

## What is probation? How is it different from parole?

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

**PROBATION** is a court-ordered sentence of supervision to be served in the community. Probation was originally intended as an *alternative to incarceration*, but PA's probation system often leads to incarceration.

**PAROLE** is an administrative decision that permits supervised release following a term of imprisonment in county jail or state or federal prison. Parole is an *alternative to continued incarceration*; instead of remaining in prison, a person on parole is released but remains under supervision for the remainder of their sentence.

## Probation in context: Pennsylvania's dismal track record on incarceration and supervision

**Even as crime rates plunge in Pennsylvania, incarceration and supervision rates have skyrocketed.**

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

- 17 percent increase in prison population, the seventh-largest increase in the country.
- 48 percent increase in parole population, the thirteenth-largest increase in the country.
- 10 percent increase in probation population.<sup>1</sup>

**Pennsylvania stands out as excessively punitive—in the northeast and in the country.**

- Pennsylvania has the highest incarceration rate in the northeast.<sup>2</sup>
- Pennsylvania has the second highest percentage of its citizens on probation and parole in the country.<sup>3</sup>
- People of color are disproportionately incarcerated in Pennsylvania.<sup>4</sup>
- One out of every 34 adults in PA is under community supervision, 36% higher than the national average.<sup>5</sup>
- In 2018, approximately 178,000 Pennsylvanians were on probation.<sup>6</sup>

## What's wrong with the probation system in Pennsylvania?

**Pennsylvania is one of the few remaining states that doesn't cap probation sentences.**

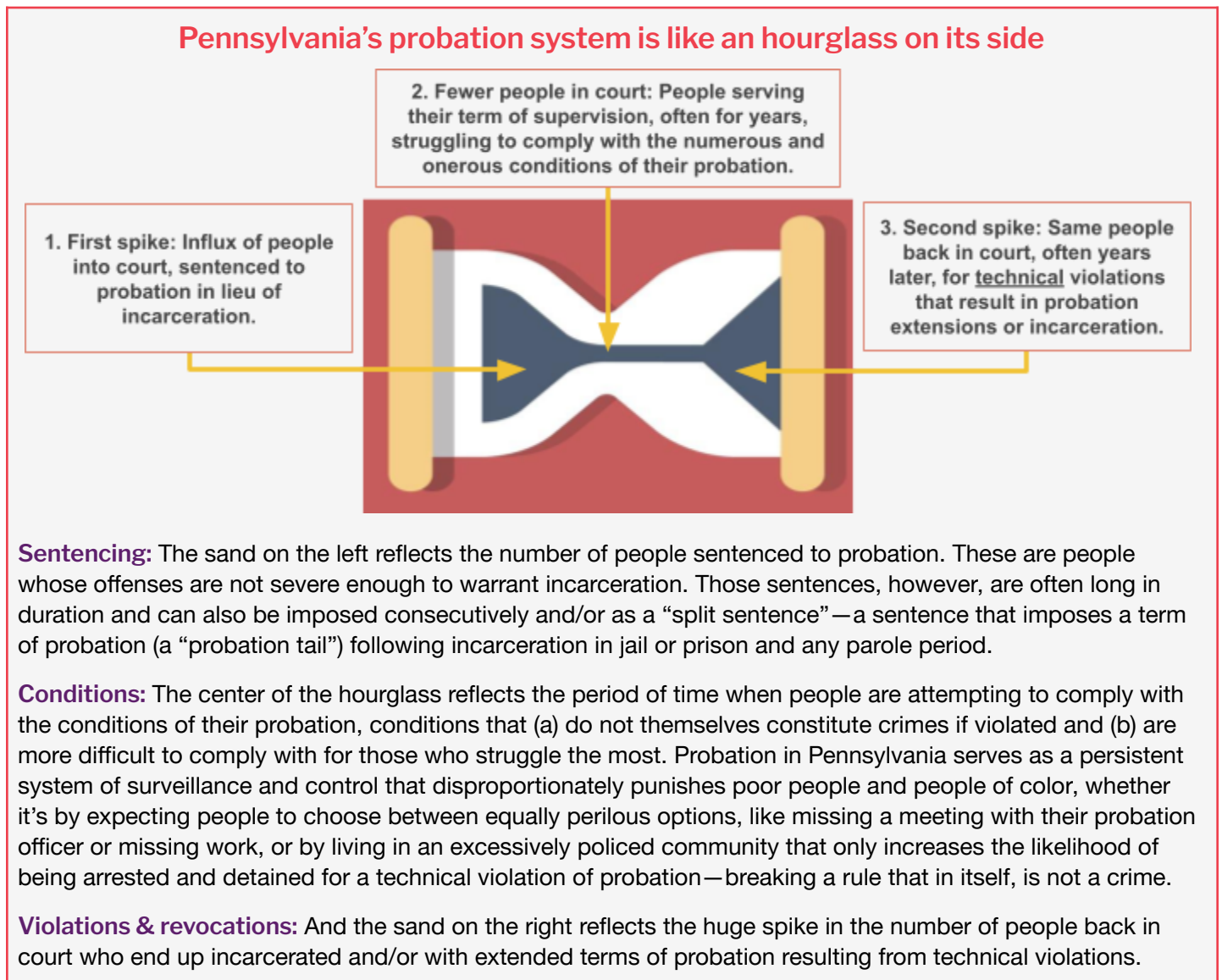
Pennsylvania is one of just a handful of states that fails to impose a cap on the length of probation sentences. The only limit to a probation sentence is the statutory maximum for the crime charged,<sup>7</sup> which allows judges to place people on probation for years, even decades. Most other states limit the amount of time someone can be sentenced to probation; three years is the national average.<sup>8</sup> Even federal law caps supervised release following imprisonment at five years for major felonies, three years for lesser felonies, and one year for minor felonies and misdemeanors.<sup>9</sup> Why? Because studies show that if people reoffend, it typically happens within the first year. And after one to two years, probation is no longer an effective way to prevent or reduce crime,<sup>10</sup> leaving hundreds of thousands of people to needlessly languish on probation every year in Pennsylvania. Establishing shorter probation terms will lead to better rehabilitative outcomes by focusing state and county resources on those who are at the greatest risk of recidivating.

