands of people in our county jails

In addition those held in state prison for probation and parole violations, probation detainers hold thousands of people in county jails. If someone on probation or parole is arrested for a new crime, the judge (or sometimes probation officer) may lodge a detainer that holds the probationer in custody indefinitely until the resolution of the new case. This can keep people incarcerated for months or often years.

The tragic story of Khalief Browder shows the devastating consequences of probation detainers. In 2010, the police arrested seventeen year old Khalief Browder for armed robbery as he was walking home one night. At the time of his arrest, Khalief was on probation for a juvenile joyriding case. The judge initially imposed \$3,000 cash bail for the robbery charge but shortly thereafter lodged a probation detainer against him because Khalief was on juvenile probation. Khalief refused to plead guilty and this probation detainer - not the \$3,000 cash bail --- kept Khalief in Rikers for three years, where he spent much of that time confined in solitary isolation. The court ultimately dismissed all the charges and Khalief was released in 2013. Khalief explained that his time at Rikers “robb[ed] him of his happiness” and, in 2015, Khalief committed suicide.¹⁰ Without that probation detainer, Khalief would not have been held in Rikers for three years.

As of May 2018, 54 percent of the people in Philadelphia’s jails are incarcerated as a result of detainers.¹¹ These people, who have not been found guilty of any new crime, sit in limbo for months awaiting the resolution of their new case or a hearing before their original sentencing judge.

Racial Disparities Plague Probation and Parole Revocations

Studies have demonstrated that, as with arrests, grievous racial disparities exist within probation and parole revocations. The Urban Institute conducted a large scale study of probation violations in Texas, Iowa, Oregon and New York City and reported:

*We consistently found disparity in probation revocation outcomes to the disadvantage of Black probationers. In all four study sites, Black probationers experienced probation revocation at significantly higher rates than white and Hispanic probationers.*¹²

Likewise, another study that tracked every adult parolee in California for a year found that race was a factor in how parole violations were handled, that Black parolees were more likely to be referred to the parole board and were more likely to be re-incarcerated for a violation than their white counterparts.¹³

Pennsylvania’s lengthy probation sentences are unnecessary and disproportionate compared with the rest of the country

Lengthy probation sentences are unnecessary and may actually harm public safety. Several studies have demonstrated that after one to two years probation is no longer effective because the behavior that tends to result in probation failure typically occurs in the first twelve months.¹⁴ Lengthy probation sentences do not reduce recidivism and may instead act as a disincentive for probationers to engage in rehabilitative

¹⁰ Jennifer Gonnerman, [Before the Law: A boy was accused of taking a backpack. The courts took the next three years of his life.](#) The New Yorker, Oct. 6, 2014.

¹¹The City of Philadelphia, [Philadelphia’s Jail Population Snapshot Report](#), May 2018 avail. at <https://beta.phila.gov/documents/philadelphia-jail-population-snapshot-reports/> accessed on July 11, 2018.

¹² The Urban Institute, [Examining Racial and Ethnic Disparities in Probation Revocation: Summaries Findings and Implications from a Multisite Study](#) (April 2014) avail. at <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>.

¹³ David Fialkoff, [Standardizing Parole Violation Sanctions](#), National Institute of Justice Journal, No. 263, June 2009.

¹⁴ Kelly Lyn Mitchell, [It’s Time to Rethink Probation in Minnesota](#), The Robina Institute of Criminal Law and Criminal Justice, (January 13, 2017) (citing James Austin, [Reducing America’s Correctional Populations: A Strategic Plan](#), 12 Justice Research Policy 9, 35 (2010) (there is no evidence that extending or reducing the period of probation impacts recidivism, and that most supervision failures occur within the first 12 months)).

programming. Moreover, onerous probation conditions prolong the period of difficulty for individuals attempting to obtain housing or employment which are both critical factors that reduce recidivism and promote rehabilitative success.¹⁵

Pennsylvania, unlike most states, allows judges to place people on probation indefinitely for years, even decades. In Pennsylvania, the only limit to a probation sentence is the statutory maximum for the crimes charged and Pennsylvania allows sentences for each charge to be stacked consecutively. For example, if someone is charged with two first-degree misdemeanors, which each carry as statutory maximum of five years, a judge could sentence that person to a total of ten years of probation, keeping them under carceral supervision for a decade.

An ACLU analysis of all fifty states' probation laws revealed that unlike Pennsylvania, 43 states limit the length of time a person can be kept on probation. Most states limit felony probation to 5 years and misdemeanor probation to between 6 months to 3 years.¹⁶

Reform is Needed

Broad reform is needed to ameliorate Pennsylvania's carceral crisis. Suggested reforms include:

- The Pennsylvania legislature should strictly limit incarceration for technical violations of parole.
- The legislature should eliminate consecutive probation sentences and cap the length of time a person can be kept on probation.¹⁷
- District attorneys, judges, and probation departments, should eliminate the practice of pretrial confinement for technical violations of probation (detainers).
- District attorneys should stop requesting incarceration at probation revocation hearings when the probationer is charged with technical violations.
- District attorneys should request shorter probation sentences, never longer than 1 year for a misdemeanor and never longer than 3 years for a felony.

Some needed parole reforms include:

- The legislature should allow automatic termination of parole and probation after a person successfully completes twelve months of community supervision.
- The Pennsylvania Board of Probation and Parole should improve parole and release policies and practices to ensure that more people are released earlier from prison and should establish a presumptive parole program whereby parole would automatically be granted to people at their minimum for anyone serving less than five years.
- The legislature could also establish some form of parole eligibility for the thousands of people serving life sentences in Pennsylvania.

¹⁵ *Id.*

¹⁶ An ACLU [analysis of all 50 states](#) revealed that most states except for (only Wyoming, Virginia, South Dakota, Massachusetts, Tennessee and Pennsylvania) cap the length of probation terms.

¹⁷ For a good example of such legislation, see [Pennsylvania Senate Bill 14](#), introduced in the 2019-2020 legislative session by Pennsylvania State Senators Anthony Williams and Camera Bartolotta.