

ACLU-PA | The Need for Probation Reform in Pennsylvania

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 period of supervision to be served in the community. Probation was originally intended as an *alternative to incarceration*, but Pennsylvania's probation system often leads to incarceration.

Parole is a period of conditional supervised release in the community 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 population¹

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

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

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,⁷ 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.⁸ 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.⁹ 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,¹⁰ 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.

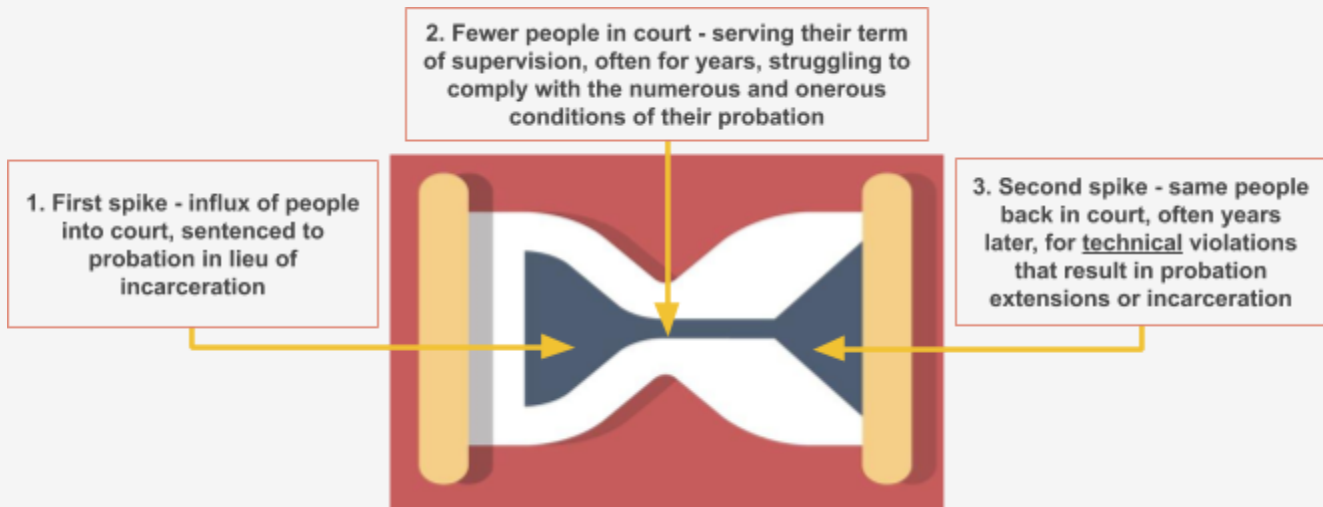
“Split” and “stacked” sentences compound the problem of excessive probation terms.

Not only does Pennsylvania allow judges to sentence people to years of probation, it permits them to stack those charges consecutively.¹¹ 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.¹² 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.¹³

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.¹⁴ Technical violations are key drivers of over-incarceration in Pennsylvania and collectively cost states \$2.8 billion annually,¹⁵ a waste of taxpayer resources that would be far better spent on public safety efforts that are effective and rehabilitative.

Pennsylvania’s probation system is like an hourglass on its side



The sand on the left reflects the number of people sentenced to probation. These are people whose offenses are not severe enough to warrant incarceration. Those sentences, however, are often long in duration and can also be imposed consecutively and/or as a “split sentence” — a sentence that imposes a term of probation (a “probation tail”) following incarceration in jail or prison and any parole period.

The center of the hourglass reflects the period of time when people are attempting to comply with the conditions of their probation, conditions that a) do not themselves constitute crimes if violated and b) are more difficult to comply with for those who struggle the most. Probation in Pennsylvania serves as a persistent system of surveillance and control that disproportionately punishes poor people and people of color, whether it’s by expecting people to choose between equally perilous options, like missing a meeting with their probation officer or missing work, or by living in an excessively policed community that only increases the likelihood of being arrested and detained for a technical violation of probation — breaking a rule that in itself, is not a crime.

And the sand on the right reflects the huge spike in the number of people back in court who end up incarcerated and/or with extended terms of probation resulting from technical violations.

What’s the upshot?

Pennsylvania’s probation system effectively operates as a process that *delays adjudication* of the original offense (again, an offense not severe enough to warrant incarceration), then ensures 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.

Endnotes

- ¹ Council of State Governments Justice Center. 2018. 50-State Data on Public Safety, https://50statespublicsafety.us/app/uploads/2018/06/PA_FINAL.pdf.
- ² This rate increased by 16% from 2005 to 2014. Council of State Governments Justice Center, *Justice Reinvestment in Pennsylvania: Policy Framework*, 2017, https://csgjusticecenter.org/wp-content/uploads/2020/01/6.26.17_JR-in-Pennsylvania.pdf.
- ³ U.S. D.O.J. Bureau of Justice Statistics. *Probation and Parole in the United States, 2016*. NCJ 251148. April 2018, <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- ⁴ The Urban Institute, *Examining Racial and Ethnic Disparities in Probation Revocation: Summaries Findings and Implications from a Multisite Study*. April 2014, <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>.
- ⁵ Kaeble, Danielle, and Thomas P. Bonczar. *Probation and Parole in the United States, 2015*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, www.bjs.gov/content/pub/pdf/ppus15.pdf.
- ⁶ Prison Policy Initiative, Pennsylvania Profile, 2018, <https://www.prisonpolicy.org/profiles/PA.html>.
- ⁷ 42 Pa.C.S. § 9754 (a) <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=42&div=0&chpt=97&sctn=54&subctn=0>
- ⁸ Bureau of Justice Statistics, “Felony Sentences in State Courts.” December 2009, <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>.
- ⁹ 18 U.S.C. § 3583. <https://www.law.cornell.edu/uscode/text/18/3583>
- ¹⁰ 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), <https://journals.sagepub.com/doi/abs/10.3818/JRP.12.1.2010.9>.
- ¹¹ 42 Pa.C.S. § 9721 (a) <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=42&div=0&chpt=97&sctn=21&subctn=0>
- ¹² Glaze, Lauren E.; Bonczar, Thomas P. *Probation and Parole in the United States*, 2010. Bureau of Justice Statistics; Washington, DC: 2011, <https://www.bjs.gov/content/pub/pdf/ppus10.pdf>.
- ¹³ Council of State Governments Justice Center, Second Presentation to the Working Group, 2016, <https://csgjusticecenter.org/wp-content/uploads/2020/01/PA-Second-Presentation.pdf>.
- ¹⁴ Council of State Governments Justice Center, *Pennsylvania Supervision Violation Data Snapshot*, 2019, <https://csgjusticecenter.org/publications/confined-costly/?state=PA#primary>
- ¹⁵ *Id.*