**“Split” and “stacked” sentences compound the problem of excessive probation terms.**

Not only does Pennsylvania allow judges to sentence people to years of probation, it permits them to stack those charges consecutively.<sup>11</sup> For example, if someone is charged with two first-degree misdemeanors, each which carry a statutory maximum of five years, a judge could sentence that person to a total of ten years of probation. Furthermore, courts are also permitted to sentence people to a term of probation following incarceration (or parole), commonly referred to as a “split” sentence.<sup>12</sup> For example, if a person is convicted of a single criminal incident with multiple charges, a judge can “split” the sentence, giving her 2.5 to 5 years in state prison followed by 5 years of county probation. From 2005-2014, there was a 26 percent increase in the number of split sentences imposed by Pennsylvania judges, an alarming trend that is responsible for significant increases in supervision time.<sup>13</sup>

## People charged with technical violations are routinely incarcerated, filling our prisons and jails.

Community supervision should be an opportunity to help returning citizens get back on their feet, but too often it traps people in a cycle of recidivism. A technical violation occurs when a person breaks any of the numerous, and often burdensome, rules of probation—behavior which would otherwise not be considered a crime. Technical violations can extend a person's probation or can result in having probation revoked, sending them back to jail for weeks, months, even years. 54 percent of those admitted to state prisons were admitted for technical violations of supervision, **not** because they committed a new crime.<sup>14</sup> Technical violations are key drivers of over-incarceration in Pennsylvania and collectively cost states \$2.8 billion annually,<sup>15</sup> a waste of taxpayer resources that would be far better spent on public safety efforts that are effective and rehabilitative.



## What's the upshot?

Pennsylvania's probation system effectively operates like a hamster wheel where people get re-sentenced to the same offense over and over again (an offense not severe enough to warrant incarceration) by ensuring that people languish for years under burdensome conditions, until they invariably violate one or more of those conditions (again, behavior which would otherwise not be considered a crime), which then results in *more time* on probation and/or or incarceration—**the very outcome probation was intended to avoid in the first place**. Each step of this process must be reexamined and realigned; we can no longer afford the human and fiscal costs of ignoring proven, best practices and what the data continue to show: Pennsylvania's broken probation system must be reformed.

This framework highlights principles intended to guide decisions about how best to approach probation reform along with recommended legislative changes that would meaningfully reform probation in PA.

## **REAL REFORM:** Would proposed reforms actually reduce mass supervision in Pennsylvania?

Pennsylvania's probation system is among the most archaic and punitive in the U.S. Any reform legislation should seek to fix the underlying drivers of excessive supervision in PA with solutions informed by data, research, and best practices. Specifically, reform legislation should limit, reduce, or restrict probation terms and/or probation revocation.

### **1. Does the bill limit the amount of time a person can be sentenced to probation?**

The sheer length of probation terms is the primary driver of Pennsylvania's probation problem, and any meaningful reform legislation **must** limit the amount of time people can be sentenced to probation.

#### **Recommendations:**

- Cap the amount of time people can be sentenced to probation (e.g., 2-3 years).
- Prohibit imposing consecutive sentences of probation (sentences served back-to-back).
- Prohibit split sentences (sentencing someone to a probation term to be served *after* incarceration).

### **2. Does the bill reduce the amount of time a person can spend on probation?**

If hard limits to probation terms are unattainable or significantly compromised, there **must** be alternative ways to reduce the length of probation sentences.

#### **Recommendations:**

- Automatically or presumptively terminate probation after a period of time without violation.
- Reduce term of probation upon completion of educational or vocational achievements.
- Make any reform provisions retroactive.

### **3. Does the bill restrict the court's ability to revoke or incarcerate following a technical violation?**

Technical violations occur when a person breaks any of the numerous and often burdensome rules of probation—behavior which would otherwise not be considered a crime. Technical violations can result in having probation revoked, extending a person's probation, or even sending them to jail or prison for weeks, months, even years.

#### **Recommendations:**

- Restrict the court's ability to revoke probation for technical violations.
- Limit incarceration following a probation revocation, both before and after violation proceedings.
- Prohibit extending probation for people financially unable to pay fines or restitution.
- Establish graduated sanctions for technical violations.
- Eliminate or revise unreasonable conditions of probation.

## **DO NO (MORE) HARM:** Do reforms include any new provisions that risk incarcerating more people or making probation more punitive?

Given that the original intent of probation was to serve as an *alternative to incarceration*, it is essential that any new proposals avoid creating new punitive or potentially carceral provisions, either explicitly or through expanded powers granted to courts or prosecutors.

## **CLEAR:** Are proposed reforms clearly defined? Will changes be easy to follow and implement?

Reform measures should avoid further complicating an already convoluted process. Changes that are too complex or burdensome, unnecessary or duplicative, or narrowly or exclusively defined, make successful implementation less likely and reform measures more meaningless.

# Endnotes

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<sup>1</sup> Council of State Governments Justice Center, [50-State Data on Public Safety](#) (2018).

<sup>2</sup> This rate increased by 16% from 2005 to 2014. Council of State Governments Justice Center, [Justice Reinvestment in Pennsylvania: Policy Framework](#) (2017).

<sup>3</sup> U.S. Department of Justice, Kaebler, D., [Probation and Parole in the United States, 2016](#) (2018). Office of Justice Programs, Bureau of Justice Statistics.

<sup>4</sup> Jannetta, J., Breau, J., Ho, H., & Porter, J. (2014). (Issue brief). [Examining Racial and Ethnic Disparities in Probation Revocation: Summary Findings and Implications from a Multisite Study](#). Urban Institute.

<sup>5</sup> U.S. Department of Justice, Kaebler, D., & Bonczar, T., [Probation and Parole in the United States, 2015](#) (2017). Office of Justice Programs, Bureau of Justice Statistics.

<sup>6</sup> Prison Policy Initiative, [Pennsylvania Profile](#) (2018).

<sup>7</sup> [42 Pa.C.S. § 9754 \(a\)](#).

<sup>8</sup> U.S. Department of Justice, Rosenmerkel, R., Durose, M., & Farole, Jr., D., [Felony Sentences in State Courts](#) (2010). Office of Justice Programs, Bureau of Justice Statistics.

<sup>9</sup> [18 U.S.C. § 3583](#).

<sup>10</sup> Austin, J. (2010, May 26). [Reducing America's Correctional Populations: A strategic plan](#). SAGE Journals. (There is no evidence that extending or reducing the period of probation impacts recidivism, and most supervision failures occur within the first 12 months.)

<sup>11</sup> [42 Pa.C.S. § 9721 \(a\)](#).

<sup>12</sup> U.S. Department of Justice, Glaze, L., & Bonczar, T., [Probation and Parole in the United States, 2010](#) (2011). Office of Justice Programs, Bureau of Justice Statistics.

<sup>13</sup> Council of State Governments Justice Center, [Second Presentation to the Working Group](#) (2016).

<sup>14</sup> Council of State Governments Justice Center, [Pennsylvania Supervision Violation Data Snapshot](#) (2019).

<sup>15</sup> *Id.*